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	Delivered: 14/04/2021

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

A HEALTH AND SOCIAL CARE TRUST

v

A MOTHER; A FATHER

(In the Matter of Two Children: Findings of Fact: Non-Accidental Injury)

Joanne Hannigan QC (instructed by DLS) for the Health & Social Care Trust
 Suzanne Simpson QC; Janice Gilkeson, of counsel, (instructed by
 Brendan Kearney & Co) for the Mother
 Gregory McGuigan QC; Nicola Rountree, of counsel, (instructed by
 McGee O’Kane) for the Father
 Charles McCreanor QC; Brenda Dargan, of counsel, (instructed by
 McDermott McGurk & Partners) for the Intervener
 Moira Smyth QC; Mary McHugh, of counsel, (instructed by Barr & Co)
 for the Guardian ad Litem

SIMPSON J

Introduction

[1] I have anonymised this judgment. Nothing must be published which would identify the children or the family in this case. I am grateful to all the counsel for their presentations and their attention to detail in the matter.

[2] There are two children in this case, a girl (now aged 5) and a boy (now aged 4). They are the children of the two respondents to this application whom, in this judgment, I will call “the Mother” and “the Father.”

[3] The history of this family’s involvement with social services is complicated, but fortunately little is necessary for an understanding of the matter before the court.

Suffice to say that on 6th December 2017 the children were placed on the Child Protection Register in the categories of confirmed neglect and potential physical abuse, as a result of two episodes of unexplained bruising to the girl in November 2017. An Interim Care Order was first made in relation to both children on 7th June 2019.

[4] The Mother and Father are separated. At the date relevant to this hearing, the Mother was in a relationship with another man. He is an intervener in these proceedings, and I will identify him as “the Intervener.” His relationship with the Mother began in August 2017 and ended on 23 February 2018. At the date of the relevant events, the Mother was aged 22 and the Intervener 20.

[5] The only matter which the court has to decide is the identity of the perpetrator of non-accidental injuries sustained by the girl whom I will identify as “the Child” or, failing that, to identify a pool of possible perpetrators. The relevant events all occurred on the night of Tuesday 20/Wednesday 21 February 2018, when the Child was almost 2½ years old.

[6] The boy is not involved, and the Father is not implicated, in those events.

The injuries

[7] In a comprehensive medical report from Dr Kathryn Ward, the injuries to the Child are set out. The relevant injuries (of which I have seen colour photographs) are:

- (i) an extensive area of different bruises and abrasions on the left side of the face and forehead;
- (ii) on the left side of the forehead, a purple bruise, with a green bruise below it, and three linear abrasions;
- (iii) two purple lesions under the left eye and, below them, a large grey lesion, all in keeping with bruising. In addition there were numerous petechiae throughout her cheeks interspersed between the areas of bruising;
- (iv) grey lesions extending to 1cm on the flexor of the left forearm;
- (v) a 1cm circular, grey lesion, in keeping with a bruise, over the left midline symphysis pubis;
- (vi) a circular 1 cm black lesion on the upper lateral aspect of the right thigh, in keeping with a bruise;
- (vii) two circular small greenish lesions over the right side of the lower thoracic area of the back, in keeping with bruising;

(viii) a dark black/bluish lesion on the superior aspect of the scaphoid fossa in the left ear, in keeping with bruising, although there was no bruising on the opposing medial aspect.

[8] Dr Ward has expressed the opinion that these injuries were caused in a non-accidental way. She considered that the bruising to the left side of the Child's face and ear were consistent with inflicted, blunt force trauma, while the injuries to the Child's back, supra-pubic region and thigh were likely to have been as a result of gripping or grasping injuries. There is no challenge to the medical opinion; indeed, the Mother and the Intervener agree that these injuries were sustained by the Child and each agrees that the injuries are non-accidental. Accordingly, I find as a fact that the injuries listed at paragraph [7] above were non-accidental injuries.

[9] However, both the Mother and the Intervener deny any responsibility for the infliction of the injuries and both blame each other.

Evidence

[10] In addition to the voluminous documentary evidence in the case, I heard oral evidence called on behalf of the Trust from: [1] Detective Constable Rankin PSNI; [2] Majella Lafferty, Social Worker; [3] Louise Collins, Social Worker with responsibility for the children since 2017.

[11] There were statements from both the Mother and the Intervener, provided for this court. I also had available to me summaries of police interviews of each of them. The Mother was first interviewed on 1 August 2018, more than 5 months after the February events, from 10:16 to 11:41am and from 11:51am to 1:13pm. She was interviewed again on 13 August from 10.12 to 11.31am and from 11:38am to 12:55pm. The Intervener was first interviewed on 23 February from 12:35 to 1:51pm, from 3:15 to 5:10pm and from 7:43 to 7:55pm. After the CCTV footage was available to police he was interviewed on 17 August from 11:49am to noon, from 12:15 to 1:09pm and from 1:32 to 3:29pm.

[12] Both the Mother and the Intervener gave oral evidence. Neither was a satisfactory witness. Both gave several intrinsically contradictory versions of events in their oral evidence, and their oral evidence in places contradicted what they had said on earlier occasions. Both admitted telling lies.

[13] In relation to the Mother, there was a report from Dr Philip Moore, Consultant Clinical Psychologist, dated 27th January 2020, and commissioned by the Mother's solicitors. He concludes that the Mother's IQ score may lie "*between mild learning disability and the borderline range.*" He also stated that her various psychological problems do not suggest that "*she will have difficulty providing a reliable history ... as long as modifications are made to formats.*"

[14] I was able to observe and listen to the Mother over several hours of her examination in chief and cross examination. I found her to be a chaotic historian, giving contradictory versions of events, sometimes in the space of two consecutive sentences. I formed the clear view that she had no long-term appreciation of what she said. I am satisfied from observing her that she frequently just said the first thing which came into her head, without considering the consequences. She was clearly confused at times, and I am satisfied that she is easily confused by unusual or fast-moving events.

[15] I was equally able to observe and listen to the Intervener over the course of several hours. On a number of occasions I noted that, during long hesitations, he was quietly but audibly (to me) rehearsing to himself what he was trying to say. It was put to him, and he accepted, that he was no stranger to police interviews. His record was produced and it was put to him that it included convictions for offences of dishonesty. It did, but in the circumstances of this case I draw no inferences adverse to the Intervener from those convictions. I did, however, form the impression, particularly from his later police interviews when he was being confronted by the CCTV evidence, that he was evasive in many of his answers and sought to avoid answering some questions, by merely stating that he relied on what he had earlier said. I also note that the Intervener's record included convictions for offences which reveal a propensity for some violent behaviour.

[16] There were several statements made by other witnesses who, for a variety of reasons, were not called to give evidence. All of those statements were admitted into evidence pursuant to the provisions of the Civil Evidence (Northern Ireland) Order 1997. I bear in mind that the weight I give to them may be reduced because the witness's evidence was not tested in cross examination.

[17] There are many factual disputes in this case. To seek to resolve all of them would render this judgment, already long, impossibly lengthy. While I have borne in mind all of the evidence, I do not intend to rehearse it and I will confine myself to a resolution only of those issues which are fundamental to my decision.

Credibility

[18] In light of the position adopted by the Mother and the Intervener, the court is perforce required to consider issues of credibility.

[19] In *Thornton v NIHE* [2010] NIQB 4, Gillen J (as he then was) provided guidance as to how a court should approach consideration of credibility. He said (at paragraph [12]) that:

“the credibility of a witness embraces not only the concept of his truthfulness i.e. whether the evidence of the witness is to be believed, but also the objective reliability of the witness i.e. his

ability to observe or remember facts and events about which the witness is giving evidence."

At paragraph [13] he set out a number of factors to which the court should pay attention:

- (i) the inherent probability or improbability of representations of fact;
- (ii) the presence of independent evidence tending to corroborate or undermine any given statement of fact;
- (iii) the presence of contemporaneous records;
- (iv) the demeanour of witnesses e.g. does he equivocate in cross examination;
- (v) the frailty of the population at large in accurately recollecting and describing events in the distant past;
- (vi) does the witness take refuge in wild speculation or uncorroborated allegations of fabrication;
- (vii) does the witness have a motive for misleading the court; and
- (viii) weighing up one witness against another.

[20] On this same issue, in *R v H* [2016] NICA 41, the Court of Appeal referred to a number of principles which could be gleaned from the English case of *R v Fanning* [2016] EWCA Crim 550 (paragraph [19]). Under the rubric "Credibility" the court in *Fanning* said:

"It has become clearly established that absent a specific direction, it was generally permissible for a jury to be sure of the credibility or reliability of a complainant or witness in relation to one count on the indictment and not be sure of the credibility or reliability of the complainant on another count.... In G (Steven) [1998] Crim LR 483 the court said: 'A person's credibility is not a seamless robe, any more than is their reliability. The jury had to consider (as they were rightly directed) each count separately, and might take a different view of the reliability of the evidence on different counts. It was too simplistic to draw a stark distinction between reliability and credibility (as had been put in the argument). It was for the jury to decide on the basis of all the material before it whether it was sure of the particular allegation on each count.'"

[21] I bear in mind both Gillen J's guidance and, although articulated in a criminal case, the concept that credibility "*is not a seamless robe.*"

The Test

[22] Before considering the evidence it is necessary to identify the test which the court has to adopt in a case such as this. In *Re JS (A Child)* 2012 [EWHC] 1370 (Fam), Baker J between paragraphs 36 and 45 set out a number of matters for the court to consider, some of which are not relevant to this case. From that decision, I take the following material considerations:

- (i) The burden of proof lies with the Trust.
- (ii) The standard of proof is the balance of probability.
- (iii) Findings of fact must be based on evidence, including inferences which can properly be drawn from the evidence, but excluding speculation or suspicion.
- (iv) The court must consider each piece of evidence in the context of all the other evidence. The judge must view the totality of the evidence in order to come to the conclusion whether the case has been made out to the appropriate standard of proof.
- (v) The opinion of medical experts must be considered in the context of all the other evidence. The court must weigh up the expert evidence against that evidence. There may be cases where a court determines that the weight of the evidence is at variance from that reached by medical experts.
- (vi) The evidence of the parents or other carers is of the utmost importance. Credibility and reliability are key issues.
- (vii) Witnesses often tell lies. The court must bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear or distress. The fact that a witness has lied about some matters in evidence does not mean that he or she has lied about everything.
- (viii) To make a finding that a particular person is the perpetrator of a non-accidental injury, the court must be satisfied on the balance of probabilities. The test regarding whether a particular person is in the pool of possible perpetrators is whether there is a likelihood or a real possibility that he or she was the perpetrator. It is desirable, where possible, for the perpetrator to be identified, but the judge should not strain to do so.

[23] In relation to paragraph (vii) above, I note also that in *A Health and Social Care Trust v A Mother and A Father (In the matter of two children: Non-accidental Injury: Causation)* [2017] NI Fam 16 Keegan J said:

“However, I also bear in mind the warnings that emanate from R v Lucas [1981] QB 720. That in essence enjoins the court to be careful to bear in mind that a witness may lie for many reasons such as shame, misplaced loyalty, panic, fear and stress and the fact that a witness has lied about some matters does not mean that he or she has lied about everything. This was a criminal case but it is also important in family proceedings to bear in mind the pressure of proceedings...”

[24] As to the civil standard of proof, in *Secretary of State for the Home Department, ex parte Rehman* [2003] 1 AC 153, Lord Hoffman explained the matter in this way:

“The civil standard of proof always means more likely than not. The only higher degree of probability required by the law is the criminal standard. But, as Lord Nicholls of Birkenhead explained in In re H (Minors) some things are inherently more likely than others. It would need more cogent evidence to satisfy one that the creature seen walking in Regent’s Park was more likely than not to have been a lioness than to be satisfied to the same standard of probability that it was an Alsatian. On this basis, cogent evidence is generally required to satisfy a civil tribunal that a person has been fraudulent or behaved in some other reprehensible manner. But the question is always whether the tribunal thinks it more probable than not.”

[25] Lord Carswell returned to this theme in the case of *In re CD* [2008] 1 WLR 1499. Having reviewed a number of earlier authorities, he said:

“Situations which make such heightened examination necessary may be the inherent unlikelihood of the occurrence taking place (Lord Hoffmann's example of the animal seen in Regent's Park), the seriousness of the allegation to be proved or, in some cases, the consequences which could follow from acceptance of proof of the relevant fact.”

[26] I bear all the above in mind.

Findings of Fact

Afternoon of 20 February

[27] The broad sequence of events, where material, is that on Tuesday 20 February 2018, after the children had their lunch, the Mother and the Intervener took them to a nearby park to play. Thereafter, the Mother went with the children to her own mother's home. I will identify her mother as “the Maternal Grandmother.” The Mother says that the Intervener came with them; the Intervener says that, on the

contrary, he went home i.e. to his father's house to smoke cannabis and that he told the Mother that this was his intention.

[28] In the course of the evidence, it became clear that Mr McCreanor QC was challenging the factual content of the statement of the Maternal Grandmother, notwithstanding that he had agreed to its admission under the 1997 Order. Counsel should be aware that it is of no assistance to a court if they agree to the admission of such a statement under the Order and then seek somehow to challenge the content of the statement. Where there is a factual dispute to be resolved, counsel should insist on the attendance of the witness (if that is possible). In fact, as I was told on the fourth day of the hearing the Maternal Grandmother was available in the vicinity of the court to be cross examined, but Mr McCreanor made no application to have her called. Accordingly, her evidence admitted under the Order was unchallenged in cross examination. I also record that according to the summary of his last interview with police, the Intervener accepted that *"he might have been at her [the Maternal Grandmother's] house on the Tuesday afternoon, but he can't remember"* and that in his evidence in chief he said *"I think I went home"*, i.e. to his father's house. (emphasis added)

[29] I find that the Mother, the children and the Intervener all went to the Maternal Grandmother's home on that afternoon. I do not believe the evidence of the Intervener when he says that he did not go there. It was at the home of the Maternal Grandmother that an incident took place causing an accidental injury to the Child which featured in the Mother's later explanations for the injuries to the Child's face. According to the Mother, the Child was playing in the house and had an apple in her mouth. She tripped over either a pram or the Intervener's feet and fell, causing a split injury to her lip. The Maternal Grandmother describes the tripping incident in some detail, which I find to be consistent with the event having taken place, and in the presence of the Intervener.

[30] After the tripping incident, the Child was taken to a chemist's shop where the chemist suggested putting Bonjela on the lip.

[31] The Mother, the Intervener and the children were all in the Mother's flat at the time (approximately 5:10pm) when the Mother went to her night class at the Tech, some 5 minutes' walk away.

Evening of 20 February

[32] For part of this evening, there is objective evidence provided by compilation CCTV footage, which was played in court. This footage came from a camera mounted high on a wall in the corridor immediately outside the door of the Mother's flat. The door to her flat is on the right as the camera is pointing, with a door to a stairwell and the door of a lift on the left. Furthest from the camera is another door which leads, so I was told, to a communal area which has windows looking out towards other flats in the block.

[33] The CCTV evidence was proved by Detective Constable Rankin. She was unable to say anything more about the timings shown on screen other than what she had been told by another officer, who had viewed the CCTV and provided the compilation. She was told that the time shown on the screen was 30 minutes ahead of the actual time of the events. There was some limited cross examination of her about this, but the matter was not taken further. I find as a fact, therefore, that the actual time of the events shown on the CCTV footage was 30 minutes earlier than the timing shown on the screen. In the findings of fact below, I refer to the actual time of events, rather than the timing on the footage.

[34] At one stage, on the fourth day of the hearing, Mr McCreanor QC appeared to express concern as to whether, in fact, the compilation showed all the relevant events. I found it unsatisfactory that this should be raised some 2½ years after the CCTV footage was shown during police interview (August 2018). I would have expected that if counsel was concerned about the images being only part of a greater amount of footage, that the whole of the footage would have been sought and viewed well before any hearing in which it was to be relied upon. In the event, Mr McCreanor did not press his concerns further, nor did he request an adjournment to allow him to view the remaining footage.

[35] The CCTV footage shows that the Mother returned to the flat from Tech at 8:43pm. The Intervener does not make the case that any person other than him was in the flat during the Mother's absence at her night class. I find that no other person was in the flat during the Mother's absence at night class, a total period of approximately 3½ hours.

[36] The Intervener has never made the case that during the time when he was minding the children he noticed any relevant injury on the Child. During his cross examination by Ms Simpson QC, he accepted that there was no relevant injury on the Child. I find as a fact, therefore, that prior to the Mother leaving the flat, there were no relevant injuries on the Child.

[37] On her return, the Mother looked in to the children's bedroom, but did not turn on the light. The Child was lying sleeping, in bed with her younger brother, and with her back towards the door.

[38] The CCTV footage shows that the Mother left the flat some 6 minutes after her arrival home, i.e. at 8:49pm. She went to the flat of a friend ("AS") in the same block. She said that the reason she left was because she was annoyed with the Intervener as he would not engage in conversation with her. She had been successful in her exams at the Tech and told him so, but he didn't answer. He stated in evidence that she asked him a question two or three times, but he "*didn't take her on*", by which I understood that he did not reply to her, and she left the flat having told him to "*Fuck off to your Da's house.*"

[39] The Mother was absent from her flat for 1 hour and 5 minutes, as shown on the footage, returning to the flat at 9:54pm. The CCTV coverage of the door of the Mother's flat during this period shows that no-one entered or left the flat. The Intervener makes no case that anyone else was in the flat during this time. Accordingly, I find that he was the only person present in the flat with the children during this period of 1 hour and 5 minutes.

[40] Some 11 minutes after the Mother's return to the flat, i.e. at 10:05pm, the Mother's telephone records show that a 999 call was made from the Mother's mobile telephone number. An audio recording played to the court reveals that the call cut off before any word was spoken. All that one can hear is a female voice saying "Ah." Not only was there a dispute between the Mother and the Intervener about when this call was made, but the reasons for it were also in dispute. In the event, the making of the call does not assist me in any way.

[41] At 10:41pm the Mother left the flat, followed by the Intervener. One minute later she went back into the flat and apparently closed the door, as the Intervener is then shown, on the CCTV footage, as being outside the flat unable to get in.

[42] From then until 11:00pm, he is seen outside the flat, variously standing, walking about, disappearing through the door at the end of the corridor which leads to the communal area, returning into view, and knocking on the flat door. He is seen looking at a mobile telephone, which is the Mother's telephone. He accepts that during this period he was, from time to time, shouting abuse from the communal area at the Mother and AS (who was at the window of her own flat) and that he was cross. In his own words he said he was "*pissed off.*"

[43] The CCTV footage then shows that the flat door apparently opens at 11:00pm, as the Intervener is seen disappearing into the flat, while the Mother comes out into the corridor area. She appears to be out of the flat (again at the flat of her friend AS) until 22 minutes past midnight, when she is seen going back into her flat. The footage does not show the Intervener leaving the flat during the period from 11:00pm until 12:22am, nor any person entering the flat in this period. Accordingly, I find that during the entirety of that period, the Intervener was the only person in the flat with the children.

Night of 20/21 February

[44] No further CCTV footage is available. By the time police went to look for footage of later times, the previous images had already been overwritten. This is most unfortunate, as there is much in dispute about the later events. Some of those later events are dealt with in a statement from AS, who was not called to give evidence. I found it difficult to place much reliance on this statement, as many of the earlier timings in the statement were wholly inconsistent with the CCTV evidence, calling into question the accuracy of events dealt with in the statement. Further, AS asserted in her statement that the Child must have been injured before the Mother

went to the Tech which, of all the various scenarios, cannot be the case. In the circumstances, I find it difficult to attach any great weight to the statement.

[45] It is then common case that at some time later, the Mother, the Intervener and a man, whom I will call SH, were in the flat. SH is a neighbour of the Mother's and was known to the Intervener from kick-boxing. What time he was there, or precisely what his movements were before he arrived, is unclear, although he was there because he was texted by the Mother and asked to come to put the Intervener out of the flat. All three, however, are agreed that it was while all three were in the flat that the Mother drew attention to injuries on the Child's face. To the police, the Intervener said that he heard the Child crying just before the injuries were pointed out, but he specifically said that he was not saying that the Mother hit the Child. There is no mention of anything like this in SH's statement and the Mother does not say this. I find that the Child was asleep, and not crying, when the Mother drew attention to the injuries on her face.

[46] On the Intervener's own evidence the Mother immediately said "*What did you do to my wean's face?*", to which he said "*Nothing*", and said that if she was blaming him she should ring for the police or an ambulance. He was then subjected to a minor assault at the hands of SH. I find that although the Mother initially said this, she did not genuinely believe, at that stage, that the Intervener had done anything to the Child. I find that her outburst was a knee-jerk reaction to what appeared then to be alarming injuries.

[47] All three agree that sometime thereafter the Mother, the two children and SH left the flat, there being a suggestion that the Child would be taken to hospital. The Mother, SH and the Maternal Grandmother all agree that they went to the Maternal Grandmother's house. Again, however, the time when this happened is not clear and there appears to be a potential disagreement between the Maternal Grandmother and SH as to whether he remained in her house with the Mother and children, the Maternal Grandmother's statement being silent as to his presence. In any event, the children were not taken to hospital, and the Mother and SH (as I find) returned to the Mother's apartment block.

Later events

[48] The Child was medically examined initially on 21 February, Ms Collins having accompanied the Mother and children to the appointment. The exact circumstances in which the other social worker, Ms Lafferty, made eventual contact on that day with the Mother was investigated, the suggestion being that the Mother was reluctant to answer her door. However, Ms Lafferty's attendance at the Mother's flat, where she knocked the door, was wholly unexpected, the Mother answered her telephone when called by Ms Collins and presented herself and the children to Ms Lafferty at AS's flat (where Ms Lafferty was visiting in her professional capacity). I do not consider that the Mother was reluctant to let social

workers see the Child and I draw no adverse inferences against the Mother in relation to this event.

[49] The Mother's evidence is that she heard, at this medical examination on 21 February, the words 'blunt trauma' and realised that there was a problem. The Mother immediately borrowed Ms Collins's telephone and called the Intervener. Ms Collins heard one side of a conversation, and gave evidence that the Mother, having asked the Intervener if anything had happened to the child the previous day, appeared to repeat what he was saying to her - to the effect that the Child had fallen out of bed - and also heard her asking why the Intervener had not said so the previous night. According to Ms Collins, the conversation ended with the Mother saying "*I'm standing here with a social worker and a GP and it looks as if I'm lying.*"

[50] The Intervener's version is that he was asked by the Mother during this telephone call to make up a story that the Child fell out of bed and that the Mother then pretended to repeat what he was supposed to have said.

[51] Ms Collins's evidence did not corroborate the Intervener's version, although her statement might suggest that she may not have heard the very early part of the conversation. She accepted that the Mother made no attempt to hide the conversation from her. Ms Collins did not suggest, and it was not suggested to her, that there was anything apparently fake or manufactured by the Mother during the course of this conversation. Having watched the Mother give evidence, I would find it difficult to believe that she could have effected such a successful charade.

[52] I am satisfied when she heard the doctor's description, the Mother genuinely and immediately sought some explanation for the injuries and that the Intervener provided the information which she repeated in the hearing of Ms Collins. I am satisfied that she did not ask the Intervener to make up a story.

[53] A further medical examination of the Child took place on 22 February. Initially, Ms Collins could not find the Mother to take her to this appointment, so she telephoned the Intervener, whose number remained on her telephone from the call the previous day. I find it very strange that the Intervener did not mention on this telephone call his concern about the content of the call made to him on the previous day by the Mother, which he knew was made on Ms Collins' telephone. On his version of events, he knew perfectly well that the Mother was potentially concocting a story, which involved him, dishonestly to explain away the injuries to the Child. This was the perfect opportunity for him to have raised his concerns with Ms Collins and to tell her that the Mother had asked him to make up a story. During interview police asked him about this, and asked why when he had heard the Mother "*tell lies about him*" he did nothing about it. He had no satisfactory answer. He was taxed about this in cross examination and again gave no satisfactory explanation.

[54] In the circumstances, I am satisfied that he was asked by the Mother during the call on 21 February what had happened and that he lied when he told her that the Child had fallen out of bed.

[55] Following the medical examination on 22 February, both children were placed in foster care.

[56] On 23 February, there was a further medical examination of the child at a different establishment, designed to ascertain whether the child had been subjected to sexual abuse.

Conclusions

[57] In cross examination, the Intervener was taken to the summary of his police interviews where he had said that he thought the Mother was "*a good mother*", that he had never known the Mother "*to do anything to the children whenever she can't cope*", and that she was "*overbearing as a mummy, probably just worried in case anything happens to them.*" He agreed with the suggestion put to him in cross examination that she was "*almost too protective.*"

[58] While there was some evidence of injuries to the Child in November and December 2017, there is no evidence that these were caused in a non-accidental way, and I intend to treat those injuries entirely neutrally, drawing no inferences adverse to anyone. I find, therefore, that there is nothing in the Mother's history to suggest violence towards the children in general, or the Child in particular.

[59] I find that her explanation - that the swelling on the Child's face was somehow connected to the lip injury caused when the Child fell - given to social workers and medical personnel, was not true. However, the children were on the Child Protection Register at the material time and I find that her lies about this were a stubborn and desperate attempt to ensure that the children were not removed from her. I find that this explains why she clung to an explanation which was, as was pointed out by other, more rational people, absurd. In light of my assessment of her, I do not find that her explanations were designed to cover up her own actions. Having seen and carefully watched her in the witness box, I find that her evidence - that she was not responsible for the injuries to the Child - is true.

[60] The Mother gave evidence that her relationship with the Intervener had, initially been good, but after a couple of months he became aggressive, violent and controlling towards her. This evidence was unchallenged. One of the exhibits in the case was a record of text communications between the Mother's telephone and a telephone used by the Intervener. Two texts sent by the Mother on 22 October 2017 clearly accused the Intervener of assault on the Mother. No attempt was made by him to deny the assaults in any replying text. In cross examination, he was unable to think of any reason why he would not have denied the assault. The Mother also said

that they had separated for a couple of weeks before getting back together again. In his evidence, he did not deny this.

[61] I am satisfied that the Intervener was violent towards the Mother in October 2017. That this incident was not reported to the police and that the Mother went back into the relationship with the Intervener, I find to be just another sad example of the reality of many women's experience of domestic abuse.

[62] On his own admission the Intervener was "*pissed off*" on the night of 20 February, and he agreed with the suggestion that he was cross - all because he was locked out of the Mother's flat and the Mother and AS were laughing at him. He agreed that he shouted abuse at both of them. I am satisfied that he was aggressive. I am satisfied that when he gained access to the flat at 11:00, he was annoyed at the way the Mother and AS had treated him.

[63] In his February interviews with the police, three days after the relevant events, the Intervener had failed completely to mention to police this period of approximately 20 minutes when he was locked out of the flat. While I am prepared to accept that his memory for precise times on that evening may have been unclear, even at that short remove, I do not accept that he could forget being locked out. When the CCTV footage was eventually put to him in the August interview, he told police that he wanted to say that he had been locked out but not until he had seen the CCTV footage. In cross examination, it was put to him that being locked out is not the type of thing he would forget. He said that he did not tell police everything and he could not recall why he did not tell this to police. He denied the suggestion that he did not want police to know that he was cross and that he only admitted to being locked out when forced to by the existence of the CCTV footage.

[64] Having carefully watched him giving evidence, I conclude that the reason for his reluctance to tell the truth about being locked out was that he was concerned that this might provide police with an opportunity to question him about a possible motive for an assault on the Child. In fact, that is precisely what happened. The police did put to him that he was angry as a result of being locked out. He denied this, saying that he was "*sweet*" and that he went to bed immediately on getting back into the flat because he was tired from babysitting. The police put to him that he only got up at lunchtime that day, but he maintained that he was "*knackered*." I find that these answers given to police in the interview were not true. I find that he gave these answers to attempt to deflect the police from identifying a potential motive for the assault.

[65] In all the circumstances, and bearing in mind all that I set out between paragraphs [18] and [26] above, I have come to the conclusion that the injuries were caused by the Intervener. I find that they were caused between 11:00pm and 12:22am after the Intervener had been locked out, causing him to be, on his own admission, cross and "*pissed off*", the most likely time being shortly after 11:00pm when the Intervener would have been at his most volatile. I conclude that he did so

to get back at the Mother for the way in which she and AS had laughed at him when he was locked out of the flat. I find that he roughly lifted the Child out of bed and struck her on the left side of the face, at least once. I find that the act of lifting her out of bed caused the gripping/grasping marks described by Dr Ward on the Child's back, supra-pubic region and thigh, and I find that the strike (or strikes) to the face caused the bruising to the left side of the Child's face and ear.

[66] I found, in paragraph [54] above, that the Intervener lied about the episode of the Child falling from the bed. I find that he did this in order to try to cover up the true cause of the injuries.

[67] Accordingly, it is my decision that the non-accidental injuries to the Child were caused by the Intervener.