WARNING: This judgment was delivered in private. The names of the children and the adult parties in this judgment have been anonymised, pursuant to the Practice Guidance of the President of the Family Division issued in December 2018 having regard to the implications for the children of placing personal details and information in the public domain. The anonymity of the children and members of their family must be strictly preserved. All persons must ensure that this condition is strictly complied with. Failure to do so will be a contempt of Court.

IN THE FAMILY COURT AT WATFORD

Case No: WD18C01445

Date: 17th September 2019

Before: His Honour Judge Middleton-Roy

Between:

HERTFORDSHIRE COUNTY COUNCIL

Applicant

- and -

M

First Respondent

F

Second Respondent

TP and TS

(Through their Children's Guardian)

Third and Fourth Respondents

Mr Date, Counsel, instructed by the Applicant Local Authority
Mr Goodwin QC and Mr Kingerley, Counsel for the First Respondent
Mr Samuels QC and Mr Fry, Counsel for the Second Respondent
Mr Motley, Solicitor for the Third and Fourth Respondents

Hearing dates: 28th August 2019 to 17th September 2019

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JUDGMENT

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Anonymity

1. The names of the children and the adult parties in this judgment have been anonymised, pursuant to the Practice Guidance of the President of the Family Division issued in December 2018 having regard to the implications for the children of placing personal details and information in the public domain.

2. The Local Authority is identified by name, the Local Authority being a public body with a statutory responsibility for the welfare and protection of children and support of families. Where that work has resulted in Court proceedings, the Local Authority is held accountable for its actions with families by the Court. The need for a public body to be identified when acting in respect of citizens is important. The Court concludes that naming the Local Authority would carry with it some risk of identifying the children. Nevertheless, having balanced the risks between transparency of justice on behalf of the State where life changing decisions are made for children, and ensuring their privacy, welfare and safeguarding needs are taken seriously and protected, the Court concludes that the public interest in identifying the applicant Local Authority is so important that it outweighs any risk of identification of the children.

3. The anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of Court and may result in a sentence of imprisonment.

The Parties

4. This Court is concerned with two children, 'TP' and 'TS' who are twin girls.

5. The applicant Local Authority is Hertfordshire County Council.

6. The mother of both children is 'M.' Their father is 'F.'

7. The children are parties to the proceedings through their Children's Guardian, Mr Purpura.

8. There are three interveners: the paternal grandfather ("PGF"), the paternal grandmother ("PGM") and the paternal aunt ("PA"). None of the interveners is legally represented.

Summary of Background Events

9. The application before the Court is the Local Authority's application for Care Orders, issued on 28th December 2018, arising from concerns that both children suffered significant injuries which were considered to be non-accidental. In short, it is alleged that TP sustained an inflicted head injury and TS sustained inflicted rib fractures.

10. There is no dispute between the parties as to the following background facts:
    a. TP and TS are the only children of M and F;
    b. The children were born very pre-term at 31 weeks and 6 days gestation by emergency Caesarean Section;

c. The twins remained in hospital until 11th September 2018, when they were discharged;
d. In the early hours of 15th December 2018, ambulance services were called to the family's home address after F reported that TP had become unresponsive and floppy;
e. In the early hours of 15th December 2018, TP was taken by ambulance to hospital ("hospital A"). She was assessed as clinically well on examination at hospital and was discharged the same day;
f. On 16th December 2018 TP's parents took her to a different hospital ("hospital B"), reporting that TP was vomiting, presenting as unsettled and moaning. TP was discharged from hospital that same day. The parents and children stayed with the children's grandparents that evening.
g. On 17th December 2018 the mother telephoned the GP as she was still concerned about TP's presentation. TP was taken back to hospital B where she was observed to experience focal seizures. Blood tests raised the possibility of a viral infection. A CT scan highlighted a likely subdural haemorrhage. The parents were unable to give an explanation for TP's injuries. TP was kept in hospital;
h. On 18th December 2018 the hospital notified Hertfordshire County Council Social Services.
i. On 19th December 2019 Paul Wright, Consultant Social Worker visited the parents to obtain their account of TP's injuries. The father reported that TP had been crying inconsolably late on 14th December 2018 and that he had tapped her on the back to wind her. He reported that TP had become quiet and floppy. He told the Social Worker that he then telephoned the mother who was visiting friends. The mother returned within a few minutes and, finding TP unresponsive, she shook her and slapped her on the back in an attempt to rouse her, while the father called for an ambulance;
j. On 20th December 2018 ophthalmology tests identified that TP had experienced retinal haemorrhages in both eyes;
k. Skeletal surveys in respect of TP were normal;
l. Skeletal surveys were also undertaken of the other child, TS on 20th December 2018, which identified that TS had sustained fractures of two of her left ribs, deemed to be at least 10 days old;
m. The paediatric team considered on 20th December 2018 that the injuries to both children were likely to be non-accidental;
n. Both parents were arrested. They were interviewed by the police on 21st December 2018. No criminal charges have been brought.

The Application

11. Having full regard to its legal responsibility for the welfare and protection of children, the Local Authority issued an application with the Court for an Emergency Protection Order on 20th December 2018. On 21st December 2018, HHJ Wilding made an Interim Care Order, which remains in force. The children were placed with Local Authority foster carers, where they remain to date.

12. Case management directions were given at the outset for the proceedings leading to a Fact Finding Hearing to determine how the injuries were sustained. The 26-week timetable in the proceedings was extended due to the need to instruct and coordinate a series of experts. The independent expert evidence was restricted to that which was necessary for the Court to resolve the proceedings justly. This being a case involving two children presenting with different clinical problems, a multi-disciplinary expert analysis of the medical information was necessary and has been conducted by a series of independent specialists, each of whom brings their own expertise, namely in relation to the child TP, a Consultant Paediatric Haematologist, a Consultant Neuroradiologist, a Consultant Paediatric Neurosurgeon and a Consultant Paediatric Ophthalmologist, and in relation to the child TS, a Consultant Paediatric Radiologist. In relation to both

children, a Consultant Paediatrician provided a paediatric overview. Additionally, in respect of the father, it was necessary for the Court to obtain independent expert evidence from a Consultant Clinical Psychologist and to obtain an assessment from an intermediary.

13. As is essential in cases of this nature, both parents were entitled to non-means and non-merits tested legal aid, such that they benefited from free and independent advice and representation throughout these court proceedings. The children were similarly represented independently throughout the proceedings, through their Children's Guardian.

The Fact Finding Hearing

14. Listed over 15 days commencing 28th August 2019, the Court heard live evidence from some of the independent experts, each by video link namely Mr Newman, Mr Richards, Dr Stoodley and Dr Johnson, together with live evidence from Dr Cartlidge, Mr Wright Consultant Social Worker, from the treating paramedics Miss Forsyth and Miss Wallace, from each of the three interveners and from the mother and the father. The Court has considered all the documents filed in the case, comprising around 4300 pages, whether or not referred to specifically in this judgment and has considered very helpful submissions from all parties. For the sake of clarity, the Court has considered also a transcript of an experts' meeting in respect of the child TP, convened by the Children's Guardian's Solicitor, attended by Dr Cartlidge, Mr Richards, Dr Stoodley, Dr Keenan and Mr Newman and a separate experts' meeting relating to the child TS, attended by Dr Cartlidge and Dr Johnson.

15. At a hearing on 21st August 2019 the Local Authority was invited to clarify and particularise a finding it sought that the parents had failed to protect the children. The Local Authority rightly and fairly informed the parties and the Court on 23rd August 2019 that this finding was no longer pursued.

16. Also at the hearing on 21st August 2019, the Local Authority was invited to indicate whether it sought to rely on a recorded note of nurse Joseph, of which she stated in her statement in February 2019 that she no longer had any recollection, that TP was being cared for by the mother when TP became floppy and unresponsive. In the light of the parents' prior and subsequent accounts that TP was in the care of the father at that time, the Local Authority properly and fairly accepted that the nurse was mistaken in her note and that the Local Authority did not seek to rely on it.

17. The Local Authority, through Mr Date, has conducted its case thoroughly, professionally, and calmly. The Court is grateful to each of the advocates for the careful and sensitive but meticulous manner in which they each presented their client's cases, which was of the highest standard. The Court records its thanks to each of those representing the parties for the assistance given. The Court acknowledges the pressure under which they have worked to ensure the coordination of witnesses and to ensure that this case has remained effective, without delay.

18. An assessment of the father by Dr Campbell, Consultant Clinical Psychologist dated 27th June 2019, which included a cognitive assessment, concluded amongst other things, that the father experiences difficulty with memory and reading. An intermediary assessment concluded that the father did not require the assistance of an intermediary at Court, however, noted that the father has mild communication difficulties which are triggered by severe anxiety and nervousness. Particular difficulties were noted in respect of sustaining concentration when experiencing anxiety, and difficulties in responding accurately to questions involving complex vocabulary and complex grammatical structures. The Court

adopted the recommendations contained both in the intermediary assessment and in Dr Campbell's report by way of ground rules during this Fact Finding Hearing, which included amongst other things, the use of appropriate communication strategies throughout the hearing, the structuring and framing of questions by advocates during his evidence and the timetabling of regular breaks, including rest breaks and explanation breaks, approximately every hour throughout the hearing and every thirty minutes during the father's evidence. These measures were implemented to support the father's understanding and retention of the key facts in relation to the case and to enable him to participate in the proceedings more effectively.

Key Issues in the Case

19. The parties agreed at the outset that the key issues in the case for determination at this Fact Finding Hearing are as follows:

a. Whether the injuries to the children were accidental or non-accidental;
b. If the injuries were non-accidental, who caused them; and
c. Who, apart from the parents, is in the pool of potential perpetrators?

The Allegations

20. The Local Authority makes the following assertions, in respect of which the Local Authority invites the Court make findings of fact:

The Child TP

Allegation 1

On 17 December 2018 TP was admitted to Hospital B. It was subsequently discovered that she had sustained the following injuries:

(a) Acute subdural bleeding on both sides of the interhemispheric fissure extending onto the upper surface of the tentorium and in the posterior fossa;
(b) Right-sided haemorrhagic (subdural) effusion;
(c) Bilateral retinal haemorrhages.

This assertion is accepted by the mother.
The father accepts that TP sustained acute subdural bleeding and bilateral retinal haemorrhages.

Allegation 2

(a) The injury referred to in allegation 1(a) was sustained no earlier than 7th December 2018 and no later than 17th December 2018;
(b) The injury referred to in allegation 1(b) was sustained between 13th December 2018 and 17th December 2018; and
(c) The injuries referred to in allegation 1(c) were sustained between 12th December 2018 and 17th December 2018.

The mother contends that the injuries occurred at the same time, prior to or around 15th December 2018.
The father contends that TP's subdural and retinal injuries were likely to have occurred on or around the later evening of 14th December 2018 or early in the morning of 15th December 2018.

Allegation 3

On the balance of probabilities, the injuries referred to in allegation 1 were sustained in a single event.

This is agreed by the mother and by the father.

Allegation 4
If the Court accepts the evidence of the parents that TP suffered an episode of becoming floppy and unresponsive late on the evening of 14th December 2019, on the balance of probabilities the injuries referred to in allegation 1 were sustained immediately before this episode.

The mother contends that she was not present prior to or at the point of TP collapsing and becoming floppy.

The Local Authority allegation is not accepted by the father who contends that the symptoms described are non-specific, subjective and may have a variety of causes.

Allegation 5
The injuries referred to in allegation 1 were caused by inflicted trauma which was non-accidental.

This is not accepted by the mother or by the father.

Allegation 6
On the balance of probabilities, the injuries referred to in allegation 1 were caused by excessive shaking of TP.

This is not accepted by the mother or by the father.

Allegation 7
The perpetrator of the injuries referred to in allegation 1 was:
(a) the father; or
(b) the mother; or
(c) the father or the mother, but the Court is unable to determine which.

This is not accepted by the mother or by father.

Allegation 8
Allegation 8 is not pursued by the Local Authority.

The Child TS

Allegation 9
On 20th December 2018 a skeletal survey was performed on TS and she was discovered to have sustained fractures at the posterolateral aspect of the left 6th and 7th ribs.

This is accepted by the mother and by the father.

Allegation 10
The fractures were between 2 and 7 weeks old when x-rays were taken on 20th December 2018 and between 2 and 7 weeks old when further x-rays were taken on 31st December 2018, and were therefore sustained between 12th November 2018 and 6th December 2018.

This is not accepted by the mother.

The allegation is not accepted by the father who contends that, on the basis of a report from Dr Johnson, the approximate timing window is 2 to 7 weeks from 20th December 2018, so between 1st November 2018 and 6th December 2018.

Allegation 11
On the balance of probabilities, the two fractures were caused by the same single event.

This is accepted by the mother and by the father.

Allegation 12
TS's rib fractures were not caused on the same date that TP's head injuries were caused.

This is accepted by the mother and by the father.

Allegation 13
TS's rib fractures were caused by an inflicted non-accidental mechanism.

This is not accepted by the mother or by the father.

Allegation 14
On the balance of probabilities, the rib fractures were caused by squeezing around her chest.

This is not accepted by the mother or by the father.

Allegation 15
The force used in the squeezing would have been obviously excessive to the person squeezing her.

This is not accepted by the mother or by the father.

Allegation 16
The fractures would have been initially painful for about 5-10 minutes after being inflicted, and TS would have cried.

The mother accepts the assertion by the Local Authority save that she contends that the length of time of a painful reaction is subjective.

The father accepts that the rib fractures would initially have been painful but contends that clinical reaction and the length of that reaction will be subjective and variable.

Allegation 17
The perpetrator of TS's injuries referred to in allegation 9 was:
(a) The father; or
(b) The mother; or
(c) The father or the mother, but the Court is unable to determine which;
(d) An unknown perpetrator, but the pool of potential perpetrators includes the father, the mother, the paternal grandmother, the paternal grandfather and the paternal aunt.

This is not accepted by the mother or by the father.

Allegation 18
Allegation 18 is not pursued by the Local Authority

21. At the conclusion of all the evidence in the case, having had the benefit of hearing from each of the witnesses, including of the interveners and both parents, Mr Date for the Local Authority very fairly and properly informed the Court of the Local Authority's revised

position, namely that the Local Authority does not consider that there is evidence to doubt the intervenor's account of what happened to the children 'on their watch' and the Local Authority invites the Court now to exclude the intervenors from the pool of perpetrators.

22. Further, in respect of the child TP, having considered all the evidence as it emerged in the hearing, the Local Authority's position was that it does not feel it can pursue the assertion that there was any opportunity for the mother to have had a momentary loss of control. The Local Authority accepted the broad thrust of the chronology given by the parents, of the children being well when the mother departed for the evening on 14th December 2018, leaving the children in the care of their father.

The Relevant Law ("Fact Finding")

23. At this point it is convenient to me to set out in summary form the applicable legal principles for a case such as this. The following established legal principles have each been taken into consideration and applied by this Court when considering the evidence and in making the findings set out in this judgment.

24. The burden of proving a fact is on the Local Authority.

25. To prove the fact asserted, that fact must be established on the civil standard, that is, on the simple balance of probabilities.

26. There is only one civil standard of proof, namely that the occurrence of the fact in issue must be proved to have been more probable than not. [1]

27. Neither the seriousness of the allegation nor the seriousness of the consequences makes any difference to the standard of proof to be applied in determining the facts.[2]

28. If the Court finds it more likely than not that something did take place, then it is treated as having taken place. If the Court finds it more likely than not that it did not take place, then it is treated as not having taken place.[3]

29. Where a fact is required to be proved, a 'fact in issue,' the Court must decide whether or not it happened. There is no room for a finding that it *might* have happened. The law operates a binary system. The fact either happened or it did not. If the Court is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, the fact is treated as not having happened. If the party does discharge the burden of proof, it is treated as having happened.[4]

30. Failure to find a fact proved on the balance of probabilities does not equate, without more, to a finding that the allegation is false.[5]

31. 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. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities.[6] Having regard to inherent probabilities does not mean that where a serious allegation is in issue, the

[1] *Re B [2008] UKHL 35*
[2] *Re B (Minors) [2008] 3 WLR 1HL per Baroness Hale*
[3] *Re B [2008] UKHL 35, per Baroness Hale*
[4] *Re B [2008] UKHL 35, per Lord Hoffman*
[5] *Re M (Children) [2013] EWCA Civ 388*
[6] *Re B [2008] UKHL 35, per Lord Hoffman*

standard of proof required is higher. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies.

32. The decision on whether the facts in issue have been proved to the requisite standard must be based on all the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors.[7]

33. If the evidence in respect of a particular finding sought by the Local Authority is *equivocal* then the Court cannot make a finding on the balance of probabilities as the Local Authority has not discharged either the burden or the standard of proof[8].

34. In assessing whether the evidence is sufficient to lead to a finding, it is not necessary to dispel all doubts or uncertainty.[9]

35. This case involving alleged inflicted injuries, the Court must be careful not to reverse the burden of proof inadvertently by requiring a parent to prove that the injuries in question have an innocent explanation.[10] It follows that is not for a party against whom allegations are made to prove a negative case. Such a party is not required to provide any satisfactory or benign explanation as to why allegations have been made about their conduct.[11] Put another way, there is no pseudo-burden or obligation cast on respondents to come up with alternative explanations.[12]

36. If the Local Authority relies on the lack of a satisfactory explanation for the injuries it does not amount to a reversal of the burden of proof.[13]

37. Findings must be based on evidence.[14] The Court must not evaluate and assess the available evidence in separate compartments. Rather, regard must be had to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward has been made out on the balance of probabilities.[15]

38. Expert evidence must be considered in the context of all the other evidence. The roles of the Court and the expert are distinct. It is the Court that is in the position to weigh up the expert evidence against its findings on the other evidence. The Judge must always remember that he or she is the person who makes the final decision.[16] The expert evidence is part of a wider canvas and it is the court that is in the position to weigh up all the expert evidence against the other evidence.[17]

39. A Judge considering non-accidental injuries must always consider the whole picture before determining causation. The Court must ask itself, what was the context in which this alleged non-accidental injury came to be sustained and entertain the totality of the evidence before the Court.[18] For example, an injury that might be accepted as accidental if

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[7] *A County Council v A Mother, A Father and X, Y and Z [2005] EWHC 31 (Fam)*
[8] *Re B (Threshold Criteria: Fabricated Illness) [2002] EWHC 20 (Fam), [2004] 2 FLR 200)*
[9] *Re D (A Child) [2017] EWCA Civ 196*
[10] *Re M (Fact-Finding Hearing: burden of Proof) [2012] EWCA 1580, [2013]2 FLR 874*
[11] *Re M (Fact Finding Hearing: Burden of Proof) [2013] 2 FLR 874*
[12] *Lancashire County Council v D and E [2010] 2 FLR 196 at paras [36] and [37]; Re C and D (Photographs of Injuries) [2011] 1 FLR 990, at para [203] and Re D (a child) (Fact-Finding Hearing) [2014] EWHC 121 (Fam).*
[13] *Re M-B (Children) [2015] EWCA Civ 1027, considering Re M (Fact Finding: Burden of Proof), at [881]*
[14] *Re A (Application for Care and Placement Orders: Local Authority Failings); sub nom Darlington Borough Council v M, F, GM and GF [2016] 1 FLR 1 per Munby LJ*
[15] *Re T [2004] 2 FLR 838 at [33]*
[16] *A County Council v K, D & L [2005] EWHC 144 Fam, per Charles J at paragraph 39*
[17] *A County Council v K, D & L [2005] EWHC 144, [2005] 1 FLR 851 per Charles J and Re JS (A child) [2012] EWHC 1370 (Fam) per Baker J, Lancashire County Council v R, W and N [2013] EWHC 3064 (Fam) per Mostyn J).*
[18] *Re B-T (Children) [2017] EWCA Civ 265*

it stood alone might take on a wholly different aspect if it is only one of a number of injuries.[19]

40. The Court must take into account all of the evidence and furthermore consider each piece of evidence in the context of all the other evidence. Evidence cannot be evaluated and assessed in separate compartments. A Judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof.[20]

41. Although the medical evidence is of very great importance, it is not the only evidence in the case. Explanations given by carers and the credibility of those involved with the child concerned are of great significance. All the evidence, both medical and non-medical, has to be considered in assessing whether the pieces of the jigsaw form into a clear convincing picture of what happened.[21]

42. The evidence of the parents is of the utmost import and to this end the Court will make a clear assessment of their credibility and reliability. The Court is likely to place considerable weight on the evidence and the impression it forms of the parents.[22]

43. 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 recognition or confusion at times of stress 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.[23]

44. In assessing alternative possible explanations for a medical finding, the Court will consider each possibility on its merits. There is no hierarchy of possibilities to be taken in sequence as part of a process of elimination. The Court will not conclude that an injury has been inflicted merely because known or unknown medical conditions are improbable: that conclusion will only be reached if the entire evidence shows that inflicted injury is more likely than not to be the explanation for the medical findings.[24]

45. Doctors, social workers and courts are fully entitled to take into account the nature of the history given by a parent or carer. The absence of any history of a memorable event where such a history might be expected in the individual case may be very significant. Perpetrators of child abuse often seek to cover up what they have done. The reason why paediatricians may refer to the lack of a history is because individual and collective clinical experience teaches them that it is one of a number of indicators of how the injury may have occurred. Medical and other professionals are entitled to rely upon such knowledge and experience in forming an opinion about the likely response of the

[19] *Re L-K (Children) [2015] EWCA Civ 830*
[20] *Re T [2004] 2 FLR 838 at 33, per Dame Elizabeth Butler-Sloss P*
[21] *Re B (Threshold Criteria: Fabricated Illness) [2002] EWHC 20 (Fam), [2004] 2 FLR 200.*
[22] *Re W (Non-Accidental Injury) [2003] FCR 346).*
[23] *Lancashire County Council v The Children [2014] EWFC 3, Peter Jackson J*
[24] *Re BR (Proof of Facts) [2015] EWFC 41 Jackson J para 9*

individual child to the particular injury, and the court should not deter them from doing so. The weight that is then given to any such opinion is a matter for the Judge.[25]

46. The Court must demonstrate the willingness to entertain that medical science might not have a definitive answer to each and every case, but there are some 'outlying' cases where the answer as to what has happened is simply unknown or not capable of proof on the balance of probabilities within care proceedings.[26]

47. The cause of an injury, or an episode, that cannot be explained scientifically remains equivocal. Recurrence is not itself probative. Particular caution is necessary in any case where the medical experts disagree, one opinion declining to exclude a real possibility of natural cause. The Court must be always on guard against the over dogmatic expert, the expert whose reputation or amour-propre is at stake, or the expert who has developed a scientific prejudice. The judge in care proceedings must never forget that today's medical certainty may be discarded by the next generation of experts or that scientific research will throw light into corners that are at present dark.[27]

48. Even where, on examination of all of the evidence, every possible known cause has been excluded the cause may still remain unknown. [28]

49. The more unknown and/or mysterious the cause, the more tempting it is to wander into the realms of speculation but this would be a wholly impermissible basis for sound fact-finding.[29]

50. It is in the public interest for those who have caused non-accidental injuries to be identified.[30] The Court should not, however, 'strain' the evidence before it to identify on the simple balance of probabilities the individual who inflicted the injuries. If it is clear that it is not possible on the evidence before the Court for the Court to conclude on the balance of probabilities who the perpetrator of the injuries is and the Court remains genuinely uncertain, then the court should reach that conclusion.[31]

51. If it is clear that identification of the perpetrator is not possible and the Court remains genuinely uncertain, then the Court should reach that conclusion.[32]

52. If the Court cannot identify a perpetrator or perpetrators, it is still important to identify the pool of possible perpetrators by asking whether the evidence establishes that there is a 'likelihood or real possibility' that a given person perpetrated the injuries in question.[33] In such circumstances, it is all the more important to scrutinise the evidence carefully and consider whether anyone, and if so who, should be included in the pool of possible perpetrators.[34]

53. Where there are two possible perpetrators, the Court must first assess whether there is sufficient evidence to identify a single perpetrator on the balance of probabilities. If there is not, the Court must then consider in relation to each possible perpetrator whether there is a real possibility that they might have caused the injury and exclude those of which this

[25] *Re BR (Proof of Facts) [2015] EWFC 41 Jackson J at para 16*
[26] *Re B-T (Children) [2017] EWCA Civ 265*
[27] *In Re LU and LB [2004] 2 FLR 263 Butler-Sloss P*
[28] *R v Henderson [2011] 1 FLR 547 per Moses LJ*
[29] *Re A (Fact Finding Hearing: Disputed Findings) [2011] I FLR 1817 EWCA Civ 12 per Munby LJ*
[30] *Re K (Non-accidental Injuries: Perpetrator: New Evidence) [2005] 1 FLR 285, CA*
[31] *Re D (Care Proceedings: Preliminary Hearing) [2009] 2 FLR 668*
[32] *Re D (Care Proceedings: Preliminary Hearing) [2009] 2 FLR 668, CA*
[33] *Re S-B (Children) [2010] 1 FLR 1161, SC; North Yorkshire CC v SA [2003] 2 FLR 849, CA*
[34] *Re S (A Child) [2014] 1 FLR 739, CA*

cannot be said. There will be cases where a Court cannot identify a single perpetrator and the Court should not strain to do so.[35]

54. When seeking to identify the perpetrators of non-accidental injuries the test of whether a particular person is in the pool of possible perpetrators is whether there is a likelihood or a real possibility that he or she was the perpetrator.[36] To make a finding that a particular person was the perpetrator of non-accidental injury the court must be satisfied on a balance of probabilities.

55. The question is not 'who is the more likely perpetrator?' but 'does the evidence establish that this individual probably caused this injury?' [37]

56. In determining whether a person is properly included in the pool of potential perpetrators, it is essential that the court weighs any lies told by that person against any evidence that points away from them having been responsible for the injuries.[38]

57. In 'uncertain perpetrator' cases, the correct approach is for the case to proceed at the welfare stage on the basis that each of the possible perpetrators is treated as such.[39]

58. If a Court concludes that a witness has lied about one matter, it does not follow that he or she has lied about everything. If a witness lies in the course of the investigation or the hearing, the witness may have lied for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure.[40]

59. When considering the evidence, the Court should only take account of any lies found to have been told if there is no good reason or other established reason for the person to have lied.[41] The 'lie' is never taken, of itself, as direct proof of guilt.[42] Judges should, therefore, take care to ensure that they do not rely upon a conclusion that an individual has lied on a material issue as direct proof of guilt'. The mere fact of a lie being told does not prove the primary case against the party.

Evidence and Analysis

60. In addition to those background facts set out in paragraph 10 of this judgment, which are not contentious, the following facts are also not in dispute.

61. The mother and father are both aged in their late thirties. They are British born, of Indian heritage. They have known each other for around twenty years. They began their relationship fourteen years ago and married nine years ago. They live in a property which they own. They both are employed on a fulltime basis, the mother as a scientist and the father works in property. There is no evidence of financial debt or significant stressors beyond these proceedings. Neither parent has any offending or antecedent history. Following the index event, the police seized and examined both parents' mobile phones and "nothing of evidential value" was found after full forensic examination. Prior to the index event, the parents and the children were not known to Social Services. There is no evidence of any domestic abuse or domestic violence within the parental relationship. Further, there is no history of alcohol misuse or illicit drug use by either parent.

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[35] *Re B (A Child) [2018] EWCA Civ 2127, per Jackson LJ*
[36] *North Yorkshire County Council v SA [2003] 2 FLR 849.*
[37] *Re B (a child) [2018] EWCA Civ 2127 per Peter Jackson LJ, paras 19-21)*
[38] *H v City and Council of Swansea and Others [2011] EWCA Civ 195*
[39] *Re O and N: Re B [2003] 1 FLR 1169, HL*
[40] *R v Lucas [1981] QB 720*
[41] *Hertfordshire v T and J [2018] EWHC 2796 per Keehan J*
[42] *Re H-C [2016] EWCA Civ 136 per McFarlane LJ*

62. The mother has a rare metabolic genetic condition, Maple Syrup Urine Disorder (MSUD) type VI. Many years ago, she underwent brain surgery to relieve pressure from the brain and was in a coma for two weeks, spending ten weeks in hospital as an inpatient. She now follows a low protein, high carbohydrate vegetarian diet.

63. The father has no relevant past medical history of note in respect of his physical health.

64. The twins were planned and were conceived following expensive, privately-funded In Vitro Fertilization treatment for which the parents had saved and budgeted. The evidence from the parents and from family and friends was that the children were much wanted children and the parents were overjoyed when the children were conceived and born.

65. The twins were born prematurely at 31+6 weeks gestation following an emergency Caesarean-Section. TP was born first and TS was twin II. TP was in a good condition at delivery with Apgar scores of 8 at 1 minute, 9 at 5 minutes and 10 at 10 minutes. They were both admitted to the Neonatal Unit where they remained for the first 4-5 weeks. TS acquired CMV and a group B strep infection.

66. On 30th July 2018, the twins were transferred to Hospital B. On 1st August 2018, a cerebral ultrasound scan was performed and was reported as normal. On 11th September 2018, the twins were both discharged home.

67. Both parents were observed extensively on a daily basis in the neonatal and children's wards throughout July and August 2018 up to 11th September 2018 with no social issues or safeguarding concerns being noted regarding the parents' care of the children. The twins were seen regularly by healthcare professionals.

68. The twins were discharged to their grandparents' home on 11th September 2018 with their mother. Following discharge from hospital, the twins were seen together at their GP practice on two occasions prior to the index event, and separately on a further three occasions, most latterly on 12th November 2018 (TP) and on 22nd November 2018 (TS). No concerns were noted regarding the parents' care of the children.

69. The Health Visitor's records note no concerns during the period 2nd October 2018 to 25th October 2018. The Health Visitor observed the twins in the family home on 15th October 2018 when the twins were 15 weeks old. The Health Visitor, "*observed warm, affectionate and appropriate handling of twins by both parents, positive attachments seen through gaze, touch and speech, both parents responding to babies' cues with love, warmth, affection and confidence.*" The home environment was observed to be, "*warm, welcoming, clean, well-ordered and well maintained.*"

70. The totality of the evidence from all sources is of the parents presenting as a stable and loving couple who enjoyed parenting their children. Further, the Children's Guardian observed that both parents showed good concern and care about their children.

71. Since the index event, and following the making of the Interim Care Order, the parents have been observed with the twins over a period of six months, those observations recorded in contact notes by eighteen different contact supervisors from 24th December 2018 to 19 June 2019. The parents attended every contact session with the children consistently over six months, three times per week, without missing a single appointment and have continued to do so, including up to the date of this Fact Finding Hearing. The parents are recorded as always attending the contact venue early, in time to set up the contact room before contact commences by laying out toys and age appropriate activities such as a baby gym mat, soft toys and musical interactive toys. The parents are recorded as always being well-presented, clean and dressed suitably, they plan their contact and

come prepared with nappies, food, clothes and toys and are described variously as 'pleasant', 'friendly', 'polite and co-operative.' The contact notes record variously that the parents provide appropriate stimulation throughout contact, they are vigilant, aware of what the twins are doing throughout contact and ensure the twins safety. They have maintained appropriate standards of hygiene throughout all contact with the children, they meet the twins' emotional needs through consistent visual and appropriate physical contact and affection and they are warm and affectionate towards the children who receive, "*lots of warm kisses and cuddles during contact.*"

72. The twins are recorded as presenting always as happy and content during contact with their parents, their emotional presentation is always positive in their responses to their parents, the parents provide warm greetings and goodbyes and the parents ensure the contact room is left clean and tidy at the end of contact. Moreover, the parents are recorded as having made appropriate use of the contact communications book for communicating with the foster carers, they have maintained the routine set by the foster carers by paying attention to when feeds were due and the parents have regularly supported the children's foster carers with nappies, food and clothing sent back with the twins at the end of contact. The contact notes record no issues of concern to be raised with the social worker and no significant events have been observed during six months of contact observation.

73. Furthermore, it is not in dispute between the parties that the parents have a considerable support network available to them through friends and extended family members, all of whom are extremely positive about the parents and their care of the twins.

74. Yet further, it is not in dispute that at the time of the index event, the father was in employment, the mother was taking maternity leave from her employment, the parties had carefully planned their finances and they were living in their own comfortable accommodation.

Friday, 14th December 2018

75. I turn to consider the events of and around the evening of Friday, 14th December 2018 and the morning of Saturday 15th December 2018.

76. In summary, the parents' joint account is that the twins appeared to be normal during the day on Friday 14th December 2018. Friends came over to the family home in the evening. The mother and father fed the twins at around 22:30 when their friends were present. The friends left the house, with the mother, at around 23:15, leaving the twins in the sole care of their father.

77. The father's account is that, sometime after the mother left the home, TP woke up. His evidence was that he picked up TP from the bouncer, put her on the changing mat and changed her nappy, playing with her whilst she was on the mat. He told the Court, *"[TP] lifted her head and it fell backwards onto the changing mat which is placed on our dining table. I picked her up and comforted her as she cried after she banged her head and then put her in the bouncer. [TP] started to cry in the bouncer and I started to rock the bouncer to try to comfort her back to sleep. Her crying became louder so I picked her up out of the bouncer and held her on my shoulder as this is how she normally settles. I patted and rubbed her back in an attempt to wind her as I thought this may be the reason why she was crying. She went completely quiet and I lifted her off my shoulder and saw that she had gone floppy and unresponsive. I panicked and I was calling out her name and I shook her to try to get a response, I was not getting a response from her. I put her in the bouncer and immediately called [M] to come back."*

78. The mother told the Court that she received the telephone call from the father shortly after midnight leading in to Saturday 15th December 2018, to tell her that TP was unresponsive and floppy. She told the Court that she 'raced over' with her friend who was driving. Both parents state that the mother arrived back home within two minutes after the father telephoned her. The mother told the Court that she grabbed TP from the bouncer whilst the father telephoned 999. The mother told the Court, *"I shook [TP] to arouse her but there was no response and she was still floppy. I then slapped her back 5 times thinking she may be choking. There was still no response."*

79. The father's evidence of the mother slapping her on the back five times is consistent with the description provided by the mother. He did not observe the mother shake the child.

80. The mother's evidence was that TP then, *"woke suddenly and became rigid and was crying. [TP] was stiff with straight arms and legs, and her head looking up, her eyes were open looking towards the corner. Her eyes were open and moving at times. She became fully responsive whilst waiting for medical help. The 999 operator told me to put her on the floor and check for a pulse and breathing. She was crying by this stage."*

81. The mother told the Court that the ambulance Immediate Response Team were on the scene first and checked TP. The mother's recollection was that TP had good vital signs and no fever.

82. The Court had the benefit of reading the transcript of the 999 telephone call made by the father and hearing the audio recording of that telephone call. The Court was impressed greatly by the telephone operator's calm, reassuring and decisive instructions to the parents during what was demonstrably a highly alarming time for both parents. The father relayed instructions from the telephone operator to the mother, who was attempting conscientiously to care for the child TP. The mother's actions appeared to the Court to be entirely appropriate. She remained calm and in control, notwithstanding the very real distress that was apparent from the audio recording. It is plain from the audio recording that the child was reported to be experiencing symptoms including periods of apnoea, or cessation of breathing, change in muscle tone, presenting as floppy and unresponsive and of having a blockage in her airway. The mother described during the emergency telephone call that the child's tongue was blocking her airway. There were periods during the emergency call when the child TS began to cry and then went silent again.

83. I have no doubt on the parents' evidence and having had the benefit of hearing the emergency telephone call, that the sudden occurrence of these alarming symptoms in the child resulted in each parent believing that the child's life was under threat.

84. The Court had the benefit also of reading the paramedic records and hearing live evidence from the two paramedics who attended the family home, Miss Wallace and Miss Forsyth. The written records note the history provided by the father at the scene, as follows:

"*Dad claims Pt was in her bouncer, started crying – so he came in to settle her, states she would [not] stop crying so he picked her up and she was floppy in his arms but crying. He rang mum was round the corner and she returned within a couple of minutes. During the unresponsive minutes, mum states she has tried to rouse Pt and then thought she may be choking as she was breathing funny so gave 5 back slaps to the baby*."

85. The ambulance report records that on arrival at around ten minutes past midnight on 15th December 2018, the child is reported to have experienced a loss of consciousness and abnormal breathing signs. The child is reported to have been found to be rigid, looking

upwards and grunting, breathing approximately 20-30 seconds. The child "*has then gone floppy and unresponsive – almost to point of slow, shallow resps (few seconds) and then just cried and screamed and been unconsolable*." En route to hospital, the child is recorded as having started to settle. The mother's comments were recorded that the child's complexion appeared to be pale. The notes also record that on arrival at hospital, the child vomited twice. The child was noted to have had a cough for around one month prior.

86. Miss Wallace told the Court in her oral evidence that the situation was a stressful one for mother. She told the Court that it is not uncommon for parents to panic and not to be able to say exactly what happened. She told the Court that the mother's focus of attention was on the child. She told the Court that the mother was distressed and was trying to convey information through her distress at a time of heightened emotion and she was doing her best.

87. The response to this emergency from both paramedics of the highest standard and was highly impressive.

88. TP was taken to Hospital A by ambulance in the very early hours of Saturday 15th December 2018. Both parents accompanied TP in the ambulance. TS was cared for by family and friends, the mother having made immediate preparations for TS's care whilst simultaneously responding to the emergency presented by TS.

89. At hospital, TP vomited and "*brought up a lot of mucus*." TP's temperature dropped to 34 degrees and she was placed under a heat source. TP was admitted for assessment. The father's evidence was that the doctor at the hospital said that the mucus from a viral infection could have caused the floppiness and unresponsiveness. TP was discharged from hospital at approximately 16:00 on the same day, 15th December 2018.

Sunday, 16th December 2018

90. The mother's evidence was that on Sunday, 16th December 2018, she woke to TS crying at around 6am. The mother told the Court that she fed TP in her sleep through the night. Her evidence was that TP wasn't herself in terms of alertness and interactiveness. She was worried and she woke the father. Her evidence was that TP remained sleepy and clingy during the day. TP later started to vomit. She told the Court that she and the father both decided to take TP to Hospital B Accident and Emergency Department*, "to see the doctors that knew the girls better."* She told the Court that the hospital *concluded that, "it is probably viral with congestion behind the nose and they seemed to think it would explain the full clinical picture including the floppiness. I was offered an overnight stay for observation but it was emphasised there would be no medical intervention and that we should consider infection risk up on the ward. I decided it was best to not stay in the hospital."* On leaving hospital that same day, on Sunday 16th December 2018, the family went to stay with the paternal grandparents.

91. The father's evidence was consistent with that of the mother. He told the Court that on 16th December 2018, TP, *"was still being sick and we were not happy with this so we decided to take her to [Hospital B]. We prepared to go to my Mums for the night as we needed help for [TS] and me. We went into A&E. [TP] was triaged and then taken into the paediatric assessment unit. She was checked over. During this time [TP] was fed, she was sick again with mucus. We showed this to the doctor who confirmed there was mucus in her sick. Once they had finished all their tests, they also said that [TP] has a viral infection that could have caused the floppiness and unresponsiveness. We were discharged at approximately 9pm and we drove back to my parents' house where [TS] was being looked after."*

Monday, 17th December 2018

92. The mother's account is that TP slept well and TS was fine with nothing to note. She told the Court that TP woke once and she took TP through to her mother-in-law. She told the Court, *"I made her milk. Mother-in-law fed her and burped her. She was sick a little less. [TP] slept on her bed whilst she [the mother-in-law] watched over her. I fed [TS] and put her back in her cot and slept a few hours. Sometime in the early morning hours, between 5 and 7, [TP] woke and we changed her nappy. It was dry. [F] and I started getting concerned as she had had no wet nappies since 2pm the previous day. I called the GP and was given an initial phone assessment. The doctor wanted to give her a physical assessment so we went in at 11.45. The GP…wasn't happy with [TP] and said we should get her rechecked at [Hospital B] A&E. She printed a letter to take with us as she couldn't get through to them. We came back to [F's] parents to grab the suitcase in case we got admitted."*

93. The mother told the Court that the A&E was very busy. She told the Court that at some point after 15:30, as she was walking around with TP on her shoulder snoozing, TP, *"started to have a fit. I quickly walked out to the nurse's station. They treated her with oxygen and moved her to RESUS. I called my husband and told him to get to A&E. The first fit was 2 minutes, self-correcting with no associated temperature."* The mother told the Court that TP then experienced a succession of fits whilst in hospital, ranging from 2 minutes duration to 4.5 minutes. She told the Court, *"Great Ormond Street Hospital was called to discuss a contingency plan should more fits occur lasting longer. TP was assessed by a team that could intubate her to control her fits if things escalated."*

94. The father's evidence was that at approximately 15:30 the mother called him to tell him that TP was having fits and that he needed to get to the hospital immediately. He told the Court, *"I left work and drove to Barnet Hospital went to A & E who told me that [TP] is in the resuscitation unit. So I went there and found [M] and [TP]. When I saw [TP] on the resuscitaire I got really scared and concerned for her wellbeing and was heartbroken to see her like this. She continued to have fits the longest being 4.5 minutes and the shortest being around 30 seconds."*

95. Whilst at Barnet General Hospital, a CT scan of the head was performed and was reported to show subdural bleeding. TP was admitted as an inpatient and the medical staff informed Hertfordshire County Council.

96. Mr Wright, Consultant Social Worker met with the parents on 19th December 2018 at the hospital and took both parents' accounts of the events leading to TP's admission to hospital.

97. On Thursday, 20th December 2018, an MRI scan of the brain was performed on TP. An ophthalmological examination was reported to show retinal haemorrhages in both eyes. A Skeletal survey revealed no abnormalities. However, a skeletal survey performed on TS also on 20th December 2018, identified that TS had fractures of two of her left ribs, which were deemed to be around 10 days old. The paediatric team considered that both children's injuries were likely to be non-accidental.

The Medical Experts: *The Child TP*

98. Mr William Newman, Consultant Paediatric Ophthalmologist, prepared a thorough and detailed report dated 30th June 2019 in respect of TP. He noted in summary that TP was admitted to hospital on 17th December 2018, after having been seen following an unexplained episode of being floppy with a reduced level of consciousness on 15th December 2018. In summary, Mr Newman reported that TP was found to have intracranial haemorrhage and widespread retinal haemorrhages in both eyes. He noted

that there has been no disclosed history of significant accidental trauma and investigations have not identified any known underlying medical condition.

99. Mr Newman noted that TP was born prematurely and as a result had regular examinations of her eyes by a paediatric ophthalmologist as part of a screening program for Retinopathy of Prematurity. No retinopathy, vascular abnormality or retinal haemorrhages were identified at any of these examinations, the last prior to the index event, being on 19th September 2018.

100. The examination on 19th December 2018 identified that in both eyes there were widespread retinal haemorrhages throughout 360 degrees. There was in addition vitreous/ preretinal haemorrhage in both eyes. Mr Newman noted that there is no documentation to suggest the presence of retinal splits or folds. A second opinion on 20th December 2018 confirmed the initial findings.

101. By 27th December 2018, both the retinal and vitreous/preretinal haemorrhages had resolved significantly. By the 16th January 2019 there was possibly only one retinal haemorrhage seen on the right and on the left there was a residual boat shaped pre retinal haemorrhage. The left preretinal haemorrhage was still present on 30th January 2019 but had resolved by 27th February 2019.

102. Mr Newman concluded, in summary, that in his professional opinion:
    (a) the presence of multiple retinal haemorrhages is, in the absence of an underlying medical cause or disclosed significant trauma, most commonly found either as a result of birth or inflicted head injury;
    (b) the retinal findings in TP are not due to birth, vomiting, seizures, minor trauma, immunisations or raised intracranial pressure;
    (c) there is nothing to suggest that there was any pre-existing eye condition or pre-existing medical condition or any inherited medical condition that would result in or lower the trauma threshold for retinal haemorrhaging;
    (a) where it is considered that an infant has been subjected to an inflicted head injury there is a close association between the presence of retinal haemorrhages and subdural haemorrhages;
    (b) the cause of retinal haemorrhages in a shaking-type injury is usually considered to be a combination of events including shearing forces at the vitreoretinal interface together with local tissue changes, autoregulatory dysfunction, elevated venous pressure and likely changes in the central retinal vessels as they enter and pass into the optic nerve;
    (c) short falls and minor events are very unlikely to result in extensive retinal haemorrhages;
    (d) non-accidental head injury as a cause of retinal haemorrhages is a matter requiring review of the whole clinical history, findings and test results and excluding possible medical causes;
    (e) the issue of retinal haemorrhages and their causation crosses many clinical disciplines and it is important that appropriate opinions are sought in such areas as child protection, paediatric haematology, paediatric neuro-radiology, paediatric neuro-surgery and paediatric brain injury;
    (f) the mere presence of retinal haemorrhages does not give rise to a diagnosis but a need to investigate searching for a diagnosis;
    (g) It is not possible to determine from the appearance if there has been more than one episode of retinal haemorrhage;
    (h) in the absence of an identifiable medical condition or history of significant trauma, the retinal haemorrhages remain unexplained but would be most consistent with those found following a shaking type injury;

(i) the findings are consistent with having occurred within about the week preceding their identification on 19th December 2018;
(j) whilst there was no detailed description of what occurred in the parents' accounts of having both shaken TP to rouse her when she was acutely unwell on 15th December 2018, a 'shake' of the type described in his report, "*may be sufficient to explain the haemorrhages within the eye;*"
(k) The retinal haemorrhages will likely resolve without leaving any obvious scarring.

103. Mr Newman explained that the cause of retinal haemorrhages in shaking injury is thought to be due to the shearing forces caused by shaking upon the vitreous within the eye. Shaking in this context is usually considered to mean holding the infant with one's hands under the arms, with thumbs on the chest and tips of the fingers on the back and no head support. Held in this position the head is unsupported and a young infant would not be able to support his head well in particular against inertial forces. As the head is unsupported it would probably come forward or possibly backwards. It would take some force in the anterior-posterior direction for the head to move in the opposite direction beyond the vertical, when it would then continue with its own momentum in addition to any further forces because of the weight of the head and then decelerate. If a child is shaken such that the head moves unsupported backward and forward beyond the vertical, then this is likely to require significant force. This however would be clear (in any circumstances) to both the perpetrator and any observer that this was dangerous and inappropriate.

104. Mr Newman notes in his report The Royal College of Ophthalmologists' 2004 Child Abuse Working Party report in relation to attempts to rouse an unconscious child, which concluded that it is highly unlikely that the forces required to produce retinal haemorrhages in a child less than 2 years of age would be generated by a reasonable person during the course of (even rough) play or an attempt to rouse a sleeping or apparently unconscious child.

105. Mr Newman acknowledged in his report that not all medical conditions or findings can be explained: "*The causes of retinal haemorrhages remain hypotheses and some ophthalmologists are, in view of recent controversies of aetiology, uncomfortable considering ocular haemorrhages associated with subdural haemorrhage in the absence of obvious bruising or skeletal or other injuries to be solely the result of non-accidental injury*."

106. In his oral evidence, Mr Newman accepted that TP's prematurity of birth is a factor that must be taken into account when considering causation of the retinal damage, whilst noting that, in his clinical observations, once the blood vessels have grown, if they are not abnormal blood vessels, they are not more susceptible to haemorrhage. Further, Mr Newman was of the opinion that, had there been evidence of the presence of folds and tears in TP's retina, that might have been associated with a greater force being used. Mr Newman accepted that if a parent picks a child up and shakes the child vigorously with an unsupported head, that might result in the potential acceleration and deceleration forces required for retinal bleeds. Having heard the description of the resuscitative shaking given by the parents, Mr Newman told the Court in his oral evidence that he did not think that would generate the forces in the eyes to cause the problems identified. However, Mr Newman accepted that TP was a small baby, irrespective of her prematurity, running along the second centile in terms of weight, he accepted that at the time of the index incident on 14th December 2018, TP was floppy and unresponsive such that she had no muscle resistance and would require less force than if she had active muscle tone and further, he accepted that a shake intended to resuscitate a child has the same mechanism as any other shake, if the adult was not trained and the child's head was unsupported, with the head moving back and forward. Further, Mr Newman accepted in

his oral evidence that there is still "quite a bit to learn" in respect of the causes of retinal haemorrhages and in trying to understand the degree of force necessary, which is, "still a developing understanding" involving a degree of hypothesis, in a "rapidly moving area."

107. Mr Peter Richards, Consultant Paediatric Neurosurgeon produced a written report dated 19th June 2019. In summary, Mr Richards was of the professional opinion that:
(a) TP presented with features compatible with her being forcibly shaken;
(b) there were no features to suggest she had suffered severe, planned, violent assault or repeated abuse;
(c) the likely timing was at the point of the floppy episode on the 14th December 2018;
(d) it is possible that the parents' explanation that they both shook TP her after this floppy episode may explain some of the intracranial features identified, although it would not explain the floppy episode itself;
(e) the whole clinical picture, including the floppy episode, is compatible with it having been precipitated by a carer forcibly shaking the child;
(f) infants would not be expected to suddenly have floppy episodes;
(g) the reason for an infant having a floppy episode or a carer perceiving them as having a floppy episode can vary;
(h) in the absence of a medical cause for such a floppy episode being identified, a known cause is following an episode of head injury, although it is not the only known cause;
(i) infants can have episodes where they appear to carers as being lifeless although when they present to medical professionals they have normally recovered rapidly. These events are known as acute (sudden) or apparent life-threatening events ("ALTEs"). They are normally however followed by complete resolution;
(j) for a floppy episode to occur, followed by a period of not being right, not feeding properly and vomiting, this would be compatible with, though not completely diagnostic of, a mild degree of brain function disturbance known as encephalopathy;
(k) The presence of seizures would also be compatible with encephalopathy and the feature of seizures would elevate the severity of the encephalopathy from mild to moderate;
(l) A period of mild to moderate encephalopathy following an acute onset of a floppy episode then followed by recovery would be compatible with the cause being a head injury on the mild to moderate scale;
(m) any head injury in an infant should be considered a serious event.

108. Mr Richards told the Court in his oral evidence that the 'force' required was a force greater than that encountered in everyday life, a force that exceeded the injury threshold for that individual child.

109. In Mr Richards' opinion, the account of both parents that TP fed normally at around 22:30 on 14th December 2018 is a strong indicator that she had not been injured at that point. Further, Mr Richards told the Court in his oral evidence that premature babies, "become term babies" but may be more vulnerable and there is a realistic possibility that their injury threshold could be lower but that it is impossible to define more carefully for want of better research: "we can't fall back on science to give a clear-cut answer."

110. Further, in his oral evidence, Mr Richards told the Court that the parents' account of responding to what they perceived to be an apparent life-threatening event on 15th December 2018, by shaking the child to rouse her *could* explain the child's presentation. The alternative, he told the Court, was that a shaking event precipitated the whole problem. He told the Court, "*we have features of a child who has been forcibly shaken. There is the possibility that the parents' reaction precipitated the features identified. It is for the Court to determine. Both parents said they did it gently but in panic. How accurate was their description?*"

111. Mr Richards told the Court that, presented with a very unexpected sudden event, the accuracy of a parent's recollection of the event may be impaired, "*even if they try their hardest: they thought their child was dying; they thought they did something that would help their child. When they later talk about it, their recollection may not be that accurate, and in the circumstances in which they have to explain, for example to police and social workers, their recollection may be affected. That does not imply a falsehood, it is just the nature of the circumstances. In circumstances where the parent thought their loved one is possibly dying, the parent's account can be inaccurate without being dishonest. For example, if they say they were gentle, they may have been more forceful. That is normal for people in an abnormal situation, where they are stressed and panicking and trying to explain.*"

112. Furthermore, Mr Richards made plain in his oral evidence that he would not criticise any parent who through panic or ignorance or both, shakes a child to attempt to resuscitate, for fear the child might otherwise die.

113. Dr Stoodley Paediatric Neuroradiologist produced a written report relating to TP dated 3rd June 2019 following a review of the neuroimaging performed on TP, consisting of a CT scan of the head performed on 17 December 2018 at 20:55 and an MRI scan of the brain performed on 20 December 2018. In brief summary, Dr Stoodley was of the opinion that the abnormalities seen on TP's scans are likely to be due to an episode of abusive head trauma involving a shaking mechanism.

114. Dr Stoodley noted that the neuroimaging investigations performed relating to TP showed evidence of acute subdural bleeds at several different sites and a right-sided acute traumatic effusion. There was no scan evidence of parenchymal brain injury. Clinical investigations have not found evidence of a naturally occurring medical condition that would reasonably explain TP's clinical presentation or the scan abnormalities found.

115. Dr Stoodley was of the professional opinion that the types of head trauma that need to be considered in a child of TP's age are:

    (a) *birth-related*: There is nothing in the clinical history which led Dr Stoodley to suggest that any birth related subdural bleeding could have persisted from birth until the time of the acute admission in December 2018 and any birth related subdural bleeding would not have still appeared bright on the CT scan. Dr Stoodley noted that TP was obviously premature but he was not aware of any study of birth-related subdural bleeding in premature infants. From the point of view of day to day clinical experience however, Dr Stoodley considered it unlikely that the incidence of birth related subdural bleeding in the premature population would be any more than that seen in the term population and is probably somewhat less;

    (b) *accidental*: In Dr Stoodley's opinion, no history of accidental head trauma of sufficient severity to account for these appearances has been given. He noted that the vast majority of accidental head trauma is secondary to impact injury. In his opinion, impact injury can certainly give rise to subdural bleeding but when seen following domestic type trauma, the acute subdural bleeding is usually seen at a single site, not at several different sites as seen with TP. In Dr Stoodley's opinon, headbutting against a parent's chin or shoulder would not give rise to this pattern of subdural bleeding; or

    (c) *abusive head trauma:* In Dr Stoodley's opinion, the scan abnormalities relating to TP can all be explained on the basis of being due to abusive head trauma and the mechanism of injury is likely to have involved shaking. Dr Stoodley noted that the majority of medical opinion is of the view that to produce such injuries, what is likely

to be required is a repetitive backwards and forwards movement of the unsupported infant head, pivoting on the neck, the head position alternating rapidly between full extension and full flexion, which it is believed leads to a degree of acceleration / deceleration and rotational forces and that the consequent differential rotation of the brain and skull leads to stretching of the subdural veins which cross the subdural space and it is this that leads to the bleeding in the subdural space.

116. In Dr Stoodley's opinion, TP seems to have recovered quickly from the acute event. In addition, there was no evidence of major hypoxic-ischaemic brain injury. In terms of the spectrum of severity of injury seen in such cases, this injury was toward the lower end.

117. Dr Stoodley noted that the majority of such injuries occur when a carer suffers a momentary loss of control and causes an injury without any intention to cause harm. Dr Stoodley told the Court that the mechanism of shaking must be the same whether it is a resuscitative shake or a momentary loss of control. Further, he told the Court in his oral evidence that the symptoms and signs of a shaking event are very variable and completely non-specific, the individual circumstances of the case being a matter for evidence before the Court. Dr Stoodley made clear to the Court in his evidence that his area of expertise is in the interpretation of imaging investigations of the brain and spinal cord with a specific interest in the neuroimaging of children but he does not see children when they are admitted to hospital or take any history from parents. Dr Stoodley explained that his professional opinion is based upon the generality of cases he has been involved in and he defers to his paediatric colleagues in individual cases.

118. Dr Keenan, Paediatric Haematologist, produced a report relating to TP dated 16th June 2019, which identified no relevant abnormality. Dr Keenan noted a slightly high white blood cell count due to a mild increase in lymphocytes which, in his opinion, is very common in infants and can be due to a concurrent or recent viral infection, and a slightly high platelet count which is not pathological and is a normal healthy response to stresses such as bleeding and infection. Further blood tests were recommended, the results of which were normal.

119. Dr Cartlidge, Consultant Paediatrician, provided a paediatric overview of both children in a report dated 5th July 2019. Dr Cartlidge concluded in summary in his written report, that in his professional opinion, in relation to the child TP:
    (a) the subdural bleeding, acute traumatic effusion and retinal haemorrhages were caused by inflicted trauma, by shaking, without any impact with a semi-yielding object;
    (b) the causal event occurred immediately *before* TP went floppy and unresponsive, at about midnight on 14th December 2018;
    (c) the shaking in an attempt to revive TP, as currently described, did not cause the head injury.

120. In his oral evidence, when asked to clarify his conclusion that the causal event occurred immediately *before* TP went floppy and unresponsive, Dr Cartlidge told the Court, "or immediately *after,* if there was an apparent life threatening event."

121. Dr Cartlidge told the Court that it, "*was plausible that TP had an apparent life threatening event on 14th December 2018, with the result that TP became floppy and quite vulnerable…any tone in the neck is lost and any innate reflex to stop the head moving back and forth is completely lost."* Dr Cartlidge accepted that it was very likely that the threshold for causative force may reduce when an apparent life-threatening event with floppiness precedes a resuscitative shake. Further, Dr Cartlidge accepted that a child presenting with a history of vomiting regularly with every feed prior to the index event enhanced the plausibility of the apparent life-threatening event.

122. Having regard to the parents' description of their attempts to resuscitate the child, Dr Cartlidge told the Court, that the mother's actions in slapping TP on the back were, "*more suggestive of revival of the child, rather than causing a deterioration…I do not think that was causative of the brain injury*."

The Medical Experts: *the child TS*

123. Dr Stoodley Paediatric Neuroradiologist produced a written report relating to TS dated 3rd June 2019 following a review of the neuroimaging performed on TS consisting of an MRI scan of the brain performed on 24th December 2018. Dr Stoodley noted that TS's MRI brain scan showed no evidence of intracranial bleeding or brain injury and the brain appeared structurally normal.

124. Dr Keenan Paediatric Haematologist produced a report dated 16th June 2019, which identified no relevant abnormality.

125. Dr Karl Johnson, Consultant Paediatric Radiologist, prepared a report dated 3rd June 2019. Dr Johnson told the Court that, having regard to the skeletal survey of 20th December 2018, TS had fractures of the posterior lateral aspect (back and side of the chest) of the left 6th and 7th ribs with evidence of bone healing around the fracture sites. From the amount of healing response, Dr Johnson estimated that these fractures were in the region of 2 – 7 weeks of age on 20th December 2018, noting that the radiological dating of fractures is difficult, imprecise and a subjective estimation

126. Having regard to the x-rays of 31st December 2018, Dr Johnson told the Court that the posterior lateral left 6th and 7th rib fractures show further evidence of healing and that in his opinion, the dating of these fractures is unchanged.

127. In summary, Dr Johnson was of the professional opinion that:
    (a) there is evidence of normal bone density in TS;
    (b) there is no evidence of underlying metabolic bone disease or other disorder which would predispose TS to fracturing;
    (c) TS was at no increased risk of fracturing compared to any other child of her age;
    (d) the radiological dating of these fractures excludes them being birth related injuries;
    (e) rib fractures are the result of significant force applied to the chest;
    (f) the amount of force required to cause these fractures is unknown;
    (g) the force required would be significant, excessive and greater than that used in the normal care and handling of a child;
    (h) rib fractures do not occur from normal domestic handling, over-exuberant play or rough inexperienced parenting;
    (i) typically, rib fractures are the result of severe excessive squeezing compressive force applied to the chest;
    (j) these two rib fractures in TS most likely occurred from a single episode of significant chest compression;
    (k) at the time that these fractures occurred, TS was less than 6 months of age and she would not have had the strength or level of development to self-inflict these injuries;
    (l) at the time the fractures occurred, TS would have been in pain and shown signs of distress which would have lasted for some moments;
    (m) following this initial distress, the signs and symptoms related to these fractures could have been variable;

(n) the radiological dating of the rib fractures excludes any event on or around 20th December 2018 as a possible cause of these injuries;
(o) no suitable explanation of significant trauma to TS's chest has been given to account for the rib fractures;
(p) the absence of any suitable history, unexplained fractures of this nature in a child of TS's age raises concerns regarding possible inflicted non-accidental injury: It is the absence of any suitable history rather than the radiological appearances of the fractures which raises these concerns. The same fracture pattern could occur from an accidental or inflicted injury;
(q) rib fractures typically heal with no long-term consequences.

128. Dr Cartlidge, Consultant Paediatrician, in his report dated 5th July 2019 in respect of TS, concluded in summary that in his opinion:
(a) the fractures to the adjacent ribs are likely to have been caused by the same single event;
(b) they would initially have been painful, typically for about 5-10 minutes, thereafter the pain would have lessened but deep breaths, crying and handling around the chest would have exacerbated ongoing discomfort causing TS to become more fractious than usual for at least a few days…yet young babies cry so frequently without a specific reason being identifiable that the cause of distress is not likely to have been recognised by someone unaware of any trauma;
(c) the fractures are not likely to have been caused or contributed by osteogenesis imperfecta;
(d) the fractures were neither caused nor contributed to by rickets (TS was at increased risk of vitamin D deficiency, because she was born very preterm, she was of extremely low birth weight, dark-skinned people living in Britain are at increased risk of vitamin D deficiency, she had conjugated hyperbilirubinemia (jaundice), however, the risk of TS developing vitamin D deficiency was lessened by her being treated with vitamin D);
(e) the fractures were neither caused nor contributed to by osteoporosis;
(f) the fractures were neither caused nor contributed to by scurvy;
(g) 'temporary brittle bone' does not form the basis of a biologically plausible explanation for the fractures;
(h) TS was at moderate risk of metabolic bone disease of prematurity: it is not possible to exclude mild osteopenia and it is not possible to exclude a mild increase in bone fragility;
(i) even if TS had mildly reduced bone-strength, rib fractures would not have occurred with normal handling;
(j) TS would not have had sufficient mobility to self-sustain the fractures;
(k) a fracture at the posterior aspect of a rib is highly predictive of a non-accidental aetiology;
(l) a fracture to the posterior aspect of a normal rib is usually caused by the chest being circumferentially squeezed;
(m) the precise force needed to fracture normal infant bones is not known…even if TS had mildly osteopaenic ribs, they would not have fractured without the use of excessive force.

129. In his oral evidence relating to TS, Dr Cartlidge commented on the parents' description of their mechanism for winding the child, namely holding the baby in the crook of one arm and applying a sharp force to child's body. Dr Cartlidge told the Court, "*it depends on the force that's given but if that is done with excessive vigour, I can't exclude it as a cause…and she is a small baby.*"

130. Dr Cartlidge went on to tell the Court in his oral evidence that he, "*could not reasonably exclude [TS] suffering bone fragility such that normal but robust handling caused the rib fractures…ex-preterm babies do turn up with rib fractures.*"

131. When invited to comment on whether an already crying baby may have behaved in a different way so as to alert the carer or a witness that such mechanism had caused a rib fracture, noting the evidence that TS has a loud cry, Dr Cartlidge told the Court, "*we know a baby is hurt because of a sudden onset of a loud cry. If the child is already crying, it is not so obvious. A person not there would not know nor would a health care professional know… if that mechanism is done and the chest is squashed a lot and she is already crying, that could explain it.*"

132. Dr Cartlidge observed that head injuries of the type suffered by TP and rib injuries of the type suffered by TS are typically seen together in a child who has been the subject of non-accidental injury and are sufficiently common to be linked but cautioned that care should be taken for one not to feed into the other. He told the Court, "*the head injury is more likely to be abusive than the ribs…I can see that the ribs might have reduced strength but I see no vulnerability with regard to the head injury….I have tried to assess TS distinct from TP…if I'm honest, it probably influences my view on TS. If TS was an only child, I could have edged towards [a conclusion] of simply robust handling.*"

The Medical Experts: *the Father*

133. Dr Adam Campbell, Consultant Clinical Psychologist prepared a report for the Court dated 27th June 2019. In summary, Dr Campbell concluded that:
    (a) there were no overt indications that the father was suffering with a mental illness or that he would meet criteria for a personality disorder;
    (b) his memory was borderline, i.e. well below average;
    (c) his reading age was marginally above the threshold for functional illiteracy;
    (d) his difficulties centre on below average language abilities paired with a proneness to quite affecting anxious states;
    (e) his anxiety is the primary functional concern;
    (f) his mental health (anxiety, mainly) is likely to be a significant impediment to him functioning under pressure.

The Interveners

134. This Court had the unique benefit of hearing and observing direct evidence from the Paternal Grandmother, the Paternal Grandfather and from the Paternal Aunt. On the evidence, it is difficult to conceive anything other than that this is a caring, supportive and doting extended family, with the strongest sense of devotion towards these subject children.

135. The Paternal Grandmother spoke of the mother and father as coping well with the twins, and that they asked for help and guidance when needed. The Paternal Grandmother, herself an experienced parent, was actively involved in the twins' lives, notwithstanding the fact that she suffered a fractured leg shortly after the twins were discharged from hospital, which did not prevent her from helping to feed, change and wind the twins. She took time off from her employment to assist the parents in caring for the twins. She told the Court that the Maternal Grandmother would also assist the Paternal Grandmother, making bottles, washing and changing nappies, despite the Maternal Grandmother very sadly suffering a stroke on the day the twins were born. The Paternal Grandmother spoke of observing nothing other than normal marital life between the mother and father, who both supported one another, who are both good with each other and who have a happy marriage. She spoke of the father, her son, being of a very good nature, very kind and very gentle and that he never got angry with the girls. She told the Court of

the father's anxiety and phobia of being around too many people, a problem that persisted throughout his childhood into adulthood. Further, the Paternal Grandmother told the Court that when TP suffered the index event on or about 14th December 2018, the father told her subsequently that TP, "went floppy and he shook her gently to arouse her to respond and he called [M] and they both gently shook her [TP] because she would not respond." The Paternal Grandmother presented as an impressive, reliable and compelling witness. It is clear that the twin girls, being their first grandchildren, are adored by the whole family.

136. The Paternal Grandfather too presented as a reliable and impressive witness. Like his wife, he told the Court that he observed nothing in the child TS that might have suggested she had suffered an injury to her ribs.

137. Similarly, the Paternal Aunt described the parents as loving and caring to their girls. She described the marriage as very good and very strong, describing the father, her brother, as very loving, who is a very hands-on father, very gentle with the twins and so excited to be a father. She too told the Court that there was nothing that had alerted her to TS having suffered any injury to her ribs during the time frame indicated by the experts or at all.

138. The evidence of each of these family members is compelling. The Court notes that each family member was willing to accept the invitation to intervene in the case and the Court has benefitted from their assistance in the proceedings.

139. I entirely accept the position put forward by the Local Authority at the conclusion of the evidence, that there is no basis upon which to doubt their account of what happened to the twins on their watch. The Court was invited by the Local Authority to exclude the Paternal Grandmother, Paternal Grandfather and Paternal Aunt from the pool of perpetrators. Whilst each of those family members had the opportunity to cause TS's rib fractures, on the compelling evidence before the Court, the Court must conclude firmly that there is no likelihood nor any real possibility that either the Paternal Grandmother, the Paternal Grandfather or the Paternal Aunt were the perpetrators of the injuries to TS. Further, the Local Authority does not assert that there is any likelihood nor any real possibility that either the Paternal Grandmother, the Paternal Grandfather or the Paternal Aunt were the perpetrators of the injuries to TP.

<u>The Child TP</u>

140. The mother's case in summary is that she has no knowledge, direct or otherwise, as to how TP's subdural and retinal bleeds were sustained. The mother does not exclude the possibility that TP's prematurity may have caused or contributed to TP sustaining such injuries. The mother's position is that the medical evidence, and her own actions in resuscitating TP do not suggest that she inadvertently caused the injuries. The mother submits that, if the injuries were caused by shaking, the medical evidence leads the mother to conclude, reluctantly, that the father was responsible and that either he has, through panic, misremembered the mechanism and force of his 'resuscitative shake,' he has deliberately downplayed the mechanism and force of his 'resuscitative shake', through misplaced guilt, or he momentarily became frustrated with TP and shook her.

141. This Court had the unique benefit of hearing and observing direct evidence from the mother. She presented to this Court as an impressive and reliable witness. Her evidence was given in a direct manner and she answered questions during thorough and proper examination without evasion. She was able to recall the events of 14th December 2018 with detail and clarity. Further, her account of events has remained consistent on all core issues, from the initial statement given to the Consultant Social Worker Mr Wright, to the police during interview under caution and to this Court in her sworn evidence.

142. The mother spoke of her strong relationship with her husband, acknowledging in frank terms that they had verbal arguments from time to time, which were always resolved amicably. She denied any domestic abuse in the relationship. She told the Court of their joint decision to have children and of their considerable financial investment in obtaining IVF treatment. Moreover, she spoke of her husband as a committed, hands-on father who took great joy in being involved in the twins' feeding, bathing, changing and emotional development.

143. The mother was frank in telling the Court that caring for premature twins was tiring and challenging. She did not seek to portray herself as infallible or impervious to the strains of parenting. In her oral evidence and in her police interview, she readily accepted that there were times when she needed a break, times when she was exhausted and sleep deficient, including the day prior to the index event relating to TP. I accept the submission made by Mr Goodwin QC that those acknowledgements from the mother detract from, rather than support, a conclusion that she might have inflicted injuries to the children. Further, the mother told the Court of her techniques for managing stress, which included removing herself from the immediate situation, developing a shared regime with the father and seeking support from family members at any time when required.

144. In respect of the events of 14th December 2018, the mother's evidence was clear and consistent. She spent the evening with the twins in the presence of her husband and friends in her home until around 23:15 when she and her friends took the short trip to the friends' house, two streets away, leaving the twins in the care of the father. The mother was clear that the twins had been bathed as usual and were fed at 22:30, which was their usual feeding time. TP had not had a nappy change. She was clear that TP had taken a normal feed, a full bottle, and that TP has posseted a little, telling the Court that TP, "*had been posseting as far back as I remember.*" She recalled with great precision that she checked the clock when she arrived at her friends' house, which was at 23:14. She contacted the father by telephone at 23:45 to check on the twins. She was told by the father that he had just changed TP and that TP and TS were both asleep in their bouncers. She told the Court that during the telephone call, she noted nothing unusual and that he was "his usual relaxed self". She then received a telephone call from him at 00:12, when the father told her that TP, "*had gone floppy and unresponsive…I don't know what's wrong*". She told the Court that the father was emotional during the telephone call. She responded instantly by returning to their home within 1 ½ minutes, which she again recalled with precision, telling the Court that she noted the time on the clock in the car.

145. The mother told the Court that on arriving home, she ran upstairs, through the front door living room and unbuckled TP from the bouncer. She told the Court, "*I picked her up. I shook her twice, with my fingers behind her head. I called out her name twice. Her breathing sounded guttural like something was stuck in her throat. [The father] was shaking and crying and trying to call ambulance.*" She described TP as, "*completely floppy, worse than when sleeping. She had no rigidity at all, a deadweight.*" She demonstrated to the Court how she shook TP back and forth over a small range of movement. She told the Court that TP's head did not flip back and forth over the midline. She described how TP remained unresponsive, whereupon she supported the child under the head and flipped her over across the mother's forearm and then slapped her five times in the middle of her shoulder blades, "*with considerable force.*" "*TP then made a noise, something roused her and made her come back. It was like she was dead when I walked into house and something I did when I slapped her brought her back and she started breathing. I was relieved to hear her cry but she was*

in pain and did not seem herself at all. She was breathing then but not normally. It did not sound right but she was back from the dead."

146. The mother's account of her attempts to resuscitate TP are consistent also, so far as can be ascertained, from the audio recording of the 999 call.

147. She described being in, "*a controlled panic, dealing with the situation to the best of my ability and also looking after [TS]. My breakdown came when I got into the ambulance and I cried seeing TP was hooked up to the machines and was pale and cold. Until then I focused on the problem and dealt with it as best I could. It hit me later*."

148. The mother was frank in her evidence in telling the Court that she and the father had been given clear advice from the hospital never to attempt to resuscitate a baby by shaking and that they were warned of the dangers of not supporting the child's head. She told the Court that the hospital staff on the neonatal unit had previously advised that a high percentage of babies have "episodes" in the first year of life. She told the Court, "*I was told don't shake but in that situation, that's how I reacted."*

149. Her evidence to the Court was that the father's routine was to stay up to 1am watching over the children as they slept and that there was nothing unusual in him staying up beyond midnight on the evening of 14th December 2018. She told the Court that the father had cared for the children alone in the past without difficulty. Further, she told the Court that the father greatly enjoyed spending time with the children late at night if one of them woke, usually TP, when he would regularly talk with the child and they would make each other laugh. Furthermore, she told the Court that on the evening of 14th December 2018, it was their joint decision that she should go to her friends' house late in the evening, to smoke shisha and to give her a break. Yet further, she told the Court that she did not find it unusual that when she arrived home responding to the emergency, TP had been placed by the father back in the bouncer and clipped in. She told the Court, "*he would have wanted to put her down safely and buckle her in before doing anything else. That was normal for him. Either put her in the bouncer or flat on the floor. It is his anxiety playing in again. He would need to feel she was safe so he would buckle her in."*

150. Furthermore, the mother told the Court that she does not consider that the father has been concealing the truth: "*I can pick up on even his small white lies, his guilt comes through if he tells white lies. Guilt ambushes him and becomes overwhelming. I have not seen any signs of that. And the time that has lapsed and being separated from the children and the effect that has had on me and the girls and the family, he would do anything to bring that to end…He would have confessed, and not keep the girls from everyone. He loves them and they come first to both of us. To get the girls home, he would readily confess and accept the consequences."*

151. On the father's part, in his oral evidence, he excluded the possibility that the mother could have been responsible.

152. I have considered whether, in being presented with her child in a floppy, unresponsive state, the mother acted in a manner that was reckless in shaking the child in an attempt to rouse her when the mother was in a state of controlled panic or indeed, whether the mother deliberately sought to harm the child. I have firmly concluded on all that evidence that she did neither. In all respects, the mother gave a compelling account of being faced with what she perceived to be a life-threatening event. Her reaction to that event was entirely natural and indeed, was impressive. Her description of gently shaking the child whilst supporting the child's head, followed by slapping the child on the back

are actions that are suggestive of revival rather than causing an injury or causing a deterioration to an injury.

153. I find that the mother's account is not flawed. The mother's actions in supporting TP's head with her fingers whilst holding her up, then supporting her head around the chin whilst 'flipping' her over, before slapping her back, when considered in the context of the expert evidence cannot properly lead to a conclusion that her actions were causative of TP's head injuries. The child's head did not move about in an uncontrolled way and it did not cross the midline. Further, the flipping and slapping actions did not generate the accelerational/decelerational forces thought to be required in a 'shaking' injury.

154. Having considered all the evidence as it emerged in the hearing, the Local Authority's position at the close of evidence was that it does not seek any adverse finding against the mother in respect of TP's head injury. The Local Authority accepted the broad thrust of the chronology given by the parents, of the children being well when the mother departed for the evening on 14th December 2018, leaving the children in the care of their father. I entirely accept the Local Authority's position in that regard, which is the only proper conclusion that could be reached on the totality of the expert evidence and lay evidence as to timing.

155. On the totality of the evidence, the Court finds that the mother's actions on returning home following the father's emergency call to her were entirely child-focused and appropriate. The Court finds that the mother is not likely to have caused the injuries to TP during her attempt at resuscitation. Further, the Court finds that the mother was evidently a protective parent in seeking medical advice on 14th/15th December 2018 and in instinctively seeking follow up medical advice on 16th and 17th December 2018. The mother must be given credit for taking these steps which further militates against a finding of inflicted injury.

156. I turn then to consider the evidence of the father. There were many parts of his evidence that remained consistent throughout, from the point of the initial interview with the Social Worker followed by the police interview and in his written and oral evidence to this Court in these proceedings. In many respects, his evidence was consistent also with that of the mother. There were, however, other aspects of his core evidence that were not consistent.

157. As to the warmth of the marital relationship, the supportive role of the wider family network and the devotion the father had towards the children, the evidence of the father was consistent with that of each of the witnesses. I have no reason to find other than that these were children who were very much wanted and were adored by the father.

158. The father's evidence of the routine he and the mother developed to care for the children was similarly consistent with the evidence of the mother. This involved both parents taking an active role in their care for both twins. Since their discharge from hospital after their birth, the twins were predominantly in the care of their mother, who had taken maternity leave. On return home from work, the father would involve himself in assisting the mother in bathing, feeding and winding the children. He was confident in changing nappies and dressing the girls and on all accounts, enjoyed playing with them and spending time talking to and bonding with them. The sleep routine was also well rehearsed between the parents, the parents sometimes rocking the children to sleep in their bouncers between 7-8pm and then transferring the children to their cot, when the mother was in the same room, the mother tending to sleep early at around 9pm, leaving the father to watch over the twins. Both parents described that the children generally would not settle in their cot unless the mother was in the same room.

159. The father's evidence, again consistent with that of the mother, was that it was normal for him to stay awake watching television from 9pm to 1am, whilst the mother and the children slept and that it was normal for the children, mostly TP, to wake at around 1-2am whereupon the father would feed and change her and spend time with her on the changing mat talking to her and making her laugh and giggle. The father's evidence was that he enjoyed that time with his daughters, very much: "*that was such a wonderful time and I would not want to come away from it. It was a precious time and something that could go on into to the early hours.*"

160. In respect of the father's account of the events of 14th December 2018, there were some discrepancies.

161. Both parents told the Court that the mother left the home with their friends to visit their friends' house, by mutual agreement between the mother and father. Both parents told the Court that the father was, "*not particularly tired.*" In evidence in these proceedings, the father told the Court that the mother left the family home at 23:15, consistent with the account given by the mother and the account given by the two friends. In his police interview of 20th December 2018 the father stated that the mother left the home at around 22:30, although he could not be sure. In his oral evidence, the father told the Court that he was anxious during the police interview and "*in a nervous state, worried about the girls.*" He told the Court that in respect of the timing of the mother's departure from the home on 14th December 2018, he "*remembered incorrectly,*" during the police interview. I accept the father's explanation for that discrepancy.

162. Of more significance is the father's inconsistent evidence about the feeding of the children on 14th December 2018. In the police interview of 20th December 2018, the father stated that when the mother left the home that evening, both twins were in their bouncers sleeping and settled. He told the police that after the mother left, he decided to feed TP. He was specific in telling the police that he fed TP, then winded her then put her on the changing mat. He was asked by the police how he knew she needed feeding, to which he told the police that TP cried and that is why he fed her.

163. In his evidence to this Court, however, the father stated that sometime after the mother's departure from the home that evening, TP woke up whereupon he picked her up from the bouncer, put her on the changing mat to change her nappy and played with her on the mat. He described TP lifting her head up and then dropping her head on to the changing mat, which caused her to cry. He then picked her up and comforted her before returning her to her bouncer where he rocked her to try to comfort her back to sleep. He described her crying becoming louder so he picked her up again and attempted to wind her on his shoulder when she then became floppy and unresponsive. There was no mention in his account of having fed TP, following the mother's departure from the home at 23:15. In cross-examination, the father told the Court, "*I incorrectly remembered that fact. I would have fed [TP] if that's what is said in the interview but it would have been at 10.30pm. I incorrectly remembered through anxiety and the girls having just been taken off me.*"

164. Another significant inconsistency in the father's evidence is his failure to mention during either his interview with the Consultant Social Worker Mr Wright or in his police interview, both conducted within a few days of the index event, that he shook the child. In his statement to this Court, filed at the outset of the proceedings, the father told the Court that when he was attempting to wind TP, "*she went completely quiet and I lifted her off my shoulder and saw that she had gone floppy and unresponsive. I panicked and I was calling out her name and I shook her to get a response, I was not getting a response from her. I put her in the bouncer and immediately called [M] to come back.*"

165. The father was asked during cross-examination why he had not mentioned this significant fact at the time of the interviews with the Social Worker and the police. The father told the Court, "*I don't know why, probably nervousness. I did not mention shaking because possibly I did not remember because I was nervous*."

166. Pressed further by Mr Date during cross-examination, to clarify why he told the police during the police interview specifically that he did not shake the child, the father told the Court, "*in my mind, at that time, I thought shaking meant holding the baby under the arms and shaking vigorously. In my mind at that point, I did not consider what I did to be a shake that could cause harm. I did shake her before I put her in the bouncer. I did not feel that was a shake motion, until I showed it to [M] and she said, that is a shake, so I told the solicitor straight away. In hindsight I wish I did tell them. I did not feel that was shaking. I wish I had the knowledge at that time to tell the police. It's a lack of knowledge and I apologise and ask for forgiveness*."

167. The transcript of the police interview records the following:

Police Constable:	*We have two children with injuries which we cannot account for, which are consistent with a shaken baby – do you know what that is?*
Father:	*So, when you shake them like this.*
PC:	*Right.*
Father:	*They told us in the hospital.*
PC:	*Yeah. Have you done that? Have you picked up TP and done that?*
Father:	*And shaked her?*
PC:	*Mmmm.*
Father:	*I've never ever shaked my kids like that – never ever shaked my kids like that. Honestly, I swear on my life. I never have shaked my kids. I would never do that. I would never shake my kids, honestly.*
PC:	*Could that have happened Friday night?*
Father:	*No, I didn't do that on Friday myself. I know that. I know that for certain I didn't shake her.*
PC:	*So, the Friday night when you were left for an hour and a half, you did not pick up TP and shake her?*
Father:	*I did not shake her, no.*
PC:	*Okay.*
Father:	*I winded her, like I said, I winded her –*
PC:	*Yeah.*
Father:	*- and I put her on the, erm, mat and she was doing the head thing, and she was just – I was just normal. Everything was normal, and I was winding her as well.*
PC:	*Cos it takes some force to do that. So, just – the way you've described winding is not going to cause it. So, is there anything that you can think of –*
Father:	*No –*
PC: -	*may have caused that?*
Father:	*- a hundred per cent, I did not shake her in any shape or form, honestly.*

168. In his tearful evidence, the father told the Court, "*I remembered that part incorrectly at the time. After I spoke to my wife, then I remembered correctly*." He proceeded to tell the Court that TP was crying for 5-10 minutes and the crying was getting worse so he picked her up, put her over his shoulder and tried a combination of tapping and rubbing her back to wind her when she then stopped crying. He told the Court that normally in that situation, TP would whimper and he would feel her breath but on this occasion, "*she*

just stopped so I lifted her forward from my shoulder and her hands and legs had flopped. There was no life in her. I thought my baby had died. So I called her name, I don't know how many times, and more than once, I shook her to rouse her."

169. The father told the Court that his attempts to rouse her by shaking had no effect. He told the Court, "*I put her in the bouncer because I wanted to call my wife safely. If she was on my shoulder I was worried about dropping her while I was concentrating on something else. I thought the only way to make her safe is to buckle up in the bouncer and call my wife…some of the details I can't remember because it was so fast…I was worried and panicked. I was worried for her life and nervous and anxious. I did not know what had happened and it was very emotional.*"

170. The Court has benefited from the opportunity to view the relevant parts of the police interview where the father, in denying that he had shaken the child, demonstrated what he understood to be a shake of the type that might cause an injury. The Court also has also had the benefit of the father demonstrating in the witness box, how he says he shook TP on 14th December 2018 in his attempt to rouse her from her floppy, unresponsive episode.

171. The Court has also taken into consideration the expert evidence of Dr Campbell, Clinical Psychologist as to the father's below average memory function and underlying anxiety state, Dr Campbell being of the professional opinion that the father's mental health, his anxiety in particular, is likely to be a significant impediment to the father functioning under pressure. I take note of the fact that at the time of the father's interview with the Social Worker Mr Wright and shortly thereafter his interview with the police, the father was aware through his conversation with the mother, that the medical staff at the hospital were concerned that TP's injuries were caused by shaking. The father was aware, through the education provided by the hospital prior to the twins being discharged after birth, that premature babies were prone to unresponsive episodes and he was aware of the strong guidance given against shaking a child to rouse it from such an episode. In that context, the father's response to the Social Worker and the police that he had not shaken the child in a manner that he perceived could have caused the injury, is more understandable.

172. The father's responses are further understood, in the context of his underlying mental health, as identified by Dr Campbell, which was likely to have significantly impeded on his functioning under the pressure of both the Social Worker's interview and the police interview. Accordingly, whilst there is a significant discrepancy in the account given to the professionals pre-proceedings, to that given in the course of these proceedings, I am not satisfied that such discrepancy impacts negatively on my assessment of the father's credibility. Furthermore, there is no evidence of any nature that suggests that the father's underlying anxiety and mental health cause him to become angry or frustrated.

173. Neither the police nor the Consultant Social Worker Mr Wright had the benefit of any expert evidence in respect of the father's mental health. Dr Campbell's evidence was not available until June 2019. Further, it is clear from the father's evidence that very shortly after his interview with the Social Worker and then with the police, the father and the mother consulted with the aim of trying to understand how the injuries might have occurred. Without the pressure of a formal interview, the father quickly and readily identified that he shook the child in an attempt to rouse her from her unresponsive state. It is not disputed between the parties that he then immediately informed his legal team, such that on the filing of his first statement with the Court on 11th February 2019, filed on time and in accordance with the Court's direction, the father put forward his version of events, including the shake, which he has maintained consistently throughout the proceedings.

174. The father's evidence to this Court was that at the time of the Social Worker and police interviews, he found that a high level of anxiety, "*manifested itself a lot more than any other time. I was anxious and nervous about the health of my girls…I was so worried about [TP] and when I found out from the police that [TS] also had rib fracture, I wanted to know how. Plus, they were not in our care and I did not know how they were. It was a difficult process.*"

175. The mother told the Court that the father has a very strong relationship with the twins. She described him as a *"really good, hands-on dad."* Further she told the Court, *"he's softer than I am, if I'm honest…he's always trying to calm them down to help them…becoming a father, I have seen him blossom. He is fiercely protective of the girls. He is kind, gently and loving towards both the girls…he's an amazing dad."*

The Child TP

176. The cause of the injuries to TP, on all the evidence, is likely to have been a shaking mechanism. It is not possible to reach any firm conclusions about the degree of force required to cause those injuries. The mechanism is likely to require a backwards and forwards movement of the head or multiple movements although there is divergence of opinion in this case about whether the mechanism requires a single backwards and forwards movement of the head or multiple movements, and if so, how many.

177. TP was born very pre-term. Even allowing for her prematurity, at the time of the index event, her weight was only at the second centile. Her neck muscles would not have been well developed and would have no neck control if she had been floppy due to illness or an apparent life-threatening event prior to a resuscitative shake. Accordingly, TP would have had enhanced vulnerability.

178. On all the evidence, I find that there was nothing unusual in the presentation of the twins prior to the mother leaving the home at 23:15. The father was capable of looking after the girls and had prior experience of caring for them when the mother was out of the house for a few hours. The evidence points to no particular reason for anxiety that evening. On the evidence, the father was supportive of the mother having a break by going out to their friends' house that evening. There is no evidence that the father was particularly tired that evening and there is no suggestion he was unwell. Furthermore, the mother was in very close proximity to their home should the father have needed her help or had he become frustrated or distressed in caring for the twins.

179. At the time of the parents' telephone conversation at around 23:45, the father was relaxed and the twins remained settled, presenting with no unusual features. The opportunity for injury is therefore likely to be a window of around 25 minutes, up to the point of the father's emergency telephone call to the mother at around 00:10.

180. Against the background of the evidence of TP's prematurity, frequent posseting and mucus in her vomit, it is not difficult to reach a conclusion that TP suffered an unexplained episode of becoming limp and unresponsive. I have no difficulty in reaching the conclusion on the evidence that the father was highly concerned as to TP's presentation. As Dr Cartlidge observed in the experts' meeting, *"I don't really have any difficulty in accepting that a baby could have had an acute life threatening episode at this age, in these circumstances, even if previously quite well. It's common enough for it to happen."*
181. In his oral evidence Dr Cartlidge observed that, "*The Court may not be able to say what caused the initial floppy episode. I suggest it does not matter too much what caused it. It is the shake that had to have happened and why it was done, that is the issue. Whether it was neglect, reckless or deliberate or whether by accident or panic*

reaction…The issue for me isn't whether it could have happened regardless of the history. I have seen it happen. The issue is more the reaction."

182. Looking at the broad canvas, and on the totality of the evidence before me from all sources, I am left with the conclusion that it is most improbable that the father would have inflicted harm on TP, or indeed either of the children, deliberately, even by way of a momentary loss of control. For the sake of clarity, I am bound to reach the same conclusion in respect of the mother.

183. In my judgment, against a background of all the evidence, presented with the situation where TP was unresponsive and limp, it is more likely than not that in a moment of panic, the father shook TP in an attempt to revive her. I find that his description of that resuscitative shake is not wholly reliable, given his likely state of high anxiety combined with panic in a situation where he thought that his daughter had died. Although I find his evidence as to the mechanism of that shake less than perfect, I do not find that he has been dishonest. In his attempt to rouse the child from her unresponsive state, I find it more likely than not that TP sustained the head injuries described.

The Child TS

184. I turn to consider the parents' evidence in relation to TS. In doing so, I have considered the evidence relating to the injuries to TS also in the wider context of my assessment of the injuries to TP.

185. There is no dispute between the parties that TS sustained 2 posterolateral rib fractures. Further it is not in dispute that the fractures would have been caused by a squeezing, compressive force.

186. In respect of the child TS, the evidence of the mother, consistent with that of the father was that the children both experienced discomfort through wind and that ordinary winding techniques did not always work on the children. Both parents explained that at times, it could take in the region of one hour to relieve the twins of discomfort caused by wind. Further, both parents were consistent in their evidence that over time, they developed by chance, originally through a tight hug, a technique to wind the children that involved holding the baby supported in the crook of one arm and applying a force to burp/wind the child with a short sharp squeeze to the upper body.

187. Dr Cartlidge was of the professional opinion that he could not exclude that as a cause for TS's rib fractures, if done with excessive vigour. Dr Cartlidge observed that the site of the fracture was quite high in general terms and he noted also that TS was a small baby. Furthermore, Dr Cartlidge was of the opinion that if TS was already crying on account of trapped wind, and her ribs were fractured through the technique described by the parents in a short, sharp squeeze, it may not be obvious to the parent or any observer that the child was then crying due to the pain of the fractured rib. Noting also Dr Cartlidge's opinion that the ribs at that site in the rib cage are more vulnerable, as the ribs at the location of the fracture are not tucked-in right to the vertebrae, together with his professional observation that he could not reasonably exclude TS suffering bone fragility such that normal but robust handling caused the rib fractures, the parents' explanation of the winding technique being a possible cause of TS's rib fractures becomes increasingly more likely. In this regard, Dr. Cartlidge's expert conclusions developed significantly during cross-examination, from those conclusions he previously reached on paper towards that conclusion that it was possible that "*robust, non-abusive*" handling was responsible. Dr Cartlidge was clear in his evidence that, "*the crucial question is whether [the force used] necessarily reaches the abusive stage and I'm not sure that it does.*"

188. From a clinical perspective, there were several risk factors that may have resulted in TS being osteopaenic, including the fact that she was very pre-term, her size was very small for her gestation, her poor catch-up growth might reflect poor bone development, she had conjugated jaundice, which can impair Vitamin D absorption and she had little mobility.

189. As Dr Cartlidge observed in his oral evidence, the treating clinicians interpreted the risk factors to be sufficiently high for TS to receive medication. TS was treated with Colicalciferol and Phosphate with a view to restoring her bone integrity. Dr Cartlidge observed that it was impossible to predict the point at which the bone integrity would have been restored to the point at which normal or robust non-abusive handling would not cause a fracture.

190. The timing window for these injuries can be extended back to around 1 November 2018, being 7 weeks prior to 20 December 2018 and possibly to back 25 October 2018, being 8 weeks prior to 20th December 2018. In his oral evidence, Dr Johnson noted a wide timeframe within which the fracture might have occurred, being up to 9 weeks prior to 20th December 2018, albeit less likely in his opinion.

191. Drs Johnson and Cartlidge both accepted that the radiological evidence is only one part of the overall picture in terms of bone fragility and that plain film radiography is not the final arbiter of bone fragility in infancy.

192. Dr Johnson was of the expert opinion that, from his interpretation of TS's X-rays, that TS had no apparent reduction in bone density. However, both he and Dr Cartlidge accepted that there can be up to a 30% reduction in bone mineralisation before this is apparent from an X-ray. Whilst that does not correlate with a 30% reduction in bone strength, Dr Cartlidge told the Court in his oral evidence, "*the logic is that that equates to some reduction in bone strength, although I cannot quantify it.*" Dr Cartlidge was the sole expert witness able to assist the Court with this important non-radiological clinical analysis. Dr Johnson deferred to Dr Cartlidge in terms of TS's metabolic condition and its potential impact on bone fragility. I accept the submission made on behalf of the mother that Dr Johnson's evidence does not in any sense undermine the realistic possibility of reduced bone strength in TS, on the facts of the case.

193. The fracture might have occurred prior to the bone-restoring medication being administered. Dr Cartlidge observed that the medication causes the body to restore bone integrity slowly. I accept the submission made by Mr Goodwin QC that the biochemistry, like the radiology, could not be relied upon to show the presence or absence of osteopenia. Although a bone profile was planned for 7 November 2018 the result was not disclosed and it is not clear if it was ever performed. The time-frame for the fractures fell within the period of the missing investigation data. It follows that, on the expert evidence, the Court cannot exclude the reasonable possibility that TS's bone development remained compromised at the point of fracture.

194. There is no evidence before the Court upon which the Court could reach a proper conclusion that a parent or other carer would have been aware that their actions could have caused a rib fracture. As Dr Cartlidge observed, even someone witnessing the event is not likely to have realised that ribs had been fractured. In his oral evidence Dr Cartlidge went further in telling the Court that a crying child may not have behaved in such a different way as to alert the perpetrator or someone else that their actions had caused a rib fracture.

195. In my judgment, the totality of the evidence from the experts, from the parents and from the wider family, clearly points towards TS's rib fractures having an accidental cause.

Normal to robust handling could have caused those injuries. The parents' description of the winding technique plainly could have caused TS's injuries. It is not possible, nor is it necessary, for the Court to find which parent in fact caused the rib fractures. I accept on all the evidence, there was no abusive mechanism used by either parent in causing TS's fractures.

Conclusions

196. Having surveyed the wide canvas and reached a favourable assessment of the parents, on a full overview of the evidence and having had the unique benefit and advantage of hearing and observing the lay witnesses, particularly the parents, together with the substantial amount of expert evidence, I reject the Local Authority's allegations in favour of an accidental explanation in respect of both children.

197. Those conclusions are reached attaching appropriate weight to the parents' exemplary history, the absence of any history of bad parenting and positively, the history of a good standard of caring, attentive parenting of two much loved children. Whilst I have considered the possibility that either the mother or the father might, in a moment of weakness, have unintentionally shaken TP hard enough to cause injury, nothing in the evidence leads me to a conclusion that this is probable. On the contrary, both parents have revealed themselves to be totally protective of the children. They both acted entirely appropriately throughout the pregnancy and following their premature birth. They both acted caringly and protectively prior to the twins initial discharge from hospital following their birth and in seeking immediate medical attention during the emergency episode on 15th December 2018. Furthermore, both parents instinctively acted responsibly and protectively in seeking to take TP back to hospital and in seeking further medical opinion from their GP, when they felt that something was not right in TP's presentation. The parents have both fully engaged with the medical, social work, police and Court enquiry with the aim of trying to identify a cause for the twins' separate and distinct injuries. They have attended every contact session with the twins, without fail and both parents have been effusive in their praise of the twins' foster carers.

198. In respect of the specific allegations set out in the Local Authority's schedule, I make the following findings:

(1) *O*n 17 December 2018 TP was admitted to Hospital 'B'. It was subsequently discovered that she had sustained (a) acute subdural bleeding on both sides of the interhemispheric fissure extending onto the upper surface of the tentorium and in the posterior fossa, (b) right-sided haemorrhagic (subdural) effusion and (c) bilateral retinal haemorrhages;

(2) The acute subdural bleeding was sustained no earlier than 7 December 2018 and no later than 17 December 2018. The right-sided haemorrhagic (subdural) effusion was sustained between 13 December 2018 and 17 December 2018. The bilateral retinal haemorrhages were sustained between 12 December 2018 and 17 December 2018;

(3) On the balance of probabilities, those injuries were sustained in a single event;

(4) I do not find on the balance of probabilities that those injuries were sustained immediately before the episode of the child becoming floppy and unresponsive late on the evening of 14.12.2018;

(5) I do not find that those injuries were caused by inflicted trauma which was non-accidental;

(6) On the balance of probabilities, the injuries to TP were caused by shaking;

(7) The perpetrator of the injuries to TP was the father;

(8) No finding is made in respect of allegation 8.

(9) On 20 December 2018 a skeletal survey was performed on TS and she was discovered to have sustained fractures at the posterolateral aspect of the left 6th and 7th ribs;

(10) The fractures were between 2 and 7 weeks old when x-rays were taken on 20 December 2018 and between 2 and 7 weeks old when further x-rays were taken on 31 December 2018, and were therefore likely sustained between 1 November 2018 and 20 December 2018;

(11) On the balance of probabilities, the two fractures were caused by the same single event;

(12) TS's rib fractures were not caused on the same date that TP's head injuries were caused;

(13) I do not find that TS's rib fractures were caused by an inflicted non-accidental mechanism;

(14) On the balance of probabilities, the rib fractures were caused by squeezing around her chest;

(15) I do not find that the force used in the squeezing would have been obviously excessive to the person squeezing her;

(16) The fractures would have been initially painful for about 5-10 minutes after being inflicted, and TS would have cried;

(17) The perpetrator of TS's injuries could have been the father or the mother but the Court is unable to determine which.

199. This Local Authority has acted in accordance with its statutory duty to protect children. In doing so, it has acted responsibly and professionally and the evidence has been obtained and presented to the Court thoroughly and conscientiously. In cases such as this, the burden of proof is on the Local Authority. When all the evidence, including the family history, is put in the balance, as it should be, in my judgement, the Court cannot be satisfied that either of the children was the subject of deliberate harm nor that either parent acted in a manner that was abusive. It seems to me that the harm caused to both children was very far from intentional.

200. I am invited on behalf of the parents to find that the threshold for the making of a public law Order, pursuant to section 31 Children Act 1989 has not been crossed. Having regard to the findings of fact reached herein, the Court could not properly reach a conclusion that the care given to the children was not what it would be reasonable to expect a parent to give. I find that the section 31 threshold has not been met. The application for a public law Order must be dismissed, the Interim Care Order discharged and the children returned to the care of their parents.