2018 EWHC 3883 (Fam)

IN THE FAMILY COURT
SITTING AT LEEDS

Case No: LS18C00223

Coverdale House
13-15 East Parade
Leeds
LS1 2BH

IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF X (A CHILD)

Before:

HER HONOUR JUDGE HILLIER sitting as a High Court Judge

Hearing dates: 11th-13th and 24th-28th September 2018 and October 1st-3rd

- -

John Tughan QC and Neil Allerton for the Local Authority
Simon Bickler QC and Andrew Fox (instructed by **Jones Myers Solicitors**) for the **Mother**
Nkumbe Ekaney QC and Sara Anning (instructed by Harrison Bundey Solicitors) for the **Father**
Alison Ball QC and Helen Crockett (instructed by **Crockett and Co. Solicitors**) for the **Childminder intervenor**
The childminder's husband, the second intervenor, appeared in person
Darren Howe QC and Charlotte Worsley (instructed by Ridley and Hall Solicitors) for the **child**

1. In this case I am concerned with the child, a little boy who was born in early January this year. His parents shall be referred to as Mother and Father in this judgment. This is a finding of fact hearing to determine, if possible, who caused injuries to the child which were identified in March. During the relevant timeframe the child was also cared for by Mrs X in the home she shares with her husband, Mr Y. They are intervenors in the proceedings.

Background

2. The Mother and Father are of Middle Eastern origin. They married in in the summer of 2016 and came to the UK in August 2016 on student visas. They are both reading for their PHDs. They planned to have a child and following a miscarriage the Mother conceived the child in 2017. It was their intention to use a nursery to care for their child as they were both working during the day, however they realised that nurseries could only take children aged three months or over. For visa reasons the Mother needed to return to her clinics and study when the child was only 3 weeks old. They therefore sought the help of Mrs X, a woman recommended to the Mother as a good childminder by a colleague. The Mother and her maternal grandmother visited Mrs X prior to the birth and an agreement was reached that Mrs X would care for the child until he could attend nursery. Mrs X has three children of her own.
3. The Mother was induced on 3rd and 4th January and the child was born in hospital on 6th January. Forceps were used to assist the delivery and he had marks to his face as a result but he was otherwise well. He was discharged home that day where he was cared for by his parents supported by maternal grandparents who stayed until 19th January when they returned to their country of origin. The child was seen on 7thJanuary, 9th January, 11th January and 16th January by the midwifery service and he was noted to be well and discharged to the GP. He was taken to the GP by his father on 19th January with colic and on 10th February with an upper respiratory tract infection. He was seen by the health visitor at home on 21st February. He had his 5 week health check on 7th March where he was seen by the GP and a health visitor.

4. Mrs X started looking after the child on 25th January. She cared regularly for him and with increased frequency and duration until he was admitted to hospital on 14th March. Mr Y was present in the house when she cared for the child. He was working on his PHD.
5. The Father started his PHD on 1st February, having delayed the start due to the birth.
6. At about 8pm on 13th March the parents decided to call 111 in respect of their son. There was a further call at 22.25.
7. On 14th March the Father took the child to the GP at 07.45. It is recorded that he said that the child had been crying excessively since the night before and had vomited three times, two of which were projectile vomits. It was noted that the child's head was large and he was referred to Hospital. Both parents took the child to A & E arriving about 0900. At 15.30 ultrasound scans revealed bilateral subdural collections and he was referred for a CT scan. At 20.30 the child underwent a trans fontanelle tap to relieve pressure. The following day he was referred for an opthalmological examination where both pre and intra retinal haemorrhages were observed in both his eyes. On 16th March a Retcam was undertaken where pre, intra, sub and multi-layered haemorrhages were found, both small and medium sized.
8. On 17th March the child underwent further bilateral drainage of the subdural collections where fluid was removed 'under pressure'.
9. The Mother was interviewed by the police on 19th March at 12.15 and The Father was interviewed at 13.49. Mr Y was interviewed at 15.47 on 20th March and Mrs X was interviewed the same day at 17.46.
10. The local authority commenced care proceedings and the child was made the subject of an interim care order on 22nd March 2018
11. On 22nd March the child was discharged home into the care of his grandparents. His parents have moved out of their home and have contact with the child, supervised at all times, between 08.00 and 18.00.
12. On 16th May the Mother was admitted to hospital following a severe deterioration in her mental health and she was diagnosed with a severe acute stress reaction. She was discharged on 25th May.

Relevant Law

13. The advocates helpfully agreed a document which set out the seminal cases in respect of finding of fact cases such as this. I have taken all the cases referred to into account as part of my judicial task in this case.

Burden and standard of Proof

14. The burden of proof lies on the local authority to prove the matters in respect of the findings sought on the balance of probabilities. The burden of disproving a reasonable explanation put forward by parents is still on the local authority and the fact that a parent cannot explain an event cannot be relied upon to prove an event.

15. A binary exercise is engaged, meaning that I can find that something happened or didn't happen. I must not find that it might have happened. If there is a doubt then the matter is resolved by stating that the party who bears the burden of proof has not discharged that burden. In Re M (Children) [2013] EWCA Civ 388 Ryder LJ stated at para 6 that where a court in a fact finding case is faced with the evidence of the parties and little or no corroborating or circumstantial material it is required to make a decision on its assessment of whose evidence it is going to place greater weight on: "The evidence either will or will not be sufficient to prove the facts in issue to the appropriate standard".

16. In Re A (A child) (Fact-Finding; Speculation) [2011] EWCA Civ 12 Munby LJ warned of the dangers of relying on suspicion rather than sound evidence and the inferences which can be properly drawn from that evidence.

17. As to what evidence I can consider, the range of facts I can take into account is infinite. Indeed, I can and should take into account of all the evidence before me in considering the 'wide canvas' or 'bigger picture' in this case, and I should not confine the evidence to silos but rather consider it as a whole.

Expert evidence

18. At the conclusion of the expert evidence the parties no longer challenged the consensus of the medical evidence in this case.

Nonetheless I have a duty to consider that evidence in the light of my other findings in the case. The difference in roles can be summarised thus: 'the expert advises and the judge decides.'

Hearsay evidence

19. In R v B County *Council ex parte P* [1991] 2 All ER 65 (at 72J), Butler-Sloss LJ observed that "A court presented with hearsay evidence has to look at it anxiously and consider carefully the extent to which it can properly be relied upon. When assessing the weight to be placed on hearsay evidence the Court may have regard to the matters set out in section 4 of the Civil Evidence Act 1995 even in cases (such as this one) where the Civil Evidence Act does not strictly apply. Section 4 of the Civil Evidence Act provides

(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

(2) Regard may be had, in particular, to the following—

(a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;

(b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;

(c) whether the evidence involves multiple hearsay;

(d) whether any person involved had any motive to conceal or misrepresent matters;

(e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;

(f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.

Pool of perpetrators

20. The case of North Yorkshire County Council v SA [2003] 2 FLR 850 is highly relevant to the case in the event that I am not able to identify a perpetrator on a balance of probabilities. In such circumstances I must also look at each individual and ask whether one or more persons in the pool may be excluded on the basis that there is no real possibility that they caused the injuries because, for example, they had only fleeting contact with the child. In addition, Mr Howe QC brought to my attention relevant passages in A-C (A child) [2013] EWCA Civ 1321, a case involving injuries to a baby and a pool of 4 potential perpetrators. In that case the judge found that F was the perpetrator. F appealed on the basis that there was insufficient evidence to enable the judge to conclude that on balance he was the perpetrator in circumstances where there was in effect nothing to choose between M and F so far as likelihood was concerned. Miss Judd QC on his behalf stressed the fact that judges must not strain to identify a perpetrator. At para 33 McFarlane LJ comments that in order to move the case from the realm of theory or suspicion there was a need for some established fact or facts upon which a reasonable inference that F was responsible could be drawn and the appeal was allowed on the basis that there was not an 'ounce' of fact to go in the evidential balance.
21. Miss Ball QC also drew my attention to B (A Child) 4th October 2018 EWCA Civ 2127 and the judgment of Peter Jackson LJ:

The law: only two possible perpetrators

19. The proper approach to cases where injury has undoubtedly been inflicted and where there are several possible perpetrators is clear and applies as much to those cases where there are only two possible candidates as to those where there are more. The court first considers whether there is sufficient evidence to identify a perpetrator on the balance of probabilities; if there is not, it goes on to consider in relation to each candidate whether there is a real possibility that they might have caused the injury and excludes those of which this cannot be

said: *North Yorkshire County Council v SA* [2003] EWCA Civ 839, per Dame Elizabeth Butler-Sloss P at [26].

20. Even where there are only two possible perpetrators, there will be cases where a judge remains genuinely uncertain at the end of a fact-finding hearing and cannot identify the person responsible on the balance of probabilities. The court should not strain to identify a perpetrator in such circumstances: *Re D (Care Proceedings: Preliminary Hearing)* [2009]EWCA Civ
21. “In what Mr Geekie described as a simple binary case like the present one, the identification of one person as the perpetrator on the balance of probabilities carries the logical corollary that the second person must be excluded. However, the correct legal approach is to survey the evidence as a whole as it relates to each individual in order to arrive at a conclusion about whether the allegation has been made out in relation to one or other on a balance of probability. Evidentially, this will involve considering the individuals separately and together, and no doubt comparing the probabilities in respect of each of them. However, in the end the court must still ask itself the right question, which is not "who is the more likely?" but "does the evidence establish that this individual probably caused this injury?" In a case where there are more than two possible perpetrators, there are clear dangers in identifying an individual simply because they are the likeliest candidate, as this could lead to an identification on evidence that fell short of a probability. Although the danger does not arise in this form where there are only two possible perpetrators, the correct question is the same, if only to avoid the risk of an incorrect identification being made by a linear process of exclusion.

22. It is important to note that whilst the heading to this guidance is stated to be in respect of situations where there are only two possible perpetrators paragraph 21 specifically relates to situations such as this case. It makes it clear that I must not approach the case in a linear fashion by saying ‘if not A,B or C then it must be D nor on the basis of

'who is most likely'? In each case I must examine the evidence to see whether it establishes that a person has caused the injury on a balance of probability. Indeed, at para 28 it is obvious that the correct approach is not to exonerate by a process of exclusion or on the basis that one potential perpetrator is less likely than another to have caused an injury. An identification is only possible on the evidence if it is more likely than not that X caused the injury.

23. It is always desirable for a court to identify, where possible, the perpetrator of a non-accidental injury. Where it is impossible to find that a rather than B or C caused injury, I should not strain to make a positive finding (Re D) (Children) [2009] 2 FLR 668

Lies

24. The basic direction of *R v Lucas* [1981] QB 720 was adopted in the family courts in A County Council v K, D and L [2005] EWHC 144. If the court concludes that a witness has lied about one matter it does not follow that he has lied about everything. The judge must bear in mind that a witness may lie for many reasons, for example out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure.

25. In the criminal courts a lie can only be used to bolster evidence against a defendant if the fact-finder is satisfied that the lie is deliberate, relates to a material issue and there is no innocent explanation for the lie and it has become standard practice for judges in cases like this to give themselves a so-called Lucas direction.

26. The advocates referred me to the case of H-C [2016] EWCA Civ 136 and to the flaws exposed on appeal in the analysis of non-medical evidence which was used by the trial judge to point to a finding of smothering or asphyxiation in a very serious case. The trial judge found that F had lied about having a good night's sleep, he had a propensity to lose control of himself, it was his first time of sole care, he was concerned about an unpaid debt and he had later said that he would have to live with the consequences for the rest of his life. McFarlane LJ reminds all judges [para 102] of the R v Lucas approach and states

that it can assist in family cases. In H-C the trial judge failed to refer directly to Lucas or to the conditions set out by that authority. His reasoning demonstrated that he had applied the test by implication rather than explicitly. Further, McFarlane LJ stresses the need to bear fully in mind the fact that in criminal cases a 'lie' is never taken as direct proof of guilt: it is only capable of amounting to corroboration of a primary positive allegation. He remained unclear whether the judge had fallen into error in his approach in this particular instance and there were other reasons on which the appeal was allowed.

27. Lies form a key component in the fact finding in this case and as such I make it clear that I have reminded myself that it is imperative to keep these principles in mind throughout this case and to apply them to the relevant 'lies'.

Memory

28. Even though the events I am concerned with happened only a few months ago I have taken time to remind myself of the fallibility of memory. Common errors are that a strong or vivid memory is more likely to be accurate than one which is less clear and that a confident recollection is more accurate than one which is more hesitant. Memory is not a mental record which is fixed in time and can be replayed accurately at will on demand. Our memories are often affected by retelling, by the sharing of experience and by the fact that we may have a stake in the outcome of events. As Browne LJ once observed: "The human capacity for honestly believing something which bears no relation to what actually happened is unlimited".

Giving evidence through an interpreter or where it is given in English as a second language.

29. This case has involved all lay witnesses on whom suspicion has fallen giving evidence either in their second language or through an interpreter (Mrs X). I do not underestimate how hard this has been for them. Interpreters were in court to assist those who gave evidence in English with difficult or nuanced concepts but it remains the case that all those who gave evidence were giving it in very unfamiliar surroundings, being accused of serious harm inflicted on a child and

being asked questions by highly skilled advocates. I intervened on a few occasions with suggestions to assist, for example requiring advocates to ask shorter questions or asking them to phrase those questions in a non-colloquial manner. I permitted extensive examination in chief, regular breaks and ensured that the evidence itself was not rushed, bearing in mind the basic Article 6 rights of each party. On every occasion that there were any questions raised about interpretation the parties had the opportunity to consult with the other interpreters present in court, especially those who had long standing involvement with the case and were therefore able to appreciate any subtle nuances in dialect. Mr Y represented himself in his second language. He is not a lawyer but was able to flag up any times when he believed that there were translation issues.

30. I have also sought to weigh the evidence given in its cultural context. All four of the individuals concerned in this case have a rich and diverse cultural heritage from their countries of origin.

31. Most of the matters I have summarised here were set out concisely by Baker J in Re JS [2012]EWHC 1370 (Fam) and I have kept paragraphs 36 onwards of that judgment at the forefront of my mind.

<u>The findings sought on behalf of the Local Authority</u>

32. The schedule of findings sought in respect of threshold criteria was refined by Mr Tughan QC following the expert evidence. It provides:

-The relevant date for the determination of the threshold criteria is the 14th March 2018.
-As at the relevant date the child was suffering significant harm as a result of the unreasonable care given to him.
-At all relevant times the child lived with his parents and was looked after by a childminder employed by his parents.
The childminder was Mrs X. Her husband is Mr Y. They live together. Mrs X cared for the child at their home. Mr Y was also in their property and was present during his wife's care of the child.

The child was presented to medical services on the 14th March 2018. The investigations that followed that presentation have established that the child had the following injuries:
(i) subdural haemorrhage at multiple locations overlying his brain and in the posterior fossa overlying his cerebellum;

(ii) subdural haemorrhage in his spine;
(iii) small bleeds within the brain and cerebellum;
(iv) multi-layered retinal haemorrhages in both eyes, extending from the optic disc throughout 360 degrees to the peripheral retina which were too numerous to count.

The child has no relevant blood or genetic disorder that would explain his presentation. The injuries were not related to birth.

The older chronic bleed occurred prior to the 2nd March 2018. The acute subdural bleed was up to 11 days old on the 14th March 2018.

It is very unlikely that the retinal haemorrhages occurred earlier than about the 22nd February 2018. The superficial retinal haemorrhages probably occurred closer to the time of admission and within "a few days" of identification.

The child was forcefully shaken twice.

The acute subdural blood could be a re-bleed from the chronic subdural collection or it could be further evidence of a second forceful shake-like event. Such a re-bleed can occur with normal handling of a small child. However, when that acute bleed is put together with the presence of the superficial retinal haemorrhages, it is likely that the child sustained a second forceful shaking event a few days prior to admission.

Between the 22nd February 2018 and the 14th March 2018 the child's care was shared between his parents and Mrs X, with her husband being present during the times she cared for the child.

It is not possible to identify who shook the child. There is a likelihood or a real possibility that both his parents, Mrs X and Mr Y caused the injuries and all four adults are within the "pool of perpetrators".

The threshold criteria are met.

<u>The parties' positions.</u>

33. At the commencement of the proceedings it was clear that some of the medical experts were required to give evidence to explore with them issues such as potential birth trauma causing injury and the effect of the child's mild platelet dysfunction test results upon the question of

causation. It was absolutely right for these issues to be tested and challenged by Mr Bickler QC and Mr Ekaney QC given what was known about the expert opinion.

34. At the conclusion of the medical evidence both Mr Bickler QC and Mr Ekaney QC, confirmed by their clients in oral evidence, that the expert opinion as to number of episodes, birth injury, effect of platelet dysfunction and causation /aetiology of injuries was accepted. Mr Y accepted in his oral evidence that he too accepted the expert medical opinion in this case.
35. The hearing recommenced after the break of one week to hear the evidence of the Mother, Father, Mrs X and Mr Y. They were all in the 'pool of potential perpetrators' and the case focussed on whether it was possible to identify who had caused the injuries.

Parties' positions 1: Expert evidence

36. The expert evidence related to several questions which were properly explored. None of the adults put forward an accidental event to explain the child's injuries. The child was only 9 weeks old when those injuries were discovered so the possibility of potential birth injury was investigated. Test results showed that the child may have a very rare platelet abnormality so the effect of that was also considered. The question of timing of the injuries was also examined in detail. The timing was not only relevant to who had care of the child but also as to whether he was injured on one or more occasions. It was also sensible to investigate whether someone who was not there when injury was caused and had no reason to believe that it had been would or should have been aware that something was wrong with the child.
37. I do not intend to set out the expert evidence in its entirety especially since this expert evidence is now unchallenged and the parties agree that there were two non-accidental shaking type injuries caused around the beginning of March and shortly before 14 March.
38. Mr Peter Richards, Consultant Paediatric Neurosurgeon, described the child's presentation as bilateral chronic subdural haematomas with

bilateral retinal haemorrhages. He said that small episodes of re-bleeding are not indicative of more than one forceful shaking injury and can occur with normal handling or spontaneously. In his opinion the chronic subdural haemorrhages were most likely to be as a result of inflicted head injury caused by a firm shake. In oral evidence he confirmed that on the totality of the medical evidence it was probable that there was a second incident in the few days before admission.

39. Mr Newman, Consultant Paediatric Ophthalmologist, confirmed the appearance of multi layered retinal haemorrhages extending through 360 degrees and too numerous to count which were unlikely to have occurred more than 3 weeks preceding first identification and more likely to have occurred within a few days of identification. Professor Stavros Stivaros, Consultant Paediatric Neuroradiologist, identified subdural haemorrhage at multiple locations overlying the child's brain and in the posterior fossa overlying the cerebellum as well as in the spine. He opined that the likely mechanism was in keeping with a shaking rather than an impact, excluding birth injury excluded as a likely cause but giving a time frame prior to 2nd March 2018 due to the observed membranes which had formed. Dr Patrick Cartlidge, Consultant Paediatrician confirmed that the most likely cause of the injuries was shaking, with the first episode before 2nd March 2018.

40. Although the expert medical opinion is now unchallenged that is not the end of my role. I have to consider whether, in the context of all that I have heard and read, the expert evidence satisfies me to the relevant standard. I am clear that it does and that the findings sought in respect of causation and number of injuries set out in the local authority document are proved on the balance of probabilities.

41. I am satisfied that the child does not have a genetic condition that might lead him to suffer the injuries of the type found when he was admitted to hospital. Dr Saggar's evidence in this was clear and compelling. The child had blood test results which showed a very rare lack of platelet aggregation when tested as a reaction to ADP. Dr Keenan opined that this platelet dysfunction - which he identified but did not diagnose on a single test -was a mild platelet dysfunction which

does not cause spontaneous bleeding. Such conditions may cause nose bleeds or a slight increase to bruising but are not associated with severe or internal bleeding. I am satisfied that, even if the mild platelet dysfunction was confirmed on retesting, it would neither have made the child more susceptible to suffering the injuries, nor would it have caused the injuries that he suffered. The only effect which could have any relevance would be that it may have caused the bleeding to last slightly longer than in a child who did not have the platelet dysfunction. I found Dr Keenan's evidence on this point to be thorough, well balanced and compelling.

42. None of the adults involved in this case suggested that there has been any accidental event which might have caused the injuries seen on presentation and I am satisfied that they were not caused by undisclosed accident/s.

43. Given the child's age it was of course necessary to look at whether birth trauma could provide an explanation for the presence of the chronic subdural collections that were found. On examination of the material it was clear that the bleeding *within* the brain as opposed to the bleeding *over* the brain in the subdural space could not be explained by birth trauma. These parenchymal micro haemorrhages were very significant as they ruled birth injury out.

44. Mr Newman's evidence was that the retinal haemorrhages observed were unlikely to be more than three weeks old when the child was admitted to hospital, thus making birth trauma a very unlikely cause. Indeed, the Retcam images taken on 16 March demonstrated superficial retinal haemorrhages which were likely to have been caused in the few days prior to the imaging thus demonstrating that they could not have been caused at birth.

45. The ageing of the retinal haemorrhages was very important in respect not only of whether birth trauma could have caused the injuries but also as to whether there had been more than one injury. The experts agreed, and I accept, that the most likely cause of the child's injuries was that he was handled in a forceful manner of either shaking or shaking coupled with impact on a soft surface. Mr Newman's evidence

was pivotal in this respect because he opined that the superficial retinal haemorrhages were likely to be only a few days old. This meant that there was an episode of injury closer to the time of admission *in addition* to the episode of injury which caused the chronic subdural haemorrhages before the 2nd March. Dr Cartlidge and Mr Richards accepted this evidence as indicating two episodes of trauma. I am satisfied on the totality of their expert opinion that the child was subjected to two 'events'. The first event occurred before 2nd March and the second between approximately 12th and 14th March.

46. When the child was taken to hospital on 14th March he had subdural haemorrhaging at multiple locations overlying his brain but also in his spine. There was an issue between Professor Stivaros and Mr Richards about the potential source of the bleeding in the spine, and whether it may have been fluid which had transferred from above the brain rather than originating where it was seen. Mr Richards conceded that experts such as Professor Stivaros who specialise in this type of imaging are "better at picking this up". I was impressed by Professor Stivaros' evidence on this issue. He has extensive experience of this type of imaging and this experience allows me to have confidence in his opinion.

47. It was unfortunate that not all the experts could attend the experts' meeting. It is very important for experts to be able to put their own opinions into the context of the overall medical picture. Had this been done I am sure there would have been a clearer medical consensus at the start of the hearing. It is also important for experts to exercise caution and to remind the court that there are possible avenues to explore before coming to a conclusion on the balance of the evidence, but I would remind them that over cautiousness can be as unhelpful dogmatism.

48. It is right to record that the child had no bruising, soft tissue injury or fractures nor did he have severe brain injury which can often be seen in shaking cases. The prognosis is good and he is unlikely to suffer any significant long-term effects.

49. The local authority has not sought findings of 'failure to protect' against any non-perpetrator. The expert evidence demonstrated that there could be a single perpetrator of the injuries on two occasions who acted unseen. They would know that the way they had handled the child, if witnessed, would have caused alarm in the observer. They would also probably know that the child had had an adverse response to their actions but if there was no significant change in his functioning they may not have appreciated that there had been significant injury. The other carers or those involved with the child would not have known that he had been assaulted unless they were there and since the likely symptoms were mild they would not have associated him being slightly unwell with him having been assaulted.
50. Nobody has suggested, and I do not think it likely on the evidence I have read and heard, that there were two perpetrators acting together or two separate perpetrators for the two incidents. The most likely scenario is a carer lost control on an occasion in late February/ early March and did not appreciate that subdural bleeding had occurred as a result. They then went on to perform similar actions in the few days before 14th March resulting in the totality of symptoms – mainly the increase in head circumference- and injuries seen shortly after admission and through subsequent imaging.

<u>Parties' positions 2: The issue of who is responsible for the injuries and whether anyone can be excluded from the pool or identified as a perpetrator of the injuries.</u>

51. In his closing submissions Mr Tughan QC stated that the proper finding in this case was that there remained a pool of four potential perpetrators. He said that the evidence of Mrs X and Mr Y about what happened on 7th March, their evidence about the voicemail to the Mother when the child was ill on 13th and their actions on the 13th undermine their credibility. Further he submitted that the evidence 'does not sit easily' within the *R v Lucas* test. He stated "…the unsatisfactory evidence of the interveners on these issues is probably

not probative of their (sic) having been a perpetrator on its own". He points to discrepancies in what Mrs X and Mr Y said about Mr Y's care of the child and submitted that as a result he should remain in the pool of potential perpetrators because there was evidence that he was more involved in the child's care than the couple had described.

52. Mr Bickler QC submitted that the evidence showed that the injuries were more likely to have been caused in Mr Y and Mrs X's home and that the Mother should be removed from the pool of perpetrators because there was no real possibility that she was the perpetrator. It was his case that I should find on a balance of probability that Mrs X was the perpetrator of the injuries.

53. Mr Ekaney QC submitted that his client denied that he had harmed his son and had no knowledge of his wife hurting him. He had been reluctant for cultural reasons to cast the blame for the injuries onto any other person but on the balance of the evidence submitted that it was likely that Mrs X had caused the injuries. He submitted that there is no evidence that the Father had caused the injuries to his son and therefore he should be excluded from the pool of perpetrators in any event.

54. Miss Ball QC submitted that it was more likely that the Mother caused the injuries than Mrs X and urged me to consider the known stressors in each household given the likelihood that the 'shakes' were likely to have been perpetrated by a carer 'at the end of their tether'. She submitted that there were clear difficulties in translation and as such I should be very cautious about coming to conclusions in circumstances where there was clear possibility for confusion and muddle. Miss Ball QC submitted that the evidence demonstrated that Mr Y played no part in the children's lives and in the event that I am unable to identify a perpetrator he should be excluded from the pool of perpetrators because there was no evidence that he had ever held the child, his main involvement being in respect of the 'fit' on the 13th.

55. Mr Y sent in written submissions. He said that the translated documents had only been received on 24 September which was the first time his wife had had the opportunity to consider what the parents

were saying and compare it to her statement. He explained that she had not had the opportunity to compare her statement with the police interview and that there was confusion as a result. He suggested that the Mother had lied about what Mrs X had told her about caring for another child and about their conversation on 13th March when the Mother collected the child. He stressed that he and his wife had no reason to harm the child and that there was no pressure in their lives to trigger such an event. He submitted that the text messages demonstrated that Mrs X was always kind and supportive to the Mother. He said that he had never touched the child save for March 13th when he read some verses of the Quran to the child.

56. Mr Howe QC asks me to consider the actions of Mrs X and Mr Y in failing to call for medical attention following the 'seizure' on the 13th and also of the Mother in not obtaining immediate medical attention if Mrs X told her about the seizure on that day, especially if, as Mrs X says, the Mother told her that something similar happened on the 12th. He submitted that there were concerning elements in respect of all four adult witnesses. In respect of Mr Y he submitted that it was likely that he had very little involvement in childcare both of his own children and of the child. If I accept that the only involvement he had with the child was on 13th March when his wife called him to see the 'seizure' then Mr Howe QC submits that he is highly unlikely to have shaken the child on two occasions and he should be excluded from the pool of potential perpetrators. In respect of the Mother, the Father and Mrs X he submitted that the Local Authority had proved in each case that there was a real possibility that they had caused the injuries but had not proved on a balance of probabilities that one of them was the sole perpetrator of the injuries.

Analysis

57. In this case there is very little assistance to the identification of a perpetrator from the medical evidence. The child was shaken on two separate occasions but if there was no significant change in his functioning the perpetrator and any carers may not have appreciated

that there had been a significant injury. Subdural haematomas can be clinically silent and they are often only diagnosed, as here, when a child's head circumference becomes abnormal. A child with these injuries may vomit, but most babies vomit so with non-specific symptoms there was nothing to make anyone aware of what had happened.

58. The medical evidence demonstrates that this was a case of damage which developed slowly. If the child had a seizure in the care of Mrs X and Mr Y on 13th March that does not mean that injury had been caused at that time, it being Dr Cartlidge's evidence that seizures alone (with normal consciousness between the seizures) are rare immediately after the causal event and are more common several hours days or weeks after the event. As Mr Tughan QC rightly concedes, this was not a case where a child collapses with significant hypoxic-ischaemic changes injury in the arms of a perpetrator. Nothing about the presentation described by any of the adults on 13th March or the experts' medical evidence assists with the timing of the second shake to be pinpointed on that day or any other day save within the parameters I have outlined.
59. In some cases the evidence enables a court to narrow the timeframes for injuries. Other than the wide timeframes described above I have no assistance as to the issue of perpetration. All four adults concede that in both timeframes the child spent significant time in both households.
60. Given the above the key issues are the stress factors present in either household, what the adults have said to each other and professionals about the history of their involvement with the child and several dates of significance- not due to them being dates when the child was necessarily harmed- but due to the events or communication recorded on that day.

<u>My assessment of the witness evidence including both written and oral evidence.</u>

61. I do not intend to set out the evidence of each individual either written or their verbatim evidence. In analysing the evidence I have taken all

the written and oral evidence into account and I have referred to it where appropriate as I have considered each issue in turn.

62. I start this assessment with the acknowledgement that there is no evidence that any of the four adults has had any involvement with child protection agencies or with criminal activity in this country or their country of origin. They are all highly educated. I include Mrs X in this because although she did not complete her degree she had studied successfully at tertiary level. Many of the 'risk factors' identified by Jackson J in Re BR (Proof of Facts) 2015 EWFC which are commonly seen in cases where babies are injured are not present in this case. Children can be and are abused in otherwise fortunate homes but the framework of common features assists judges in pulling together the strands of the bigger picture. There is no history of intimate partner violence or emotional abuse in either family, no history of physical or sexual abuse to the adults when they were children and no poverty or significant socioeconomic disadvantage. Both families show no evidence of substance misuse of any kind and the couples appear to be in stable and secure relationships. Similarly, there is evidence of household rules, boundaries and routines in both families, albeit the routine for the child was developing as he grew. The parents clearly had an organised routine before he was born, he was planned and they were very happy when he was born.

63. All four adults had access to and used the health service and although both have limited community support they are not in any sense isolated. As Mr Ekaney QC pointed out, the child was a 'visible' child and there is evidence to demonstrate that he was taken to the GP and seen by midwives and health visitors as appropriate.

64. Mrs X and Mr Y are experienced parents who have raised three children and in addition Mrs X has successfully 'minded' other children. Their older children have good school attendance and are progressing well. When seen by social care after the proceedings started the children were observed to be well presented, happy and settled with good parental attachment, including their youngest child who has been regularly seen by the health visitor.

65. There are very few people who don't lie to some degree, especially when they are accused of harming a child. I'm afraid three of the four individuals in this case told lies to a certain extent, either to each other, to those involved in investigating what had happened to the child and also during the course of their evidence. Two of them told significant lies in order to obfuscate the evidence or to provide unswerving support for the other's case.
66. I was impressed by the evidence given by the Mother. She was not shown to have deceived anyone about anything and her evidence remained consistent and thoughtful. She was robustly and expertly challenged and all her answers were impressive. I formed the clear assessment that she is a genuinely caring person who does not think ill of anyone and is genuinely perplexed as to what has happened to her son. Her description of reading the evidence and the allegations about her conduct made by Mrs X was genuine surprise rather than anger or shame. She was realistic about what happened in May when she was admitted to hospital and did not try to minimise it or explain it away. She has the self-possession to contradict her husband, candidly stating that he didn't do as much childcare as he said and she remained good humoured throughout even when asked searching and difficult questions. Her evidence about losing a child through miscarriage and her reaction to that was heartfelt.
67. When describing the involvement of the police and social workers she was clearly stressed by the fact that she had been kept from the child before the existence of any protective order. Yet where many parents would have been accusing the police and social workers of misconduct she said that she felt they were doing their job. In my assessment that was an example of how measured and calm she is as a person. She is a perfectionist and the breakdown of her mental health must have been very significant for her. In my assessment she is carrying a heavy burden of guilt. The question for me is whether that is a guilt at placing her baby at 3 weeks old with a childminder so she could satisfy her visa requirements and her work commitments or because she harmed him in a moment when her circumstances seemed overwhelming?

Whatever the reason I hope she can accept that the world is not perfect and that she can and should accept support to ensure that her mental health remains good and to avoid any future adverse stress reactions. Her love for her husband and her son shone through.

68. The Father is personable and self-assured. He comes from a large family and his values of family support and belief in education were evident. His love for his wife and son and his shared values with her were very clear. He obviously regards her as an equal and values her intelligence and expertise in her chosen field. He is very bright and academically able. I'm not sure that he is terribly realistic in his assessment of his wife's resilience. Her stress reaction in May should be a wakeup call to him that she needs more support from him in the light of all that has happened. Having said that I found him to be a substantially credible witness on all factual matters. His evidence was thoughtful and believable.

69. Mrs X claimed on several occasions that her statement had been inaccurately drafted or that what she said had been mistranslated. It was a theme which pervaded her evidence. Where there is only one word in Arabic for a particular thing – for example vomit and posset appear to be covered by one word – I have taken care to ensure that I have not been unfair to her as the inferences and nuances in one language can be different than those in another. In her texts she was texting in Arabic to another Arabic speaker so the precise English translation is on occasions irrelevant. It's what she meant to say and how it was received that matters. As will be seen below my overall assessment of Mrs X was that she lied about many things during the proceedings and tried to hide those lies behind excuses of mistake and mistranslation. Even allowing for the circumstances of giving interpreted evidence I found her to be almost totally lacking in credibility.

70. I called Mr Y to give his evidence and asked him questions so that he could settle in to giving his evidence just as those who were represented had had the opportunity to do. Mr Y agreed that his qualifications and work mean that he is used to the need for documents

to be accurate and he agreed that he had checked his statement before signing it. When challenged about its inaccuracies he said he thought he had signed the statement during Ramadan and 'maybe' he felt dizzy or 'maybe I was busy'. When challenged about the fact that he had quite clearly described seeing the fit, telling his wife to contact the parents and watching his wife leave a voicemail his reaction was 'maybe I got it wrong.' When challenged about seeing the eye rolling he said "Maybe. The main thing is I saw it myself" and that remained the theme of his evidence. In my assessment he was acutely aware of the inaccuracies in his wife's evidence and very keen to shore them up. For example he knew that Mrs X's evidence about 7th March was important and at every opportunity said that she had told him about the vomit. When asked whether he had been surprised about what she had said via him to the police and social worker on the 15th he was evasive: "I'm not sure. There was confusion about it" and "I don't remember".

71. Mr Y's evidence about what they had discussed was also very unclear. He admitted that Mrs X had spoken to him prior to his police interview: "I got information from my wife about this stuff" and that he had been involved in his wife changing her written statement and when the obvious inconsistencies about the call on the 13th were put to him he became aggressive and said "take it or leave" it with an arrogance that was surprising for one in a pool of potential perpetrators.

72. It was a theme throughout Mr Y's evidence that he was vague, saying 'maybe' as a preface to his answers, or giving responses which were simply unhelpful. An example of this was when he was asked to describe the fit. All he could do was copy his wife's description and it was striking to me as I watched that that was what he was doing. He even looked towards her for reassurance. What she had described would have been a very memorable event yet he couldn't remember whether he had seen the child's eyes rolling or him struggling to breathe. In my assessment the reason for this was that he wasn't sure what she had said he had seen. I have reminded myself that memory isn't a video archive and that the event may not have lasted long but his responses were extraordinary. When asked by Miss Ball QC to

describe the noise the child made on 13th he replied: “It was a kind of breathing difficulty, maybe” (exactly the phrase used by his wife) and used phrases like “I think so” and “I guess”. In my assessment this was not colloquial use of these phrases but was because he hadn’t actually heard or witnessed what he was being asked about. It became evident during cross examination by Mr Howe QC that this was the case.

73. Mr Y said that he had not spoken to her about whether she had harmed the child or what had happened which was an obvious lie as he was demonstrably saying what they had agreed. As Mr Ekaney QC pointed out it couldn’t be coincidence that both of them had said the same thing in their statements about the voicemail on 13th and both had been demonstrated by the factual phone records to have got it wrong.
74. The person who shook the child on two occasions knows that they did so and knows that by failure to admit what happened the finger of suspicion has pointed to three innocent individuals and caused lengthy and costly proceedings to investigate potential organic causes. Seven crucial months of his development have been disrupted by these proceedings.
75. I acknowledge that after the first shake the perpetrator may have felt that the child was fine. They knew that what they had done was wrong on any level and failed to acknowledge their need for help. This meant that he was shaken a second time. The failure to ‘own up’ is very unfortunate for all concerned, especially since there is no doubt that the injuries he suffered even after two totally inappropriate episodes were ‘at the lower end of the scale’ and it is likely that work could be undertaken with an ‘acknowledging’ perpetrator to ensure the trigger factors are recognised and the risk of future harm being caused in this way reduced to manageable levels.
~~76.~~ I am aware that perhaps the very fact that these are all highly educated, professional individuals in this country on visas means that the stakes for them on findings being made are potentially very high
77. There are various matters which have been identified as potentially assisting me in identifying a perpetrator in this case. These include the

stress factors which may have been at play in the respective homes and the adults' acknowledgment or otherwise of those stress factors, together with events which occurred during the weeks prior to the child being admitted to hospital.

Whether Mrs X told the Mother that she was caring for another child.

78. In the great scheme of things this is a very small point, but it I think it is a good example of the way Mrs X communicated with the Mother. The Mother said that when she went to see Mrs X on the basis of an introduction through a friend Mrs X did not tell her that she was also caring for a little boy. She found out about him when she saw him in February and Mrs X said she cared for him on a Thursday. The Mother accepted the situation because by then she had no choice. Mrs X said that during the initial visit the Mother asked about the other children and she told her about a 2 year old boy but "I didn't give her more details". In fact she cared for him 3 days a week on Monday, Thursday and Friday. He was not there when the Mother visited with maternal grandmother.
79. I am satisfied that Mrs X was trying to create a favourable impression and didn't tell the Mother about this boy. I preferred the evidence of the Mother that she found out when she saw him and Mrs X told her that he was quiet and minimised the time she looked after him. This wasn't so much an example of lying at the time but of being 'economical with the truth' and then telling a lie (I told her about him at the outset) to cover up. Sadly, this was one of several examples of Mrs X behaving in this way.
80. There were other examples of 'miscommunication' raised by Mrs X. She inferred that the Mother had told her to keep the child in the car seat for 1 ½ hours when I'm satisfied that the Mother made it clear that it mustn't be used for more than 1 ½. Mrs X also suggested that the Mother had told her to feed him less milk when in fact I'm satisfied that the Mother mixed all the feeds up in advance and she had explained that he was to have smaller feeds to help him recover. I have looked at why Mrs X raised these matters. There was no reason to tell anyone

about them other than to suggest that the Mother was not a good and caring parent.

The stress factors in the parental home.

81. One of the factors I have considered is the reality of the pressures placed on these new parents, whether they have minimised the effects of those pressures and whether the Father has exaggerated the care he provided for the child to obfuscate the strains on the Mother.

82. Academic work can bring immense satisfaction but inevitably brings with it significant pressure. Both the parents are high achievers and they have an acknowledged need to succeed with their work in this country. The statement from Professor Z demonstrates that the Mother has a programme of lectures and seminars in addition to clinical practice and research, and she has written work and exams. The reality of the situation was that she was in need of childcare five days a week by the middle of February comprising half and full days. She had a busy schedule involving challenging and complex work.

83. The Mother accepted that she is a perfectionist, and life is rarely perfect. Her plans to give birth in her country of origin were thwarted, she had only 5 weeks maternity leave and she found herself in a position where the family needed childcare from the baby being 3 weeks old until he was 12 weeks old so that he could then take up a nursery place. Sadly, her plans to breastfeed did not work out and by the beginning of March had come to an end. Occasionally her plans didn't work out as they should. On occasion the child was ill or clingy and she felt she needed to remain with him and cancel her work, for example on 8 and 13 March. I am sure that the decision-making process on those days was emotionally difficult for her as a new mother. She clearly must have felt torn between work and academic demands and the needs of her baby son who she clearly adored. The Mother accepted that she felt guilty at having to leave her young baby to be cared for by another, especially when he was unwell or crying.

84. On another occasion (9th February) the Uber driver who should have waited while the Mother dropped the child off at Mrs X's home and then taken her to work abandoned her and she broke down in tears. Mrs X

described her as being significantly upset, requiring consolation. In my assessment this demonstrates that she may be a person whose reaction to things not going to plan is more significant than one would expect. Most people would be frustrated in such a situation and may shed a tear or two but Mrs X described something more than that and from that time the Father delivered the child in the taxi. Equally this demonstrates that the parents work together as a couple and that they could be flexible to change arrangements and responsibilities.

85. It is clear that the Mother suffered stress induced psychosis and was admitted to hospital in May. The evidence shows that during her admission she sought reassurance and asked for forgiveness. The Mother states that her words were part of a prayer which she routinely says, and this was confirmed by Dr K. It was suggested to the Father that both he and the maternal grandfather tried to explain this very significant stress on the Mother's exams rather than on what had happened earlier in the year and that the family had minimised the injuries to the child. The written evidence demonstrates that in fact the family were open and honest about what had happened. I accept the Father's evidence that the breaking point for the Mother in his view had been some exams which she had not expected. Equally, I accept that in addition to the fact that they had had to come to terms with a potentially inflicted injury or injuries to their son, that they had been interviewed by the police, had had their home searched, had had to stay in a hotel because they had nowhere else to go, had to tell family in their home country what had happened and move out of their home so that the maternal grandparents could move in to their home, been separated from their first born son, had supervised contact and were the subject of care proceedings. The enormity of these matters cannot be denied and the fact that she prayed for forgiveness is no more or less in my assessment than many others do in the context of their faith.

86. It is significant that the child suffered from colic from at least mid-January to early March. Both parents were concerned about his colic and they asked Mrs X to give him infacol with his milk. The child was obviously uncomfortable with colic, pulling his knees up to his chest,

making fists and crying. Both parents were concerned about the colic and it probably led to some interference with their – and their baby's- sleeping.

87. Having a first baby is demanding for all parents. Miss Ball QC pointed out that the child's parents were concerned about the shape of his head and eyes. It was clear that they were worried about the slightly flat aspect to one side and the fact that he had big eyes. I don't think these were particularly unusual worries and they took the advice of professionals.
88. Sleepless or partially sleepless nights are also natural stressors for parents and the child was no exception. He woke every 3 or 4 hours and the Mother did most of the night feeds. Such fitful nights are draining on any parent especially those like the Mother who work and also those like the Father who are studying. On 19th February the Father was so sleepy he and the child slept for several hours when the Father should have taken the child to Mrs X's home to be cared for by her. He started his own PHD in early February and the burden of that would have been significant.
89. The Father's own health was affected during the time by both headaches and arm pain. These were sufficiently severe for him to seek medical attention. A crying or sleepless baby can obviously be more stressful to a parent who is themselves in pain.
90. One of the things which struck me about the Mother as she gave her evidence was her ability to retain composure even when put under significant pressure by difficult questions. She is outstandingly efficient and explained her routine. She was clear that the pressures were manageable because it was what she and the Father wanted, and that they shared family tasks to enable the routine to be upheld. She was evidently delighted by the birth of her much-wanted son. She had suffered the emotional pain of a miscarriage and she and her husband were over the moon that she had been able to conceive, even going to the same restaurant to celebrate.
91. Many women hold highly stressful jobs, have to rely on childcare and have partners who don't make a fifty percent contribution to childcare. It's not an

impossible task and the Mother demonstrated throughout her evidence that she had planned a routine and stuck to it.

Potential stressors in Mrs X and Mr Y's home

92. The potential stressors in the home of Mrs X and Mr Y were investigated with care. The family had suffered some financial difficulty due to the situation in their country of origin and they had not been sure whether they would have any further payments. Mrs X did childminding to help with family finances and to pay for some of the family shopping. It was very poorly paid – just £4 per hour- and I am sure that on occasions she must have felt exploited. She was caring for two 2 year old children (her daughter and a boy toddler about the same age) in addition to the child. There must have been times when the noise caused by the children interfered with Mr Y's concentration and I don't accept that these children were so well behaved and quiet that they didn't cause tension. I accept the Father's evidence that when he collected the child on one occasion the older children told him that his son had been crying. Caring for children in those circumstances must have been very stressful on occasion. Mr Y, on his own evidence, undertakes no childcare tasks and it seems likely that Mrs X was carrying a heavy burden. Mr Y spent a significant part of each day in his study completing his PHD and in my assessment the couple minimised the impact of her childminding on their home life.
93. I am satisfied that the couple did not have any immediate money worries during the relevant period and that Mr Y did not have any pressing debts. Nonetheless, in my assessment, the issue of finance was not straightforward. They wanted to have sufficient to fund a property when he finishes his PHD and returns home. I did not accept Mrs X's evidence that she looked after the child because she felt sorry for the Mother. In my assessment she wanted to earn money. When she was told she could no longer engage in childminding on 15th March she appeared to faint. Her husband confirmed that she can be 'emotional'. In my assessment she was concerned about finances and was concerned about their future. I also find that it is likely Mrs X felt

some level of resentment about the Mother and the Father's changing arrangements and not paying her when the child did not attend. On the other hand, it was clear that the Mother felt that Mrs X was a good childminder; she trusted her and made no complaint about her care of her son

94. In addition, Mr Y clearly felt torn between immediate return to their country of origin and seeking an extension of his time in the UK to gain further experience in his highly specialist field. Confirmation that they would continue to receive a stipend only arrived once Mrs X had started caring for the child. Whilst the Mother has work colleagues Mrs X is quite isolated. She did not appear to have many social contacts and Mr Y's social circle also seemed quite limited. Despite the fact that they had money in the bank, Mr Y was working shifts, including night shifts.
95. Miss Ball QC summed up the situation as one where the four potential perpetrators are decent, hardworking, intelligent and caring people with no problems related to substance abuse, dysfunctional relationships or poverty "…and yet the child was harmed by shaking". Twice.
96. Looking at the two households it was clear that there were matters which may impact on each carer. It was therefore my task to assess how resilient to these pressures each of them was.

<u>What role did Mr Y play, if any, in the care of the child?</u>

97. In a recording made by the police when they visited Mrs X and Mr Y on 15 March at 8pm it is noted that the couple said that the child had been cared for by Mrs X but there were periods when Mr Y would look after him if Mrs X left the address. "They later clarified that this was only within the first 2 weeks and was for very short periods of perhaps several minutes".
98. It is of concern to me that Mr Y and Mrs X now say that they were referring to times when she went to the toilet or went outside to take the bins or hang washing out. It was a bitterly cold spring with snow sufficient to close schools in West Yorkshire and bring transport to a standstill. It seems very unlikely to me that Mrs X would have been

going out to hang washing out. I found her evidence on this to be unsatisfactory. It seems more likely to me that she may have asked her husband to keep an eye on the children if she was going to the shops or doing something for a length of time more extensive than popping to toilet.

99. I bear in mind that during this meeting Mr Y translated for Mrs X and there was no opportunity for either of them to check the information afterwards but I think it's likely that that is what they said and that it is likely to be true. Mrs X had her phone with her and was able to check texts if she wished. There are minor factual inaccuracies. Mr Y made a strong case for the document being inaccurate on the basis that it recorded his occupation inaccurately and there was an inaccuracy regarding the 8th March. The social worker asked questions during this visit and the police officer took notes.

100. It is suspicious that they said that Mr Y didn't look after the child after two weeks. The timing of the first injury was unknown to them at the interview so why point to the 2 week period? Did one or both of them know that something had happened after a couple of weeks and decide that Mr Y should not assist further? Their lack of candour and Mr Y's evidence attempting to exonerate his wife at every turn has not helped them at all in this respect. As Mr Tughan QC points out Mr Y told the police in interview that Mrs X was "mostly" responsible for the care and the obvious inference from that is that he was caring for him for some of the time. In his statement he said that he cared for the child when his wife went to the bathroom.

101. The fact that a person lies about one thing does not mean that they lie about everything. I have carefully considered the evidence about Mr Y and Mrs X's roles in their family home. Firstly, it was Mrs X who met the Mother and the maternal grandmother to discuss childminding. It was clear that Mr Y played no role in the negotiations or discussions. Secondly, Mr Y played no part in communications during the time when the child was cared for in their home. He didn't send texts and he wasn't engaged in handovers. Thirdly they were clear that they have a relationship where Mrs X is responsible for the

children and the household and Mr Y was thereby enabled to spend considerable amounts of time working on his PHD. He was responsible for finances and more important family decisions. In my assessment Mr Y is unlikely to have done more that kept an ear out for the children if Mrs X asked him. I don't think he did any hands on caring and I think it is very unlikely that he came out of the study in a rage on two occasions, unseen by Mrs X, shook the child and then returned to his studies.

102. The local authority evidence filed about the family tends to support the view that their roles are 'traditional' to their culture. On 13th March I am satisfied that Mrs X called Mr Y out of the study because that's where he normally was and because she was deeply concerned. She would not have interrupted him for a trivial matter. I think it's likely that it was a strain on her to keep the children quiet so that he could get on with his work. He states that he had done most of the thesis and that he had the evidence to complete it but that did not mean that the pressure to finish it was off such that Mrs X didn't have to keep the children out of his way. I found his evidence that the children never bothered him to be disingenuous. Their home was small and a crying baby or fractious toddler would have disturbed his concentration. In my assessment the only possible contribution to the child's injuries would be the stress on Mrs X to prevent interruption of his study. He had very limited opportunity to harm this child and I am not satisfied that the local authority evidence is sufficient to show on a balance of probabilities that he perpetrated the injuries nor that they have demonstrated on the evidence that that there is a realistic possibility that he caused these injuries. I accept his regret at his wife accepting the child into their care related to the child being too young; he also regrets the impact the proceedings have had on their family life, including separation of the family for a period of time.

<u>2nd March</u>

103. On 15th March Mrs X described the child as 'vomiting through the day' on 2nd March. She stated that she didn't text the Mother because she didn't have credit on her phone. This does not tally with

the later suggestion that in fact she meant 7 March. What turns on this evidence whether she meant 2nd or 7th? Firstly, I am satisfied that she told the police that it was the 2nd. She had access to her phone, knew that she was to be questioned about events and in my assessment, had already started to concoct a scenario which would show her as a dedicated childminder and the Mother as a reckless and irresponsible mother. The further importance of it is that it is suggesting that the child had been unwell in her care. I am satisfied that if this were true then she did not communicate the illness in any way to the Mother or the Father. She explained that she had to top up her Lebara credit that day which is why she didn't say anything but also claimed it was a mistake as she actually meant the 7th. Both can't be true. I think it is likely that since it was so near to the relevant dates that she did mean the 2nd March and to say that he was unwell in her care on that day. There is a separate entry for 7th and I am clear that she would have deliberately referred to both days as separate events. Her subsequent description of small vomits and larger vomits does not account for that. In my assessment she referred to this day as part of her plan to give a clear indication that the child was unwell at that time and she has changed her story to suit the emerging evidence of what happened to him.

<u>7th March 2018</u>

104. The Mother's evidence is that she didn't see Mrs X on 6th or 7th March. She said that Mrs X didn't say anything about vomiting to her until the text just after 1pm and she sent the Father to collect him immediately. the child had not been sick at the GP's but on the 8th March he was unwell. He had a fever and wasn't feeding well. He seemed tired and they thought it was due to the injections. When she saw Mrs X on 9th March she had not advised her to take him to the GP.

105. In Mrs X's written statement she said that at 9am the child woke up, she fed him and then he vomited up all the milk. She said that she had texted the Mother but had not had any response. She further reported that the child had "cried and cried" and his mother had said that the Father would collect him but that he could not come for at least

1 ½ hours. During that time she fed the child again and he vomited again. She had texted the Mother again to let her know that he had vomited. the child went to sleep about 1pm and the Father collected him at 1.30pm.

106. Mr Bickler QC pointed out to her that the statement was wrong because she didn't text the Mother until after 1pm. She said that her statement was true but "…there may have been some mix up with translation". She then confirmed that the statement was translated for her by the interpreter who she trusted and who was in court with her and that if she had wanted to lie she wouldn't have told the Mother anything at all about the vomiting. She had sent the text as "an introduction" to the fact that he had been sick. The Mother had then texted to ask whether it was a lot and she had confirmed that it was.

107. In my assessment there is a clear implication in the statement that Mrs X is caring for a sick child, is trying to contact the Mother who is apparently unconcerned and that the parents were leaving their sick child with the child minder rather than responding to the fact that he was ill. It is part of a picture painted by Mrs X of the Mother as a somewhat minimising and dismissive mother.

108. The telephone records, which were available only just before the hearing, show that there were no texts or calls to the Mother between a text message at 07.56 and a text message at 13.02 to say that the child had vomited. I find that what she said in her statement was a tissue of lies and I was unimpressed by her attempts to change her story when the incontrovertible evidence of the texts was discovered.

109. I accept the Mother and the Father's evidence about their response on that day. The first they knew of the vomiting, as demonstrated by the texts, was the communication just after 1pm. The Mother contacted the Father because he could get to the childminder's home more quickly than she could and they took him to the GP that afternoon for a prearranged check.

110. The GP records do not show that the parents said that the child had vomited that morning. The reference is to him being colicky. The parents explained that since the child was due to have his

immunisations they had raised the fact that he had been sick that morning. They said that the child was checked, appeared to be well and they were reassured that he was fine to have his injection. I found their evidence to be cogent and credible on this issue. The Mother is a woman who took her wedding and engagement rings off when she was caring for her son because she was so cautious about harming him. I think she would have been concerned about his immunisations and, given his vomit earlier that day, would have been particularly concerned to ensure he was well enough to have the immunisation.

111. In her oral evidence Mrs X said that this was the first time that the child had been so seriously sick that she had had to change his clothes. This was different from small vomits.

<u>The description of the child's presentation given to the police by Mrs X and Mr Y on 15th March, general communications during this period and the evidence of the Mother and the Father about their son during this period.</u>

112. Mr Bickler QC submitted that the description given by Mr Y and Mrs X to the police had been recorded with sufficient accuracy and I agree. Mr Y speaks very good English and can obviously understand his wife. Taken through a significant section of the recording Mr Y agreed that it was predominately accurate. As Mr Bickler QC observed; Why then would it suddenly become wildly inaccurate?

113. The picture painted by them was of a child who had increased vomiting, sleeping and crying in the two weeks prior to presentation at hospital. This description, coupled with the description given in Mrs X's statement about the Mother's reaction to information about her son's presentation "…every time I talked about something of concern, the vomiting, the sleepiness, the seizure, the Mother gave an explanation as if she was trying to minimise things….I urged her to take him to the doctors…" are in direct conflict with the evidence of the Father and the Mother. They also conflict with Mrs X's assertion in her July statement that the child did not seem unwell until he vomited on 7th March. In her oral evidence Mrs X said that when she saw the police and social

worker she wasn't really prepared. She said that when she described him vomiting in the last 2 weeks she was not meaning a large amount of vomiting. She denied saying that the child had vomited through the day on 2nd March and said that she was referring to the 7th March. She said it was clear now that there had been a mix up and that the police had mixed the 2nd and 7th March.

114. Mr Bickler QC pointed out that there were several days where she referred to the child vomiting and sleeping a lot. He referred to her saying that on one day the child cried all day but she replied that she had not meant all of the day but most of the day. Again, her evidence was inconsistent. There is clearly a large difference between a child bringing back a small amount of milk – posseting to use the 'old fashioned' phrase – and I am satisfied that Mrs X was giving the clear impression of vomit without any qualification as to it being 'small' or 'large'. The picture she painted was of a child who was ill. I do not accept that there was a 'mix up'. I am satisfied that she said and meant 2nd and lied about it.

9th March

115. Mrs X stated that on 9th March she reiterated her advice to the Mother to take the child to the GP. In fact, she didn't see the Mother on 6th or 7th March and there are no texts to that effect. The Mother said that when she saw Mrs X on 9th March there was no mention of the need to go to the GP or of the child being ill. Again, in my assessment there cannot have been any 'reiteration' because I do not believe that she told the Mother to take the child to the GP in the first place. I am satisfied that this is a further example of her lying in order to show the Mother as an uncaring mother.

12th March

116. In her initial interview Mrs X said that the child had cried on this day, had only eaten small amounts and had vomited. In her police interview she said that the child was crying "…as if he had something

painful inside…". In her oral evidence Mrs X said that the Mother hadn't given her the chance to tell her what was happening because the taxi would have been waiting. The Mother collected the child on this day and she denied that Mrs X had said anything about him crying or 'a little vomit'. She said there was nothing said that was of concern to her about his health until the text on 13th. The Mother said that the discussion about the child being sleepy during the day did happen but had in fact been in mid-February. In my assessment if Mrs X felt that the child was in pain she did not communicate this to the Mother. Even if there was no time at handover she could have texted. In my assessment she is again reinforcing the picture of the Mother as a mother who was too in a rush to be concerned about her son's health.

13th March

117. On the morning of 13th March at 07.43 the Mother texted Mrs X to say that the child was crying a lot so she would bring him later. The Mother described him in her oral evidence as 'asking for hugs'. There was no response from Mrs X that the child had been ill the day before. The child had settled and she delivered him to Mrs X at 12.30. The Mother and Mrs X both gave evidence that he was well when he arrived and was settled. Mrs X confirmed that the child was well when she fed him and he took his feed.

118. Mrs X said that when the Mother brought the child she did not tell her the full story because it was not convincing that she wouldn't bring the child to her if he was 'just' crying. In fact, I find that it was entirely consistent with the Mother's care of her son and if she felt that he needed her she would rather be with him than take him to the childminder. Again, I find that Mrs X's comments are designed to be critical of the Mother and to imply that something must have happened when he was in her care.

119. The Mother said that Mrs X didn't contact her that afternoon and that when she did collect him Mrs X described him as being tense and having a tantrum. She said there was no mention of eye rolling or

struggling to breathe. She knew that something had happened but certainly didn't get the impression of a fit or anything urgent. The text sent afterwards she had seen as describing a shudder and felt it was reassuring. When she took the child home she kept him warm and put oil on his tummy. She thought he might have a cold and she called the Father from the car. The Mother said that what was described was 'clenching' and the first time she appreciated what was being described was a fit was when she saw Mrs X's written evidence.

120. Later, when the Mother was feeding the child, she describes him vomiting forcefully and when he did the same thing she and the Father called 111. The operator had told them there would be an appointment at midnight and by the time the doctor rang much later the child had settled so they decided to take him in the morning. The Father described thinking that his son was not well when he got home. He was perplexed because the child did not have a temperature but he didn't look quite right. He didn't feel that the child was extremely ill and he wasn't overly concerned. He had thought a 2am appointment would be unsettling. When he took him to the GP in the morning the GP said that the child was fine. He raised the question of the size of the child's head which had led to that being investigated.

121. Mrs X's initial evidence was that she had tried to call the Mother but she did not answer the phone. The telephone records show that the Mother was able to receive calls that day but there was no 'missed call' from Mrs X. Mr Y's initial evidence was also that he had heard Mrs X leave a voice message for the Mother.

122. Once the records were received and Mrs X knew that there was no evidence of this call she said that it was a mistake in her statement. She said that when the statement was sent by the solicitor she had gone back over it with the texts that she had and she reviewed the dates. The statement was then corrected.

123. Mrs X was asked about what she told the Mother when she collected him. She demonstrated by holding her arms to the side of her body with the fists clenched and her eyes staring forwards. She said that the Mother was "really frightened and concerned" for her son. She

had thought that her description may have been “too tough” so she didn’t tell her about the child’s eyes rolling. She said that she was worried about the child and she forgot to say anything about his eyes going from side to side.

124. In evidence in chief Mrs X described taking care of the child downstairs. He was crying a little and she was cuddling him to go to sleep. Suddenly he was rigid. She had put him down and tried to relax him. When cross-examined by Mr Bickler QC she said she could not remember whether she had been holding the child or whether he was on the bed. In evidence in chief she said she read verses from the Quran to him. She said that she was frightened so she took him upstairs to Mr Y and placed him on the children’s bed. Mr Y saw the child and said call the Mother so she had taken her phone and called the Mother whilst talking to Mr Y. She asked Mr Y whether the child had relaxed. She didn’t put the phone to her ear and didn’t think it was ringing. She then closed the phone. She saw that the child’s eyes were like he was dizzy and he had some breathing difficulties. Then the child relaxed more. She had agreed with Mr Y that if it happened again she wouldn’t call the Mother but would call for an ambulance.

125. In her evidence in chief Mrs X said that once the eye movement stopped and the child relaxed, he closed his eyes and went to sleep. Mr Bickler QC suggested to her that she had told the police it took 90 minutes to calm him. She said that she couldn’t say how long it took but he fell asleep as if nothing had happened. She said that she had checked every few minutes. She demonstrated the breathing difficulties by what could be described as gasps or panting. She said that later on she heard gases in his stomach and he passed wind.

126. Mr Bickler QC suggested that if what she described were true she must have been very frightened. She replied that she was surprised and concerned but wasn’t worried he would die. He asked her why she hadn’t called an ambulance. She said that she didn’t know the background history of the parents being concerned about his head and the incident had lasted less than a minute.

127. Mrs X said that she thought of calling the Mother but she did not wish to frighten her. She decided that if it happened again she would act differently. She described the sounds in the child's throat as small sounds. The interpreter said that it was a 'burp' and described the child as 'stressed'

128. Mr Bickler QC asked Mrs X about what she had said to the Mother when she collected the child. She said that she couldn't remember and then said "I'm not sure whether she got me or not". She accepted that the text about the gases could only have been a few minutes after the Mother collected the child.

129. Mrs X was part-heard overnight. I warned her not to discuss her evidence. As soon as she recommenced her evidence Mrs X said that she had been misinterpreted the day before and that the questions had been too long. I ensured that the questions were short and that she had pen and paper to assist with any matters she wanted to note. It was obvious to me that she had discussed the evidence with her husband. They would have been acutely aware of the inconsistencies in her evidence and I'm satisfied that her protestations were primarily aimed at explaining any dishonesty which had been demonstrated by questioning the day before.

130. Mr Bickler QC submits that there are three crucial questions to ask about the 13th. Did Mrs X really try to contact the Mother? If she did not try to contact her what was the reason for not telling the mother of a child who had "seized" that he had been ill? What did Mrs X tell the Mother when she collected him and what were her reasons for doing so?

131. I am satisfied that Mrs X made no attempt to contact the Mother after the 'fit' despite the fact that he was not due to be picked up for several hours. I don't accept her explanation to Mr Bickler QC that she told Mr Y that she had been unable to contact the Mother nor her evidence "Maybe I told him I reach the voicemail, I can't remember". To Mr Tughan QC she said that "maybe" Mr Y thought she had left a voicemail. In my assessment at that point she was making her evidence up as she went along. It certainly contradicted what her

husband had stated and went on to say in his evidence and contradicted what she had said in her written evidence and in chief. She accepted when questioned by Mr Tughan QC that she had the Mother's number in her phone as a contact so it wasn't complicated to call her number. He suggested that she may have misled Mr Y by pretending to call. She said "Why would I? Maybe he misunderstood". Her evidence that she wanted to tell the Mother face to face was not born out by what she actually did when she saw her.

132. I am also satisfied that she lied to the police when she said that she had told the Mother it was very important to take the child to hospital and that she was very worried when the Mother collected him. She told Mr Tughan QC that she would have called 999 if what had happened to the child had happened to her daughter. She said that she didn't call because the child is not her son and because she wanted the Mother to come and then she could take him.

133. Her dishonesty is illustrated by her text at 17.07 where she told the Mother it was probably gases and that "it's nothing…don't worry". I am satisfied that if she had given a description of him struggling for breath, eyes rolling, stiffness and seizure to the Mother that afternoon the Mother would have rushed the child to the GP or hospital. Evidence which supports this is her reaction on 7th when told the child had vomited and she immediately arranged for the Father to collect him. I have asked myself if the Mother sent her husband because she knew that the child had been injured and she wanted to distance herself from that but I do not think that was the reason. Her demeanour when she gave evidence about that day was entirely consistent with a concerned mother who reacted immediately when told her son was ill and ensured he was picked up as quickly as possible.

134. The superficial retinal haemorrhages could have been caused by an event on 13th March and Dr Cartlidge's evidence was that if Mrs X and Mr Y believed that the child was having a seizure they should have sought immediate medical attention. It is astonishing in my assessment that they chose not to do so. Mr Y was sufficiently concerned to read verses of the Quran to the child to help soothe him

but then apparently returned to his studies without a further thought for the child. Mrs X admits that she stayed watching the child for some considerable time and that if it had been her daughter who had suffered such a seizure she would have sought immediate medical attention.

135. Mr Bickler QC and Mr Ekaney QC both submit that the behaviour of Mr Y and Mrs X that afternoon demonstrates that they -or one of them- had harmed the child.

136. When I take a step back and look at the events of 13th/14th March and the actions of the two sets of carers it is obvious that their behaviour can be interpreted in one of two ways.

137. In the parents' case the fact that the Mother did not take him to the childminders until he was settled could indicate that there had been an event that morning when she had lost control and she had soothed the child until he was calm enough to go to the childminders. She would have known when she picked him up and later that evening that he was unwell but, knowing that she had shaken him before and he had been okay afterwards she may have hoped that he would recover again. In my assessment this did not happen. If she had harmed him and wanted to keep him away from anyone there was no reason to take him to Mrs X's home. She could have kept him at home all day. Both women were clear that he was well when he arrived. The medical evidence that the child may have been more irritable or clingy would fit with his mother's description of his presentation that morning.

138. I'm satisfied that when the Father returned home it was clear that the child was unwell and they called 111. Later that evening they decided that the Father would take the child to the GP in the morning rather than have an out of hours appointment. I find that the Father lied when he said that they had exams in the morning, although I think the reason was because he was trying to get an earlier appointment, and like many people he was trying to give reasons for them not having to wait until the early hours (2am) to be seen. I also find that he was less than candid about the contribution he made to the child's care. I acknowledge that it was quite unusual in his culture for him to put his

wife's studies as a priority in their relationship and that he is as proud of her academic achievements as his own. He is self possessed and family orientated but he undoubtedly exaggerated the contribution he makes. The Mother was the one who got up in the night for most of the feeds and did the majority of nappy changes. I'm sure he played a sufficient role in his son's life for there to be a possibility that he caused the injuries but I'm satisfied that in reality the division of labour so far as the child was concerned was far from equal and he could have done more. In my assessment the reason for his lies was firstly to get an early appointment and secondly to portray himself in a favourable light as a hands on father. I do not think that his lies were to conceal guilt or to point blame at anyone else.

139. I have considered whether the Mother tried to extend the period before the child was seen by a medical professional to cover up what she had done. That doesn't really fit with the Father trying to get an earlier appointment when they were told there would be a long wait. So why did they decide in the end to take the child in the morning? They both say that it was late and the child had settled. If they didn't know about the extent of the seizure and their child was not showing significant symptoms – just that he didn't seem right – why wake him, disrupt their rest and go out into the cold?

140. When the Father took the child to the GP first thing the next day I have asked myself whether the Mother was trying to distance herself from a child she had injured or whether the child was not significantly unwell so there was no reason for them to both go as it was more of a check-up than anything else. The Father took the child to the GP for example when he had colic and there are recorded visits on 19th January, 10th February and 7th March in addition to the 14th. I'm satisfied that it was a better arrangement for him to do so as his PHD commitments were more flexible. I therefore don't find anything sinister in him taking the child on 14th. He took him before 8 am which shows appropriate concern. I'm satisfied that it was the Father who drew attention to head circumference and set in train the events which led to admission and the discovery of the injuries.

141. When I look at the evidence of this period of time I am satisfied that their actions were those of normal caring parents who did not appreciate that the child had subdural haematomas and retinal haemorrhages.

142. In Mrs X's case the reasons for not getting medical assistance or telling the mother what had happened may have related to the fact that she was worried about a child being ill in her care as she was an unregistered childminder, so she may have been worried that the Mother would not use her services again if she had taken the child to the GP or she and Mr Y may have felt that it was not 'their role' to interfere and take the child to the GP or A & E. On the other hand she or they together may have been trying to keep the news of this seizure away from the parents and professionals because it would lead to the discovery of mistreatment of the child.

143. The lies they both told made it very difficult to assess the reasons for what they did. It became apparent that Mr Y had not really seen much of what had occurred that day and was simply giving evidence about what his wife had told him. Mrs X said that the fit had occurred about 13.00 whereas he said it was 15.00. Mrs X was desperate to demonstrate that he had seen the fit but his evidence about it was unconvincing. I began to wonder whether there had actually been a fit at all and I certainly had reservations as to whether he had seen anything.

144. Mrs X's descriptions of the event have varied. In her statement, which was translated for her by a familiar interpreter, she said that the child was rigid, his eyes rolled back in his head and then moved side to side. She had called her husband, put the child on the bed and it had stopped. She described the child as breathing heavily and said that her husband told her to contact the Mother, she tried to call her but she did not answer. Mrs X said that she didn't text the Mother in case she panicked.

145. In her police interview Mrs X said that the child had a spasm after which his eyes were spinning. She had massaged him and read the Quran to him and he became quiet. She was worried and had

spoken to her husband who was in his office and asked him to come and look at the child because he was ‘in seizure’. She had tried to contact the Mother but couldn’t get in touch with her. Mrs X demonstrated that the child had struggled to breathe before he fell asleep and demonstrated gasping sounds.

146. In oral evidence Mrs X said that she had put the child on a mattress downstairs before taking him upstairs. She said that she had neither described what had happened to Mr Y nor had he asked her. She said that she had told the Mother about the seizure and the Mother had said something similar had occurred the night before.

147. I am satisfied that there was an event involving the child on that day which so worried Mrs X that she took the child upstairs for her husband to see. I am also satisfied that Mr Y came out of the study and saw that the child was unwell. I find that at least Mrs X was sufficiently concerned to recite Quranic verses to the child and try to soothe him and that the child started to return to normal.

148. I found Mr Y’s evidence about what he saw and did to be unconvincing. I asked him to recite the verses he spoke and he was hesitant and seemingly unsure. This part of his evidence, like much of his oral evidence, demonstrated to me that he was describing what he had been told rather than what he had witnessed. There were numerous examples of this, the most obvious being his statement that he had seen Mrs X try to contact the Mother and leave a voicemail. I don’t think this was something they concocted together.

149. In my assessment it would have been quite natural for him to say ‘contact the Mother’. It was the obvious thing to do. The phone records show that she didn’t and yet Mr Y told the police and filed a statement to say she had. I’m satisfied on the evidence that Mrs X told him that she had when in fact she had not and that she deliberately lied to him. I find that he believed what she said and was therefore prepared to say that was what had happened even though he had not seen or heard it. The only alternative is that she ‘faked’ a telephone call. The effect would have been the same, namely to deceive him and to avoid alerting the Mother and therefore the Father. The telephone

records demonstrate that she did not call at all and her revised evidence that she was panicking and may not have made the call were in my assessment disingenuous and trying to cover up the deception which the records showed. I think it's likely that he told her to contact the Mother and she may well have told him that she had but he did not see her try to call, did not hear her leave a voicemail and lied about that. I don't think he was particularly interested or concerned about the child and he left his wife to the task of looking after the child. His willingness to give evidence about things his wife told him rather than what he had actually done or seen seriously undermined his credibility. He was arrogant when he gave his answers and displayed a disregard for the importance of assisting the court. I find that the principal motivation of his evidence was to exculpate his wife.

150. When it became clear subsequently that the child had possibly been injured I find that they discussed what had happened and he basically adopted her story. He is a man who is adamant that his wife has not harmed the child. He is extremely supportive of her. He has lied to bolster her case and protect her and I'm sure that he believes that the child was harmed in his parent's care.

151. Mrs X's behaviour that afternoon is of significance. If the child had had a significant seizure I don't think she is the sort of person who would have been prevented from seeking medical treatment by fears that her unregistered childminding would be exposed nor was there any reason for her 'not to worry' the Mother. If what Mrs X describes was accurate there was every reason to call 111 at the very least and to call the Mother as a priority. She knew the Mother was keen to receive news of the child's welfare because she had given her an additional number to use following the significant vomiting on the 7th. There was no history of the Mother or the Father being cross about having to pick the child up early. She was only helping out until he was able to go to nursery at 12 weeks. The money was useful but not crucial to family finances at that time.

152. I find that the decision to avoid informing the Mother that her son was ill was Mrs X's decision. I find that she is more likely to have done

so out of fear of discovery than because she was worried about childminding or finance issues. I did not believe her explanation that she was waiting to tell the Mother face to face. She knew she wouldn't see her for several hours. I am satisfied that she knew she should call his mother but was deliberately delaying to see if he became well again. I am satisfied that she lied to her husband about her attempts to contact the Mother and I find that her oral evidence that if it had happened again she would have sought medical attention was trying to excuse her behaviour. She would have taken her own 2 year old for immediate medical help. There could be simply no reason to delay obtaining help for a 9 week old child other than to try to avoid detection of him being unwell due to a known shake.

153. I am satisfied that when the Mother collected the child, Mrs X gave a description of what had happened which was minimised in the extreme. I find that she described little more than colic and that if the Mother had responded that he'd been like that before it would only have been in the belief that he had had colic before. If Mrs X had wanted to give a face to face description of what had happened then the pick-up time was the obvious time to do it, together with a clear recommendation for immediate medical attention. I find that she did not describe anything of concern. Whilst the text refers to seizure it also refers to symptoms of colic, gases and gurgling and basically says not to worry. There is no exhortation to medical attention. In my assessment if there had been then the Mother would have gone straight to the GP. The child was, as Mr Ekaney QC submitted, a very 'visible' baby. He was seen by the health visitor and the GP and his mother's texts about the need for his infacol and the need to keep him warm during the bitter weather provide independent corroborative evidence to my own assessment of her. I am satisfied that she was very caring and anxious about his health. As a couple they were keen to seek medical advice about their baby.

154. Whenever there was a situation where it was clear that Mrs X's statement had been contradicted by demonstrably factual evidence both Mrs X and Mr Y claimed that there had been a problem with

translation. The interpreter who consistently assisted Mrs X filed evidence about the 'mistranslations' and I have taken her version as the appropriate version – thus giving Mrs X the benefit of the doubt in respect of mistranslations to ensure fairness to her.

155. The text message Mrs X sent to the Mother on 13th at 17.07 is an example of this as it can be translated as her forgetting to say that the child probably had a lot of gases because after either 'convulsions' or 'seizure' he burped and had noises coming from his stomach…. But don't worry, it's nothing". I am satisfied that this does not demonstrate that Mrs X had described either convulsions or seizures to the Mother when she saw her. Miss Ball QC submits that the Mother could have asked for clarification and that the fact that she says she didn't take any particular notice of the reference to 'seizure' is not credible. There was no reason for her to think that anything out of the ordinary had happened.

156. I do not accept the submission. Mrs X insists that she was impressing on the Mother that she must take him to the GP but within minutes of her leaving she texts and says it's nothing to worry about.

157. I find that the Mother saw it as a reassuring text after the description of mild symptoms she had been given. Overall she took it as a 'no need to worry' rather than a 'get help quick' and I am satisfied that that was understandable given what she had been told. It was a perfectly reasonable view to take.

<u>14th March and the descriptions to the medical professionals.</u>

158. Miss Ball QC in her usual thorough and meticulous style, sets out the descriptions of the child given once he was presented to the GP on 14th March and subsequently. She does so in the context of demonstrating that if the child had been becoming increasingly unsettled it would have increased the pressure on the parents. That is true but unless the child behaved very differently in Mrs X's care it would have also put additional stress on her.

159. I'm satisfied that there was a gradual change in the child's behaviour in the couple of weeks prior to 14th March. It wasn't a sudden decline and I find that the parents' description of a 10% increase in crying which they put down to the immunisations to be truthful. There is a slight discrepancy between the Mother's and the Father's description of the onset of the increase in crying (7th March and before 5th March). I have considered whether this has any significance. Memory is fallible and unless there is a particular event to pinpoint it is difficult to ascertain the start of a gradual change. The descriptions given by parents in these circumstances can often be very telling but in this case I am not assisted by it save to note that it is basically accurate and contains no obvious dishonesty.

160. Miss Ball QC submits that I must ask myself whether Mrs X deliberately lied. I am absolutely satisfied that she lied consistently about the significant matters and events which I have outlined above. There was no question of whether these were deliberate lies. I'm satisfied that each and every one was scheming and calculated. I have carefully balanced the possible reasons why she lied and on each occasion there is only one reason. These were not case bolstering lies they were lies to clearly point the finger of responsibility at the Mother. Miss Ball QC submits that the lies – if they are lies- do not go to a material issue and therefore do not assist with my decision as to whether I can identify a perpetrator. In a case such as this where I am looking at the wide canvas of the evidence the findings of fact (which I set out below in summary) I have made are in my assessment extremely material to looking at the issue of who harmed this baby.

161. I am very conscious of the fact that I must not strain to identify a perpetrator. In *A-C (A child)* the circumstances were very different. There was not an 'ounce' of fact to demonstrate that one or other parent was responsible. I am quite clear that there are several findings which take the case against Mrs X to beyond suspicion or theory and to meet the relevant standard of proof, namely balance of probabilities..

162. I have taken care to survey the evidence as a whole and to avoid going through the potential pool to see who is the most likely to

have caused the injury. I have considered whether the evidence supports a finding against Mrs X that on a balance of probability she caused the injuries, not because she is ‘the likeliest candidate’ but because the evidence supports the factual findings I have made.

163. This is precisely the type of case which Lord Justice Ryder had in mind in *Re M (Children*). I know in this case that the child was shaken forcibly on two occasions whist in one home or the other. The medical evidence is not particularly helpful as to timing but shows the wider timeframes. There is little corroborative material, although there is the primary, independent evidence of the phone calls and text messages and I have been able to identify factual occurrences as a result. I have then been able to look at whether any individual has lied about those facts and examine why they may have lied. Ultimately, I have to decide whose evidence I place greater weight upon.

164. On occasions one comes across a witness whose evidence is so unsatisfactory, so unreliable and so mendacious that nothing they say (unless it is plainly against self interest) can be accepted in the absence of corroboration. Described by some advocates as ‘unsatisfactory’ I have to say my conclusions were that that was an understatement of the quality of Mrs X’s evidence. When looked at as a whole, giving allowance for translation and ‘confusion’, there is a clear thread of mendacity running throughout her evidence. From the moment she saw the police and social worker on 15th, by which time she knew there was a clear concern that the child had been injured, she twisted the evidence to exculpate herself and to implicate the Mother.

165. As Munby LJ said in *Re A(A Child)(Fact Finding :Speculation)* a lying denial of responsibility when something has happened does not of itself establish precisely what that 'something' was. What it was that happened, who the perpetrator was, and what the perpetrator's motives, intentions and state of mind were, are different things, and a lie in relation to one does not without more establish the facts in relation to the others.

166. Mr Tughan QC submitted that the evidence about 7th March and 13th March undermine Mr Y's and Mrs X's credibility but are 'probably not probative of their having been a perpetrator'. With respect to Mr Y I agree. The question for me looking at the wide canvas is whether on the evidence it is more likely than not that Mrs X is the perpetrator. I find that it is.

167. I have not come to this view on the basis that I am not satisfied that the Mother or the Father are responsible or because there is no real possibility that Mr Y caused the injury. That would be to arrive at the impermissible linear conclusion that therefore it must be Mrs X who caused the injuries. I have come to this view on the basis of all the findings I have made about her and, importantly, my assessment of her as a witness in these proceedings.

168. I have found inter alia, the following 15 facts:

a. that Mrs X did not tell the Mother the extent of her childminding activities when she met her shortly before the birth;

b. that she said that the Mother had told her to keep the child in the car seat when in fact the Mother had told her not to keep him in the car seat for longer than 1 ½ hours, that the Mother did not tell her to feed the child less milk as she measured the doses out in advance;

c. that she wanted the additional childminding money;

d. that she was more likely to have left Mr Y to keep an eye on the child if she was going to the shops rather than hanging washing out in February;

e. that she was under pressure to keep a baby and two toddlers quiet as her husband was working in the home on his PHD which was in its final stages;

f. that she said on 15th March that the child had been vomiting through the day on 2nd March;

g. that she did not text the Mother on 7th March to say that he had vomited soon after he arrived;

h. that she was not ‘introducing ‘the fact of sickness’ in the first text as there was no reason to introduce it several hours after the event;

i. that she tried to paint a picture of the Mother as an uncaring and dismissive mother when in fact she was very caring;

j. that she did not at any time tell the Mother to take the child to the doctor as he was unwell;

k. that if the child was unwell in her care on 12th March she did not tell the Mother,

l. that she either pretended to make a call to the Mother or made no attempt at all to call her on the 13th March;

m. that she did not tell or demonstrate to the Mother anything on 13th March which would cause her to believe her son had been or was seriously ill,

n. that she sent a text to reassure the Mother about the child if he was ill rather than to tell her to take him to the GP.

169. I am satisfied that when I look at the overall picture each one of these is a material issue of some degree. I have then looked at why, having found in each case that Mrs X lied, she has lied. At each stage I have looked to see if there are causes such as shame or trying to bolster her case which were the possible reasons for the lie. On each occasion I am satisfied that it was a knowledge of her own guilt, fear of detection and a desire to point the finger of blame at the Mother which was the reason for the lies. I am therefore satisfied that there is factual evidence on which to base my decision which, taken together with my overall ability to assess Mrs X in the witness box as she gave her evidence and the reasons for the lies she told, enable me to find on a balance of probabilities without any straining of the facts that Mrs X caused the injuries to the child by shaking him on two occasions when he was in her care in late February and mid March 2018.

170. I make it clear that I believe that the circumstances appertaining at the time – a newborn baby and two toddlers being cared for in a home where her husband was trying to complete his PHD do not

appertain now. She is no longer babysitting and he has completed his PHD. In the event that the local authority commence any proceedings in respect of Mrs X's children those proceedings will be referred to me.

That is my judgment.
HHJ Hillier
16 November 2018.