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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/06/2018

Before :

MRS JUSTICE KNOWLES

- -

Between:

A COUNTY COUNCIL	**Applicant**
- and -	
A	**Respondents**
B	
Z	
(A Minor, by her Children's Guardian)	

- -
- -

Miss Heaton QC and Mr Hart for the local authority
Miss Taylor QC and Miss Bowcock for the mother, A
Mr Momtaz QC and Mr Hunt for the father, B
Mr Rothery and Mr Warner for the child, Z

Hearing dates: 8,9,10,11,14,15,16,17,18,21,22,23,24,25,29,30 and 31 May 2018

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

....

THE HONOURABLE MRS JUSTICE KNOWLES

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All person, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

This anonymised version of the judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10.30am on Friday 29 April 2022

Mrs Justice Knowles:

1. On 16 August 2017 an eight-day old baby girl, X, suffered a catastrophic collapse at the home she shared with her parents, A and B [hereinafter referred to as "the mother" and "the father"]. At the time of X's collapse both her parents were at home. The father called the local Birthing Centre at about 23.00 and spoke to a midwife to explain that "*his baby was not feeding well that day and her breathing was not right*". When the father then told the midwife that X was breathing slowly, the midwife told him to ring 999 immediately. The father rang 999 at 23.01 and thereafter attempted to resuscitate X following instructions given to him by the ambulance controller. By 23.05 ambulance paramedics were in attendance and they found X to be unresponsive with a slow heart rate. She was making no respiratory effort and was peripherally cyanosed. They took over cardiopulmonary resuscitation and X was transported to the Emergency Department of the local hospital arriving there at 23.30. On arrival, X was in pulseless electrical activity cardiac arrest. Despite the best efforts of the hospital staff to revive X, she was pronounced dead at 00.06 on 17 August 2017.

2. A post-mortem radiological skeletal survey was carried out on X which revealed a metaphyseal fracture of the distal left femur. As a result, a post-mortem examination was carried out on 21 August 2017 by Dr Batra, consultant paediatric pathologist, and Dr Wilson, a Home Office registered forensic pathologist. The findings of that examination, together with other expert examination of X's tissues, revealed that she had died in consequence of inflicted head trauma. There was also evidence that X had been the subject of non-accidental injury on at least one other occasion in the days leading up to her death.

3. X had an older sister, Z who was born in the summer of 2016 and is now nearly two years' old. DNA testing was undertaken to ascertain whether B is her biological father as asserted by the mother and the outcome of that testing has established that B is indeed Z's father. Following X's death, Z was examined by medical staff and underwent a skeletal survey. No injuries of concern were identified. The local authority has parental responsibility for Z by reason of an interim care order made on 25 August 2017. Z has been living with foster carers since the summer of 2017.

4. In August 2017 both the mother and the father were arrested in connection with the death of X and interviewed. They were subsequently released on bail on . Both parents are now no longer on bail but remain under investigation with respect to X's death.

5. Over the course of a hearing lasting 12 days I have been dealing with a fact finding enquiry into the following matters:

    a) The circumstances of X's fatal injuries;

    b) Whether X was injured on an earlier occasion;

    c) Which of her parents was responsible for the injuries to X;

    d) Whether her parents failed to seek appropriate medical attention for X in good time;

e) Whether her parents failed to protect X from the harm she suffered.

6. In summary and at the commencement of the hearing, the parties' positions were as follows. The local authority asserted that X was the victim of inflicted injuries on one occasion prior to the assault which led to her death. She was also fatally assaulted on the evening of 16 August 2017. Either the mother or the father was responsible for both sets of X's injuries. Both parents denied causing X's injuries and, in statements filed in the family proceedings, neither claimed to have any knowledge as to how X was injured or who might have injured her. The Children's Guardian remained neutral with respect to the findings sought by the local authority. The parties' positions underwent some modification as the hearing progressed which I will refer to later in this judgment.

7. In determining the issues in this case, I have considered the contents of about 20 lever arch files of documentary evidence and have had the benefit of hearing the mother and the father give oral evidence to me. The evidence of the mother was facilitated by an intermediary, that assistance being necessary by reason of the mother's autistic spectrum/social communication disorder and impaired use of language for social communication. As both parents remain under investigation with respect to X's death, I considered it necessary to give each of them a warning pursuant to s.98 of the Children Act 1989 before they gave their oral evidence to me. That warning was couched in plain and straightforward language which both parents confirmed to me they had understood. I also heard evidence from the father's mother and her partner, HH; the mother's mother; a midwife, HT; a friend of the mother's, JJ and her mother, KK; a social worker, RR and a family friend, FF. I listened to a recording of a 999 call and viewed an excerpt from the police interview of both the father and of the mother

8. I have had the benefit of expert reports from Dr Wilson (Home Office Pathologist), Dr Batra (Consultant Paediatric Histopathologist), Dr McCarthy (Consultant Pathologist), Professor Mangham (Consultant Histopathologist), Dr du Plessis (Consultant Neuropathologist), Professor Kinsey (Consultant Haematologist), Dr Morrell (Consultant Paediatrician), Mr Jayamohan (Consultant Paediatric Neurosurgeon), Ms Hartshorn (consultant forensic psychologist) and Ms Harrison (intermediary). I heard oral evidence from Dr Wilson, Dr du Plessis, Professor Kinsey, Dr Morrell and Mr Jayamohan.

9. I want to record my thanks to the advocates who appeared before me. They co-operated in matters great and small to assist me during the hearing and provided helpful written submissions at the conclusion of the evidence.

10. This judgment concerns itself with the responsibility for X's death and earlier non-accidental injury so that I can determine whether Z was at risk of suffering significant harm in the care of her parents, such that the threshold criteria in section 31(2) of the Children Act 1989 were crossed. My judgment requires to be read with a companion judgment, detailing significant failings in the disclosure provided by the police, a matter recognised only during the course of the hearing.

THE BACKGROUND AND THE LAY EVIDENCE

The Mother

11. The mother is A. She was born in 1990 and is now 28 years old. She has cerebral palsy and right-sided hemiplegia resulting from a stroke at birth. This means that she has no use of her right arm and manipulates her arm through her shoulder. She cannot use both hands and this makes certain tasks such as cutting food and tying laces difficult. The mother also has difficulties with her mobility and can sometimes be unsteady on her feet. Additionally, she was diagnosed with epilepsy in 2008 when aged 17 years. Her last seizure was in May 2016 when she missed a dose of medication whilst pregnant with Z. She is prescribed Lamotrigine for her epilepsy. The mother's younger sister is reported to have a hereditary condition known as idiopathic thrombocytopenia purpura which means that her blood does not clot as it should and that her immune system is compromised. It is evidenced by a low blood platelet count. The maternal grandmother's paternal aunt, female cousin and niece all have this condition but the mother herself has never shown any symptoms and her platelet count has always been normal.

12. In addition to her physical difficulties, the mother was diagnosed with social communication/autistic spectrum disorder at the age of 11. A letter from a Professor of Brain and Behavioural Medicine at the Maudsley Hospital, London, explained that her problems could best be labelled as either a social communication disorder or as an autistic spectrum disorder given that the mother had many of the impairing difficulties that were on the autistic spectrum. The letter described some of the features of the autistic spectrum disorder as they manifested themselves in the mother:

    "…Her use of language for social communication is impaired. She is not particularly chatty and shows relatively little interest on other people's point of view. When explaining something to other people, she will often fail to sketch in the relevant context and begin part of the way through the narrative without enough details to make sense of what is going on. Other times, she provides excessive irrelevant details. Speech involves many repeated questions and stock phrases. Her ability to make sense of other people's non-verbal cues (tone of voice and facial expression) is poor. Her eye contact is fleeting and this is not simply due to social anxiety…"

    The letter went on to explain that these sorts of problems were extremely common among children and young people with hemiplegia. The letter also identified that, as they grew older, children with hemiplegia often became painfully aware of their socially marginal position and behavioural and emotional problems could emerge as a result. If nothing was done about these, very poor self-esteem, marked depression and severe challenging behaviour could develop.

13. The mother attended mainstream primary and secondary schools and then went to college where she gained three GCSEs and completed a BTEC qualification. At the age of 24 the mother started attending a university with the aim of becoming a scientist. She had a support package to manage her disabilities whilst studying but she left during her second year as she was, by then, pregnant with Z.

14. During these proceedings, the mother was assessed by Dr Hartshorn, consultant forensic psychologist. Her full-scale IQ, perceptual reasoning and verbal

comprehension index fell within the borderline to low average range of abilities whereas her processing speed and working memory lay in the borderline to average range. Dr Hartshorn's assessment highlighted difficulties with the mother's verbal and non-verbal skills with the mother having a limited understanding of the meaning of words but possessing stronger verbal reasoning skills. Her relative strengths were the speed at which she processed visually presented information and her recall of both verbal and visually presented information. The mother was, however, assessed to have significant deficits in her adaptive functioning across most areas of daily living skills. She scored poorly on practical skills, in the main due to her physical disabilities. I note that Dr Hartshorn had no medical information available to her to verify the mother's account of a diagnosis of autistic spectrum/social communication disorder.

15. Both the mother and the maternal grandmother agreed in their evidence that the mother struggled with the impact of her disabilities. She found it difficult to accept she was less able than her sister or other children and her frustrations manifested themselves in aggressive behaviour towards those closest to her - her mother and, to a lesser extent, her sister. She would lash out at her mother, bite herself and cry uncontrollably. The social services and health records evidenced that the maternal grandmother clearly struggled to contain and manage the mother's behaviour and, on occasion, the maternal grandmother accepted that she had hit her daughter to try and stop her hurting herself. As evidenced by the educational and health records, the maternal grandmother asked for professional help in managing the mother's behaviour and those records also showed that she was a doughty advocate in seeking appropriate education and health services to maximise the mother's potential. Despite the sacrifices made by the maternal grandmother over many years, her relationship with the mother clearly suffered. The mother felt controlled by the maternal grandmother which manifested itself in resentment and occasional aggression and her desire to escape her mother's control prompted, in part, the mother's decision to leave university and move to another part of the country in furtherance of her relationship with the father.

16. Though the mother was offered and underwent a variety of therapies in childhood and adolescence to manage her frustration and aggression, these seemed to have had little effect. What was striking was that this volatile behaviour by the mother continued into adulthood up to and including her time at university. The mother told me that she could be moody and that she had both extreme mood swings and significant problems with anger which sometimes resulted in a loss of control and aggression to those close to her. She also told me candidly that she struggled with those who tried to tell her how to do things, including how to care for her children, and that she found it hard to ask for help when her physical disabilities limited what she wanted to do.

The Father

17. The father is B. He was born in 1991 and is thus 26 years old. He lived with his parents and older sister until the age of 4 years when his father left the family home, taking the father with him. His parents' relationship was marred by significant domestic abuse which the paternal grandmother told me that the father had heard rather than witnessed. The father spent some six weeks living with his father until he returned to his mother's care following her threat of issuing legal proceedings for his return. I understand that the father has not seen his own father since that time. The

paternal grandmother formed a relationship with HH some 22 years ago and he thus parented the father during the remainder of his childhood and adolescence.

18. The paternal grandmother described the father as having significant behavioural problems and it was accepted that she found it very hard to manage him. He was aggressive to her and to his sister and refused to obey her. The paternal grandmother confirmed in her oral evidence that the father used to punch and kick his sister when he did not get his own way and had attacked her on one occasion armed with a screwdriver. She said he was bullied a lot at school and brought his aggression home with him. Despite her requests for help, Social Services did not provide the paternal grandmother with any assistance to manage the father's behaviour though his schools were more helpful. Both the paternal grandmother and HH agreed that HH was able to manage the father's behaviour better than the paternal grandmother and that the father would not be so difficult when HH was present.

19. The father attended mainstream primary and secondary schools. He told Dr Hartshorn who assessed him during these proceedings that he had truanted from school and had a 1:1 support teacher in all lessons throughout secondary school. He described himself as struggling with lessons. On leaving school he went to college for a few months but left due to being bored. Thereafter, he had a variety of low skilled jobs and told Dr Hartshorn that he never stayed in a job for long as he got bored. He started doing labouring work in about 2013 which he said he really enjoyed but, even so, he had not been doing this work regularly prior to meeting the mother. Dr Hartshorn assessed the father as having a full-scale IQ, verbal comprehension skills and processing speed within the extremely low to borderline range of abilities. He also had difficulties with his working memory and with his verbal and non-verbal skills, having a limited understanding of the meaning of words albeit with slightly stronger verbal reasoning skills.

20. The mother does not have a criminal record whereas the father has convictions for criminal damage, shoplifting, handling stolen goods, using threatening words or behaviour, and possessing an air weapon in a public place. All these offences took place between February 2005 to January 2010. The father also smoked cannabis from the age of about 11 until he was 23. He has had serious problems with anxiety and depression according to the paternal grandmother. She described his mood as unpredictable as he would lose his temper at the slightest thing. In his oral evidence, the father agreed with his sister's description that he was a "*Jekyll and Hyde*" character who could shout and be aggressive.

The Parental Relationship (to August 2017)

21. Prior to meeting the father, the mother had a boyfriend in 2010 who was physically abusive to her. She confided in her friend, JJ, about his behaviour to her and JJ told the police that the mother's self-confidence was shattered by this man. The maternal grandmother reported the mother having boyfriends but that these relationships seemed to fizzle out after a while. The father too had a girlfriend prior to meeting with the mother and lived with her on and off for about three and a half years. That relationship was characterised by frequent rows during which the father was reported to throw furniture and punch doors. His then girlfriend gave a statement to the police as part of the investigation into X's death in which she explained that the relationship

had ended when the father elbowed her in the face during a row. This incident was not reported to police at the time.

22. In November 2015 the mother and father met online and about a fortnight later he travelled to visit the mother at university. Thereafter he visited her in her university city and she also came to his home city to see him. By February 2016 the mother knew she was pregnant and in early April 2016 she told the maternal grandmother about this and introduced her to the father. Shortly thereafter, the mother moved to the father's home city in mid-April 2016 to live with the father, the paternal grandmother and HH. She did not tell her own mother about the move or that she was abandoning her university course. Contact with the maternal grandmother was restored when the father rang her on 4 May 2016 to tell her that the mother was in hospital having suffered an epileptic fit. Soon after that hospital admission the mother and father moved into a flat in the block next to the block where the paternal grandmother and HH lived.

23. In July 2016 the father was beaten up by four men with a baseball bat after his motorbike was stolen. He had been giving chase to the thief but was waylaid by a group of men coming out of a local pub, one of whom was apparently the brother of the person who had stolen the father's motorbike. He required hospital treatment for his injuries but was not admitted for treatment. Following this incident, the father became more anxious about living in the locality and the couple's move to another town in March 2017 was, in part, prompted by his fears following this incident.

24. In summer 2016 Z was born by emergency caesarean. The maternal grandmother travelled to stay for a fortnight to help. She was concerned that the flat in which the couple lived was unsuitable for the mother and Z given it was accessible only by stairs. Her concern in that regard was accepted by both the mother and the father who agreed that their eventual move in March 2017 was also prompted by the need for the mother to be able to go out with Z without constant assistance from the father. Unfortunately, the couple's relationship began to show signs of strain in the months after Z was born. On 20 October 2016 the maternal grandmother contacted the local authority to report telephone contact from the mother who was saying that the father was going to kick her out of their flat and keep Z. The police attended the flat and were told by the father that he no longer had feelings for the mother and wished to end their relationship. Both the mother and father confirmed there had been no violence or disturbance. It was agreed that the father would stay in the flat as the mother could not be left with Z due to the possibility that she might have an epileptic fit. I note that the couple quickly reconciled after this incident.

25. The parents and Z also had some sporadic contact with the health visiting service. An initial visit on 23 August 2016 identified a need for further support and a follow-up visit by the health visitor with a colleague from the local Children's Centre found the mother to be suffering from a mild level of post-natal depression. Despite several attempts to engage both the mother and father with support services including Home Start, this never happened. Notwithstanding the family's reluctance to engage, Z was reported to be well looked after and her immunisations were up-to-date. On 1 February 2017 the Early Support Plan for the family was closed by the local authority due to non-engagement. By that time the mother was once more pregnant.

26. On 22 February 2017 the community midwife visited the mother at home and was concerned that the mother was suffering from post-natal depression. The mother was reported to feel isolated and the father expressed concerns about the mother's mental health and her ability to cope with another baby. Both parents acknowledged that they needed to move to more suitable accommodation as the mother was unable to leave the flat independently with Z. At about this time the maternal grandmother also contacted the health visiting service to report that the mother was being controlled by the father and that this was adversely impacting on the mother's well-being. The health visitor made a referral to the multi-agency safeguarding hub detailing the maternal grandmother's concerns. Following the family's move to another town, the health visiting service in that area was informed about the referral and the family's records were transferred.

27. In March 2017 the family moved to another town. The mother had found a cheap rental property and the couple took the decision to move without viewing the property. The state of the property was poor - the boiler was faulty and the bathroom was tiny - and both the mother and father realised very quickly that they wished to return to live close to the paternal grandmother and her partner. An additional problem was that the stairs were very steep which made it hard for the mother to get up and downstairs quickly.

28. In late April/early May 2017, the mother messaged her close friend, JJ, to say that the father had "*strangled*" her. JJ was concerned and forwarded the message to the maternal grandmother. The father subsequently contacted JJ to say that he had not strangled the mother but had only pushed her away when she was "*in his face*". JJ cancelled her plan to visit the couple but, following further communication with them, she accepted that the father had not strangled the mother and that the mother had said it was her fault that the father had become upset. The mother accepted in her oral evidence that the father had not strangled her but had put his hands on her upper chest close to her neck.

29. Notwithstanding her pregnancy, the mother failed to make herself available for antenatal visits to the family home - three attempts were made during June 2017 to see the mother without success. Despite being given contact details, the mother herself did not contact the antenatal team to arrange a visit. Z's 8-12 months developmental review by the health visitor was due but the parents were not available for three planned home visits. On one occasion the mother cancelled a visit on the day it was to happen, explaining that she had a hospital appointment. That was untrue when checked against the hospital records. In her oral evidence the mother told me that she could not be bothered with Z's developmental review. I note that the father apparently took no steps to facilitate this review either.

30. Additionally, it is apparent that the couple's relationship was under some strain. Neighbours heard the couple arguing in the street on more than one occasion and on 24 May 2017 a passer-by heard the mother shout "*get off me you bastard*" with the father shouting in reply "*you're a fucking bitch*". The exchange prompted the passer-by to become "*immediately concerned*" for the welfare of the mother. That person together with someone else in the street knocked on the door but no one answered. In her oral evidence the mother told me that she was in pain because of her pregnancy and could barely walk up and down stairs. She had rowed with the father and slapped him across the face. On 26 May 2017 the mother's Facebook account showed that the

mother had sought to end her relationship with the father: she messaged him at 09.03 saying "*Its [sic] got nothing to do with me. You said last time if either use [sic] said it over it be 4 good not just words. As you said it this morning. What choice did we have*." She said in her oral evidence that she was seriously considering ending the relationship but attributed her feelings to mood swings in pregnancy.

31. In June 2017 following a row with the mother, the father left the home for about 36 hours and spent time at the homelessness shelter in the town. In his statement within the family proceedings he explained that he had had enough of the mother's difficult behaviour, particularly her telling him during arguments that she hated him and did not want to be with him. The mother accepted in her statement that the father had left for a brief period of time following a row. Even on his return, the rows continued – on 23 June 2017 the mother told JJ that she had smashed a cup against the wall because she was angry. Facebook messages recovered by the police reveal that the father was having flirtatious conversations with other women at this time. The father admitted in his oral evidence that, by the time of X's birth, he had become resentful of doing all the housework and had stopped keeping the house clean and tidy because he felt the mother was "*taking the mick*".

X: 8-16 August 2017

32. X was born by planned caesarean section on 8 August 2017. It is not in dispute that the mother found the later stages of her pregnancy physically very difficult and, towards the end, she was obliged to use a wheelchair when she left the house. Both parents had arranged for Z to spend a fortnight with the paternal grandmother towards the end of July. Z returned for a few days to the family home but went back to the paternal grandmother's flat on 4 August 2017.

33. On 6 August 2017 the mother's friend, JJ, and her mother, KK, arrived at the family home. The mother had asked JJ to be her birthing partner as the father said he would be too anxious to fulfil that role. On 7 August 2017 the adults stayed at home relaxing and preparing for the mother's admission to hospital. On 8 August 2017 all the adults went to the hospital for X's birth. The maternal grandmother was also present at the hospital. On 9 August 2017 JJ and her mother spent the day in Liverpool whilst the father went to the hospital. At some point during that day the maternal grandmother told hospital staff about her concerns with respect to the volatile relationship between the parents.

34. On 9 August 2017 the maternal grandmother collected Z from the paternal grandmother's home and brought her to the hospital so that she could see her mother and baby sister. Thereafter, there was a meeting between one of the midwives, the father and the maternal grandmother about her concerns about the parents' volatile relationship. The father was unhappy that these issues had been raised particularly when the mother's discharge from hospital was delayed in consequence. Z returned home with her father that evening as the arrangement for maternal grandmother to take Z to her home for a few days to give the parents a break had been cancelled by the mother and father. The maternal grandmother was not welcome on the ward to see either the mother or X after her exchange with the father and Facebook messages from the father to the mother threatened that he would fall out with the mother if the maternal grandmother came to their home. The father was described by a member of the hospital staff dealing with the maternal grandmother's concerns as being annoyed

and angry, such that there was felt to be a need to alert security staff due to the father's behaviour.

35. On 11 August 2017 the mother and X were discharged from hospital, returning home at about 6pm. JJ described the mother as being in a lot of pain and really struggling to get up and down the stairs in the house. The mother, father and X slept upstairs, X sleeping in a Moses basket. Z slept in her own bedroom which was also upstairs. The night of 11 August 2017 was disrupted for all the adults as every time X woke up for a feed, she would disturb Z.

36. On 12 August 2017 the paternal grandmother, HH, the father's sister and her son arrived at the house at about 11 o'clock to find the adults still sleeping. JJ said that the father was completely exhausted and the mother was tired and in pain. Everyone was intent upon celebrating the birth of X but the father's sister described the house as being messy and grubby with no sign of any preparation for a party. JJ's police statement recorded with a degree of understatement that "*the day had its issues and didn't go very smoothly*". With the exception of the father's sister and JJ, all the adults were drinking alcohol, namely beers and brandy though the mother said she had had only one small drink. The father appears to have drunk a large amount of alcohol because he had an abscess in his mouth from an infected tooth. During the afternoon the father became upset with the neighbour making a noise and he picked up a frying pan from the kitchen and went out into the street to challenge the neighbour. Before going outside, the father had been banging the frying pan on the wall and shouting in a misguided effort to get the neighbour to be quiet. When the father went outside armed with the frying pan, JJ stepped between him and the neighbour to prevent an assault. The police were called and both the father and the neighbour were warned about their behaviour. After this unpleasant incident, the father appears to have been agitated for the rest of the afternoon – it was said that on coming back into the house once the police had left, he went into the back yard and banged his head against the wall.

37. Before the visitors left at about 8 o'clock that evening, the father and the mother had a row and the father went out into the yard and punched the shed door in anger. The mother had become upset because she felt the paternal grandmother was taking over the celebrations and she went upstairs. Both the father and JJ went to speak to her but the mother would only speak to JJ. It was then that the father went outside and punched the shed door. At the father's request, Z went back to the paternal grandmother's home that evening in order that he and the mother could get some sleep and focus on caring for X.

38. According to JJ, the mother was upset about the incident involving the neighbour and told JJ that she was scared about the way the father had reacted. She went upstairs crying and JJ followed her. The mother told JJ that the father would not listen to her when she tried to talk to him about her feelings and about how low, isolated and left out she felt. JJ encouraged her to reconcile with the maternal grandmother and eventually the mother calmed down and she and JJ went back downstairs to join the party.

39. On 13 August 2017 JJ and her mother left at about 9.30 am to catch a bus back home. They spoke to the mother and father that evening via Facetime and saw that they were sleeping downstairs with X in the Moses basket. That day the father went out to buy

formula milk and was gone for about one and a half hours. On 14 August 2017 the father, in pain from a tooth abscess and tired from lack of sleep, hit and broke a pane of glass in the door in the living room after a row with the mother. He went to his GP and was prescribed antibiotics. He returned home but went out later that day to do some shopping at the local convenience store. The mother messaged JJ to say that both she and the father were tired and her phone records revealed that she was searching for a new property for the family.

40. Both parents accepted in their oral evidence that they actively avoided contact with health professionals during this time. They gave a variety of reasons, namely (a) that they could not get to the front door in time to answer it and (b) that the house was a mess. I note that there had been several attempts to gain access to the parents' home to complete postnatal home-care. The community midwife told me in her oral evidence that, if she had not been able to gain access to the home on 15 August 2017, the police would have been informed so that a visit could take place. These matters constitute a concerning background to the events in the family home.

41. The following day, 15 August 2017, the mother and the father were seen at home with X by the community midwife who removed the stitches from the mother's caesarean section. During her visit the midwife undressed X to examine her and also performed a blood spot test by pricking X's heel. No concerns about X were recorded and the blood spot test took place without incident or X having prolonged bleeding thereafter. The condition of the home was quite tidy according to the community midwife. Encouragement was given to the parents to avail themselves of regular postnatal care for the mother and for X. After the midwife had visited, the father went out of the house to do some shopping.

42. On 16 August 2017 the father's sister saw X on video call sitting on the father's knees. X was described as being fine, pink and alert. The father told his sister that, on the night of 15 August 2017, X had been constipated and he had manipulated her legs by moving them up to her chest to help her defecate. This manoeuvre had had the desired effect. That morning, 16 August 2017, the mother had exchanged text messages with JJ, saying that neither she nor the father had had a great deal of sleep the previous night because of X and because of the pain experienced by the mother in her stomach. During the afternoon the father went shopping to a supermarket, leaving the mother alone with X. The mother did all the feeds that day with the exception of the 4pm feed which the father did. X was said to have projectile vomited during that feed which the mother told me left the father feeling upset as he could not understand why X did not do this when she was fed by the mother.

43. At about 7 pm the police attended at the parents' home following the allegation by the maternal grandmother to the midwives that there was domestic abuse in the relationship between the mother and the father. The father answered the door and agreed that the police officer could speak to the mother alone. The house was reported to be a little untidy which the police officer considered to be normal after the birth of the baby. The mother denied being a victim of domestic abuse and was seen trying to settle X by rocking the Moses basket gently from side to side. X was dressed in a pink babygrow and mittens with a blanket covering her from the waist down. She was crying but not loudly, with a cry the police officer described as "*a whingeing cry like an irritable cry*". The police officer saw X kick the blanket off her whilst crying. Before exiting the house, the father told the police officer that he knew the maternal

grandmother had made the most recent referral which he described as malicious. The officer had no concerns about the occupants of the house during her visit and left at about 7.20pm.

44. The mother fed X at about 8.30pm and at about 8.50pm the father contacted JJ by text to tell her that he and the mother had been allocated a ground floor flat not far from the paternal grandmother's home and that they planned to move there on 23 August 2017. At about 9.20 pm the mother contacted the health visitor by phone to say that the family were moving out of the area and that she would register with a new health visitor once they had moved.

45. Thereafter, the parents' accounts of what occurred during the remainder of that evening are confused. I observe that their accounts have also changed during these proceedings. In her statement filed in the family proceedings dated 30 October 2017, the mother recalled going to the bathroom at about 10.30 pm whilst the father was in the kitchen. When she was on the stairs she heard X cry out with a loud and shrill cry but she did not, at that point, think anything of it. She was in the bathroom for about 5 to 10 minutes and came down the stairs slowly as she was frightened of tripping. When she came down, X was in the Moses basket and the mother described seeing X jerking her limbs and gasping. The father then picked X up with his hands under her armpits and at that point he shook her twice. The mother said that the father did not do so vigorously but the mother reported that X's head did flop backwards and forwards on both occasions. The father then placed X onto the mother's right shoulder so that she could try and wind her but this made no difference. The mother then laid X down on her knee and put her cheek to her mouth to see if she could feel her breathing. At one point the father put a bottle to X's mouth to see if she would take some milk but she would not. The father then rang and spoke to the midwife and, on her advice, then immediately rang for an ambulance. X was on the mother's knee and, according to the mother, was clearly very ill. The father put X on the floor and started to do cardiopulmonary resuscitation under instruction from ambulance control. A few minutes later, the mother ran to the front door to let the paramedics indoors.

46. In his statement in the family proceedings dated 27 October 2017, the father recalled the mother feeding X at about 8.30 pm and putting her back into the Moses basket. Later he was in the kitchen and heard X start crying. It was a noisier cry than usual and it was unexpected. He went into the living room and, as he went in, the mother was going up the stairs. He went to the Moses basket and found that X's eyes were closed. Initially he jiggled the Moses basket as he thought this might settle X but she continued to cry and so he picked her up. He noticed that her head was quite floppy and leaned her against his chest and tried to wind her on her back. She still did not settle and so he held her facing him with her head cradled in his hands. He said that X's eyes would not open. At this point the mother was on her way downstairs and X was still crying. The father put X in her basket for a minute and the mother then came back into the living room and sat on the sofa. The father picked X out of the Moses basket and gave her to the mother. At this point X's head went backwards and to the side and she seemed to be choking and gasping for air. The mother put X on her chest and tried winding her. She then put X on her lap and told the father to call the midwife which he did. The father made no mention in this account of shaking X in an effort to revive her though he had told the police in early October that he had done so.

47. The first account given by the mother was to the consultant paediatrician present during X's resuscitation. The mother told the paediatrician at 00.30 that, shortly before 11pm, X was in her Moses basket in the living room. The mother was upstairs and heard X crying whereupon she went downstairs. The father had picked X up and passed her to the mother who said that X seemed limp and gasping for breath. She then noticed X had stopped breathing so she called the midwife and 999. That account was confirmed by the father to the paediatrician at 01.15. He said he had been with X whilst the mother had gone upstairs on the toilet. X had started crying so he had rocked her to comfort her. He had then picked her up but she did not settle so he handed her to the mother. X's breathing was then seen to be erratic. The hospital notes recorded that both parents' reaction appeared to be appropriate and both gave a consistent history.

48. In her August 2017 police interview, the mother gave a similar account to that given to the paediatrician. She said she was upstairs during which time X woke and screamed. She went downstairs and saw the father rocking X in the Moses basket. X began to gasp for air as if she could not breathe properly and this prompted the mother to check her more closely. She observed X's head to be limp and then checked her breathing and put her ear to X's mouth but could not hear or feel anything. She then asked the father to ring the Birthing Centre for advice from the midwives.

49. In his August 2017 police interview, the father stated that the mother was upstairs in the bathroom when X woke up screaming. He rocked the cot to settle her but she continued to scream. He then picked her up and saw that her head was floppy. He said he did not know what to do so he put X back in her Moses basket and rocked it to try and settle her but this did not work. The mother came downstairs whilst X was still screaming and the father passed X to the mother whereupon she stopped crying and began to struggle for breath. The mother tried to wind X but then laid her down and realised she was not breathing.

50. On 6 September 2017 the father gave a different account of what had occurred on the evening of 16 August 2017. This account was given to a mental health nurse during a home visit to see the father. The father had attended hospital a couple of days earlier when he reported feeling suicidal and it was apparent to those who assessed him that he was experiencing a significant grief reaction. A recommendation was made for the father to have home treatment, hence the home visit by the mental health nurse. The father reported to her that, days before the death of X, she was vomiting back most of her feed and he had mentioned to the mother that something was not right with X. He then said that on the night of 16 August 2017 X was screaming and screaming whilst he was cooking tea. He said that the mother had "*shot off upstairs*" leaving X downstairs and he thought this was unusual because of the mother's reduced mobility after her caesarean section. He said that "*my head went west*" and then described how he had picked up X under the arm with one hand with her head being supported by that same hand. He told the nurse that "*I may have shook her*". He was asked how vigorously he had done this to which he said "*I don't know, I don't know*". The father then turned to his mother who was also present and said "*you know what I am like, I might have been panicking*". The nurse asked the father how many times he had shaken X and he said he did not know. By this point in the meeting, the father was close to tears and looked distressed.

51. During a police interview on 4 October 2017 the father demonstrated how he had shaken X. He was at pains to stress that when he shook X, he was trying to open her eyes. It was not a "*full on*" shake. I have viewed this excerpt from the father's interview as have Mr Jayamohan, consultant paediatric neurosurgeon, and Dr Morrell, consultant paediatrician. The mother also confirmed in her police interview in October 2017 witnessing the father shake X gently to see if she was conscious. She told a friend in a message on 1 September 2017 that the father had shaken X "*but it seemed gentle to see if she'd respond and wake*".

52. Both parents in their oral evidence altered their accounts once more of what happened on the evening of 16 August 2017. The mother confirmed that X had been crying when she got up to go to the toilet. She said that the father was not there when she went to the toilet but was either in the kitchen or by the back door having a cigarette. The father described for the first time being in the garden rather than in the kitchen when he heard X crying.

X's Fatal Injuries: Aftermath

53. X's fatal injuries occurred as set out at the start of this judgment. A second post-mortem was carried out on 6 September 2017 by Dr Lumb. That report was not available to me though Dr Lumb told Dr Wilson that he agreed with his anatomical findings. X's funeral took place on 24 September 2017.

54. Contact between Z and both her parents was arranged. On 21 August 2017 a social worker, RR, was present at the hospital when Z was due to undergo a skeletal survey. She observed the mother in the act of changing Z's nappy. Z was sat in a cot playing and RR described the mother grabbing hold of Z's ankles and pulling Z towards her. This sudden movement caused Z's head to fall backwards onto the mattress. RR intervened to remind the mother to be careful as she might hurt Z. Z did not cry and was not hurt by the mother's actions. In her oral evidence RR accepted in cross-examination that the mother had not grabbed Z's legs but had taken hold of them. RR considered that the mother's behaviour when changing Z's nappy was concerning and, from that time onwards, the mother was not permitted to change Z during contact.

55. The parents were arrested and interviewed. Both were bailed and they were further interviewed by the police about two months later. Their bail conditions included a condition that they were not to have contact with each other and I note that the father's October 2017 statement made clear that his relationship with the mother had come to an end by reason of the said bail conditions. He expressed anxiety about being accused of being in contact with the mother and said he had alerted the police to the Facebook contact the mother was having with the paternal grandmother. He was at pains to state that he had not engaged in conversation with the mother. A statement from the paternal grandmother dated 28 October 2017 confirmed that the mother had messaged her several times, often to say how much she was missing the father but also to talk about other matters. The mother accepted message contact with the paternal grandmother but asserted that she would not do anything to jeopardise her freedom as she was enjoying her contact with Z. She denied sending these messages to the paternal grandmother so that information might then be passed to the father.

56. Despite stressing at the end of October 2017 that his relationship with the mother was at an end, the father retained strong feelings for her as late as 26 September 2017. On that date the father asked a police officer to pass to the mother a handwritten note in which he expressed his feelings for her. The officer did not do as the father wished given the ongoing police investigation. The note reads as follows:

"[A] [drawing of a heart and two xx] I love you so much you mean the world to me my princess [sad emoji face] I feel so lost without you I can't go to sleep without crying my eyes out at night I need you to keep going as this is so hard for both of us. But I swear [A] me and you are forever and always will be no matter what. Your my rock, my soul, my one and only love [drawing of a heart] my heart is in pieces, I miss us being a family [crying emoji] I love you so much always [kisses]"

57. By the time of the hearing in May 2018 both parents' cases were being put on the basis that they remained separated and were not in a relationship even though their bail conditions had been lifted in the spring of 2018.

THE HEARING

58. This hearing was beset by problems with police disclosure which substantially increased the size of the bundle and lengthened the hearing. Those matters are discussed in my companion judgment.

59. I have already referred to the assistance that the mother had from an intermediary during the course of the hearing. The report of Ms Harrison, a registered intermediary, recommended that the mother should have an intermediary available to her throughout the hearing to help her process and retain information and to regulate her emotions. A variety of measures were proposed and implemented without any difficulty including taking breaks during the hearing to allow the mother to respond to and understand the evidence which was being given by others. When she herself gave evidence, I permitted her to have breaks when she was obviously tired and struggling to understand what was being put to her. The interruptions in the court day for these purposes had the added benefit that the father's legal team were able to make use of the time to clarify and reinforce the father's understanding of what was happening during the hearing.

60. On the eleventh day of the hearing [22 May 2018] and at a point when all of the advocates, but particularly those representing the parents, had had an opportunity to digest the extensive additional police disclosure, I was told at the start of the court day that the local authority had been contacted by the maternal grandmother with information that the mother and the father had been spending time together in April 2018 including the father spending the night with the mother at her flat when the maternal great-grandmother was visiting. A statement to that effect had been obtained from the maternal great-grandmother though it was not available to me at that time. The local authority told me that the parents accepted they had spent a night together as set out in that document. Miss Taylor QC then informed me that there had been text message contact between the parents and that it was being asserted by the father that the mother had sent the father a text message to the effect that she would tell the court she had harmed X to get the hearing over with. Mr Momtaz QC confirmed this and both advocates told me that their clients had deleted text messages between them

from their respective phones. The mother had also used a pay as you go phone to contact the father but that phone had been destroyed by her the previous week.

61. In the light of these developments, I required the parents to each produce a detailed statement about the status of their relationship. The father also agreed to surrender his phone for examination of both sent and received text/Facebook messages. The mother likewise agreed that her tablet device should be obtained and examined to retrieve a recently deleted long letter she had written to the father. I decided that it was not proportionate to examine some of the other devices in the mother's possession via which she had had contact with the father.

62. Following this exercise, a number of matters emerged from the new statements, the oral evidence of the parents, the recovered messages and the mother's letter to the father. I observe that the mother's letter to the father was in diary format and began on 19 August 2017 when they were forbidden direct contact by their bail conditions. It was a lengthy document [91 pages] and contained a record of the daily events, her thoughts about the predicament in which the couple found themselves and her feelings for the father. It was written with the intention that the father would be able to read it once they were no longer subject to bail conditions.

63. First, both parents had breached their bail conditions as long ago as 25 October 2017 when the mother had sought the father out on his way back from contact with Z. That contact was apparently welcome to him. To achieve telephone contact with the mother, the father placed an advert on an online classified advertisement website as he was selling a motor-cross helmet which the mother had purchased for him. He included his new phone number in the advert so that the mother could contact him. Within a day or so of their meeting, both were texting, phoning and in contact via Skype on an almost daily basis. That contact continued until 21 May 2018. Examination of the phone messages retrieved from the father's phone showed that the mother and father were messaging each other at the beginning and end of each court day. Second, the parents met again on 28 October 2017 when – on the basis of what the mother wrote in her letter – they were sexually intimate. Both agreed that they met regularly to be intimate, sometimes camping in the local countryside close to their respective homes. They spent weekends together in the mother's flat and also at the paternal grandmother's home. Third, though the text messages purportedly sent by the mother in which she said she would tell the court she had harmed X were never produced by the process I had approved, the mother accepted in her oral evidence that she had sent a message to the effect that she would say this as a means of bringing the court proceedings to an end. She denied having harmed X and said that she had made that statement to the father having been affected by the pressure and stress of the proceedings. Fourth, neither parent was able to explain to me why it was they had reconciled when, in late October 2017, each knew that either one of them was suspected of having seriously injured and killed X.

64. At the conclusion of the hearing, the local authority's written submissions invited me to find that, on the balance of probabilities, the mother was the perpetrator of both the old and acute injuries to X. In the alternative, the local authority submitted that neither parent could be excluded as a perpetrator of these injuries. Each parent asserted that the other was responsible for harming X. Counsel for the Children's Guardian submitted that there was an evidential pathway by which I could properly conclude that X's injuries were inflicted by the mother. However, he also submitted that the ties

which bound the parents together weighed more heavily upon them than their obligation to Z to tell the truth about what happened to her sister and he recognised that I might be simply unable to penetrate the fog of denials, evasions, lies and half-truths to make any secure findings identifying a perpetrator. No party suggested either that any person other than the mother and the father was responsible for X's old and acute injuries or that both the mother and the father had been responsible for injuring X.

THE MEDICAL EVIDENCE

65. The advocates collaborated to provide me with an agreed summary of the medical evidence in a document composed by counsel for the child. What follows draws in part on that document. I have identified, where relevant, the medical issues which were in dispute during the hearing.

66. At the conclusion of the hearing both the mother and the father conceded that there was no natural cause for the significant pathological findings and for X's death. Both also accepted that (a) she was assaulted on more than one occasion and (b) she died as a result of an assault on her shortly before her collapse on 16 August 2017. It thus transpires that the medical evidence is uncontroversial.

67. It is not in dispute that X suffered two sets of inflicted injuries: the first set occurring between 1-3 days prior to 16 August 2017 [the older injuries] and the second set occurring on 16 August 2017 [the acute injuries]. According to Dr Wilson and Dr Batra who conducted the post-mortem and analysed the subsequent reports from other specialist pathologists instructed, there was no naturally occurring disease process which could account for either set of X's injuries. The mother submitted that X might have an inherited blood platelet disorder, idiopathic thrombocytopenia purpura [ITP], which could have made her more susceptible to injuries of the type detected. Both parents also queried whether some of the injuries seen might have been birth related. Having heard the medical evidence, both parents accepted that there was no evidence that X had any platelet function/clotting disorder that contributed to or explained the injuries.

68. I have accepted the evidence of Dr Wilson that there were some marks on X's body, namely bruises on either side of her chest, which were likely to have been the by-products of the attempts to resuscitate her following her collapse on 16 August 2017. Though Dr Wilson hypothesised in his report that the bruise on the right side of the chest may have represented an inflicted injury, he accepted in cross-examination by Mr Momtaz QC that this bruise was likely to have been caused whilst paramedics and doctors were trying to resuscitate X on 16 August 2017. I have concluded that the bruising on the right side of X's chest was most likely caused by the efforts to resuscitate X on 16 August 2017.

X: Older Injuries

69. A post-mortem skeletal survey showed evidence that X had a distal left femoral metaphyseal fracture. Professor Mangham was asked to consider whether there was evidence of bone disease, whether fractures were present, and, if they were, to give an estimate of their age at the time of X's death. His report concluded that there was no evidence of underlying bone disease and that X had sustained a distal left femoral

metaphyseal fracture which had occurred between 36 and 72 hours prior to her death. Such fractures were caused by traction (pulling) with a degree of accompanying twisting. Considerable force was required to produce a fracture such as this and he concluded that this fracture occurred non-accidentally. That view was shared by Dr Morrell who explained that a fracture of this nature did not occur during the normal handling of infants. Though X would have screamed or cried in pain for about 30 minutes after the fracture was inflicted, she may have shown few if any symptoms once the initial pain had subsided. Dr Morrell considered whether this fracture might have been caused during X's birth but was able to exclude this not only on account of the estimate of the fracture's age given by Professor Mangham but also because X's caesarean was atraumatic. No bruising was seen on examination after birth and her delivery by vertex presentation (head first) made it highly unlikely that any force or traction was applied to X's legs during delivery. Dr Morrell told me that this fracture could have been caused by an adult using one hand only.

70. Dr du Plessis identified older brain injuries to X, specifically bilateral subdural haemorrhage, intracranial and spinal subarachnoid haemorrhage, and an intracortical bleed or contusion in the right temporal lobe over the crest of a gyrus. The subdural haemorrhages showed evidence of early macrophage activity within the dural border cell layer which Dr du Plessis concluded was consistent with this injury having occurred most likely 1-2 days prior to death but certainly 24 hours prior to the injuries which led to her collapse on 16 August 2017. There was no subdural bleeding consistent with an injury having occurred at birth. No natural disease process (including a pre-existing clotting disorder) could account for these injuries which were attributable to inflicted trauma. Some areas of the sub-arachnoid haemorrhages contained limited haemosiderin deposits together with increased numbers of macrophages consistent with these haemorrhages occurring earlier than the date of X's collapse on 16 August 2017. The age of these subarachnoid haemorrhages potentially overlapped with the older subdural bleeds and the metaphyseal fractures, namely within a time span of 36-72 hours.

71. Dr du Plessis identified microscopically an intracortical lesion or bruise/contusion in X's right temporal lobe. This was associated with macrophages and other inflammatory cells suggestive of an injury occurring between 1-2 days before death [a time range overlapping with the time range of the metaphyseal fracture, the subdural haemorrhages and the subarachnoid haemorrhages]. This contusion was an unusual injury in such a young baby and was most likely caused by trauma involving an impact to X's head. Mr Jayamohan confirmed that the presence of a contusion was unusual and that such an injury was seen in cases where children had experienced traumatic head injuries at the more severe end of the spectrum, most commonly with impact.

72. Dr du Plessis considered that all of these older brain injuries were most likely to be associated with some symptoms around the time the injuries were caused but these symptoms may not have involved any loss of consciousness. It was not possible to say that all of these injuries occurred at the same time but they could all potentially reflect a single episode of inflicted head injury. Mr Jayamohan confirmed that a contusion as small as this one could be asymptomatic though a child might have presented as being more irritable and not wanting to feed. It would not be obvious to a carer what was wrong with X if that person had not been present when the injury was caused.

73. Dr Wilson identified a deep bruise to the back of X's scalp which showed pathological features suggesting it was of a different age to the three other deep bruises identified on the back of X's scalp. He hypothesised – with a degree of caution as this was not his field of expertise - that X might have sustained a contrecoup injury, namely the intracortical contusion when she sustained the older bruise to her scalp. Contrecoup injuries occur in the brain on the side opposite the area of the head which is hit. Mr Jayamohan, however, took issue with that theory since contrecoup injuries were "clinically really rare" in babies [oral evidence]. He accepted however that X may have been subject to a complex episode of head trauma which caused both the external scalp bruise and the intracortical contusion. Such an episode would also, I observe, account for the older subdural and subarachnoid haemorrhages. Dr Wilson also found a deep bruise over X's spine which was compatible with trauma caused a few days prior to death. He considered it to be highly suggestive of non-accidental injury.

X: Acute Injuries

74. The following significant acute injuries were identified:

a) Bilateral acute subdural haemorrhages less than 24 hours old at the time of death;

b) Brain swelling;

c) Hypoxic ischaemic encephalopathy;

d) Three deep scalp bruises to the back of X's head;

e) Spinal subdural haemorrhage with spinal root nerve haemorrhage;

f) Small single focal areas of haemorrhage in the retinas of each eye;

g) And subdural haemorrhages in the optic nerves and external to the nerve sheaths in the orbital tissues.

75. Dr du Plessis identified hypoxic ischaemic encephalopathy which was caused by an initial serious head injury as a triggering event. This precipitated an episode of vascular and respiratory instability and insufficiency followed by cardio-respiratory arrest. The latter was not immediate but probably occurred after about half an hour or so of significantly impaired blood and oxygen supply to the brain during which it was highly likely that X would have had a depressed level of consciousness and irregular breathing. X's brain was also swollen and the hypoxic ischaemic encephalopathy would have contributed to the development of X's brain swelling. Though examination of the subdural haemorrhages alone could not determine if these were less than 24 hours old, the presence of fresh optic nerve sheath haemorrhages and spinal subdural haemorrhages pointed to a traumatic event which accounted for all three types of acute brain and spinal cord haemorrhages. No natural disease process or blood clotting disorder could reasonably have accounted for the spectrum of brain and spinal cord pathology present in this case.

76. X was a previously well child who collapsed with sudden cardiorespiratory arrest and was found to have the above brain and spinal injuries. The only proven explanation

for her collapse was traumatic head injury. There had been no account of an accidental head injury preceding X's collapse and, according to Dr Wilson, it was thus more likely than not that X had been forcefully shaken with or without impact. The presence of bruising to the scalp was consistent with some form of head impact. Dr du Plessis, Mr Jayamohan and Dr Morrell were of the opinion that the head injury implicated in X's profound deterioration on 16 August 2017 occurred very close in time to that deterioration. X would not have behaved normally after the head injury but before her collapse – in fact, she would have become obviously unwell almost immediately. In answer to questions from Mr Momtaz QC, Mr Jayamohan considered it highly unlikely that X could have sustained a traumatic head injury at about 4 or 5pm on 16 August 2017 and then been capable of feeding normally at about 8/8.30 pm as both parents agreed that she did.

77. Mr Jayamohan and Dr Morrell viewed part of the father's police interview on 3 October 2017 in which he demonstrated how he shook X to rouse her that evening. Neither considered that what they saw would have accounted for X's significant brain injuries.

78. Dr McCarthy examined X's eyes post mortem. He identified bleeding around the optic nerves within the subdural spaces and external to the nerve sheaths. These were fresh injuries as were the small single retinal haemorrhages in each eye. Though the retinal haemorrhages were small and thus non-specific injuries, the presence of florid peri-optic nerve haemorrhages associated with bleeding into the surrounding connective tissue was consistent with head impact or movement trauma or a combination of both these events. These injuries occurred at or around the time of X's collapse.

79. Though no longer relying on this submission at the conclusion of the hearing, Miss Taylor QC had suggested that X may have inherited idiopathic thrombocytopenia purpura from the mother and that this may have contributed to either the presence or severity of some of the injuries. The mother's sister suffers from this condition as did other members of the mother's family. However, the mother herself has never had and did not have this condition during her pregnancy with X. Z does not have this condition either. Dr Kinsey provided a report as to whether this haematological abnormality might have played a role in X's injuries. Though there was no tested blood sample showing platelet function taken from X, Dr Kinsey's examination of the records and reports in this case did not discover any features associated with either an inherent predisposition to spontaneous bleeding or bruising or an acquired tendency to bleeding and bruising, for example due to immune thrombocytopenia purpura. The bleeding seen in X was not in the distribution seen in spontaneous bleeding or following accidental trauma in children with known thrombocytopenia or coagulation factor deficiency. She concluded that the injuries found in X were, in the absence of a history of accidental trauma, more likely consistent with inflicted or non-accidental trauma.

THE LAW

80. Mr Momtaz QC produced, on behalf of all the advocates, an agreed note on the law which governed the court's task at this hearing. What follows draws on that document.

81. To establish the threshold criteria, I need to be satisfied that, on the relevant date, Z was likely to suffer significant harm attributable to the care given to her or likely to be given to her not being what it would be reasonable to expect a parent to give. The relevant date in this case was 22 August 2017 when protective measures were taken. The local authority may later rely on information which comes to light after that date, and which is capable of proving the state of affairs and risks to the child at the date of intervention [Re G (Care Proceedings: Threshold Conditions) [2001] 2 FLR 1111].

The burden and standard of proof

82. The burden of proof is on the local authority. It is for the local authority to satisfy me, on the balance of probabilities, that it has made out its case in relation to disputed facts. The parents have to prove nothing and I must be careful to ensure that I do not reverse the burden of proof. As Mostyn J said in [Lancashire v R 2013] EWHC 3064 (Fam), there is no pseudo-burden upon a parent to come up with alternative explanations [paragraph 8(vi)].

83. The standard to which the local authority must satisfy the court is the simple balance of probabilities. The inherent probability or improbability of an event remains a matter to be taken into account when weighing probabilities and deciding whether, on balance, the event occurred [Re B (Care Proceedings: Standard of Proof) [2008] UKHL 35 at paragraph 15]. Within this context, there is no room for a finding by the court that something might have happened. The court may decide that it did or that it did not [Re B at paragraph 2].

84. Findings of fact must be based on evidence, and the inferences that can properly be drawn from the evidence, and not on speculation or suspicion. The decision about whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors [A County Council v A Mother, A Father and X, Y and Z [2005] EWHC 31 (Fam)].

85. The court is not limited to considering the expert evidence alone. Rather, it must take account of a wide range of matters which include the expert evidence but also include, for example, its assessment of the credibility of the witnesses and the inferences that can properly be drawn from the evidence. Thus, the opinions of medical experts need to be considered in the context of all of the other evidence. When considering the medical evidence in cases where there is a disputed aetiology giving rise to significant harm, the court must bear in mind, to the extent appropriate in each case, the possibility of the unknown cause [R v Henderson and Butler and Others [2010] EWCA Crim 126 and Re R (Care Proceedings: Causation) [2011] EWHC 1715 (Fam)].

86. The evidence of the parents and of any other carers is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability. They must have the fullest opportunity to take part in the hearing and the court is

likely to place considerable weight on the evidence and the impression it forms of them [Re W and Another (Non-Accidental Injury) [2003] FCR 346].

87. It is also important when considering its decision as to the findings sought by the local authority that the court takes into account the presence or absence of any risk factors and any protective factors which are apparent on the evidence. In Re BR [2015] EWFC 41, Jackson J (as he then was) set out a useful summary of those factors drawn from information from the NSPCC, the Common Assessment Framework, and the Patient UK Guidance for Health Professionals.

88. When seeking to identify the perpetrators of non-accidental injuries, the test of whether a particular person is in the pool of possible perpetrators is the balance of probabilities [Re S-B (Children) [2009] UKSC 17]. It is always desirable, where possible, for the perpetrator of non-accidental injury to be identified both in the public interest and in the interest of the child. Where it is impossible for a judge to find on the balance of probabilities, for example that parent A rather than parent B caused the injury, neither can be excluded from the pool and the judge should not strain to do so [Re D (Children) [2009] 2 FLR 668 and Re S-B (Children)]. Where a perpetrator cannot be identified, the court should seek to identify the pool of possible perpetrators on the basis of the real possibility test, namely that if the evidence is not such as to establish responsibility on the balance of probabilities, it should nevertheless be such as to establish whether there is a real possibility that a particular person was involved. When looking at how best to protect child and provide for his future, the judge will have to consider the strength of that possibility as part of the overall circumstances of the case [Re S-B (Children) at paragraph 43].

Lies

89. It is common for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind at all times that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear, and distress. The fact that a witness has lied about some matters does not mean that he or she has lied about everything [R v Lucas [1981] QB 720]. It is important to note that, in line with the principles outlined in R v Lucas, it is essential that the court weighs any lies told by a person against any evidence that points away from them having been responsible for harm to a child [H v City and Council of Swansea and Others [2011] EWCA Civ 195].

90. The family court should also take care to ensure that it does not rely upon the conclusion that an individual has lied on a material issue as direct proof of guilt but should rather adopt the approach of the criminal court, namely that a lie is capable of amounting to corroboration if it is (a) deliberate, (b) relates to a material issue, and (c) is motivated by a realisation of guilt and a fear of the truth [Re H-C (Children) [2016] EWCA Civ 136 at paragraphs 97-100].

91. In this context I have borne in mind the words of Jackson J (as he then was) in Lancashire County Council v The Children [2014] EWFC 3 (Fam). At paragraph 9 of his judgment and having directed himself on the relevant law, he said this:

"*To these matters I would only add that in cases where repeated accounts are given of events surrounding injury and death, the court must think carefully about the*

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

DISCUSSION

92. Having considered the evidence of fact and the evidence of opinion before the court and applying the legal principles set out above, I have come to the following conclusions in this case as follows on the balance of probabilities:

i) Between 36 and 72 hours before her death at 00.06 on 17 August 2017 and prior to 16 August 2017 X sustained the following injuries:

a) Distal left femoral metaphyseal fracture;

b) Bilateral subdural haemorrhage;

c) Intracranial and spinal subarachnoid haemorrhage;

d) An intracortical bleed or contusion in the right temporal lobe over the crest of a gyrus;

e) A deep bruise to the back of her scalp;

f) A deep bruise to her spine.

ii) The femoral fracture was caused by pulling X's leg with a degree of accompanying twisting. To inflict this injury required considerable force though it could have been caused by an adult twisting with one hand only.

iii) The femoral fracture most likely occurred in an incident additional to but separate from the incident which caused X's head, spinal and bruising injuries.

iv) X would have screamed or cried in pain for about 30 minutes after this fracture was inflicted but would have shown few if any symptoms once the initial pain had subsided. A carer who had not been present when the injury was inflicted would not have recognised that there was a problem with X's leg and may have attributed her distress to other causes.

v) The head and spinal injuries together with the scalp bruising inflicted prior to 16 August 2017 were caused by X being assaulted resulting in trauma to her head involving impact – being thrown or thrust onto a hard surface – and possibly shaking.

vi) The bruising to X's spine was caused by trauma and was probably sustained at the same time as the assaulted which caused the head and spinal injuries and the scalp bruise.

vii) These older injuries (excluding the femoral fracture) were likely to have been asymptomatic and it would not have been obvious to a carer what was wrong with X if that person had not been present when these injuries were inflicted.

viii) There was no evidence of underlying bone disease or any other naturally occurring disease process which might account for any of these older injuries.

ix) Neither parent has disclosed any accidental trauma which might have accounted for these older injuries.

x) Either the mother or the father was responsible for inflicting these older injuries to X.

xi) The perpetrator of the older injuries failed to seek appropriate medical attention for X when she was assaulted.

xii) On 16 August 2017 shortly before 23.00 X sustained the following injuries:

a) Bilateral acute subdural haemorrhages;

b) Brain swelling;

c) Hypoxic ischaemic encephalopathy;

d) Three deep scalp bruises to the back of her head;

e) Spinal subdural haemorrhage with spinal root nerve haemorrhage;

f) Small single focal areas of haemorrhage in the retinas of each eye;

g) And subdural haemorrhages in the optic nerves and external to the nerve sheaths in the orbital tissues.

xiii) All of these injuries resulted from a shaking injury with impact.

xiv) X 's deterioration after she was injured would have occurred very close in time to that event and she would not have behaved normally after the event but prior to her collapse. She would have become obviously unwell almost immediately as her breathing would have been compromised and her heart rate would have started to drop. She would have been incapable of screaming for several minutes after being assaulted.

xv) X died as a result of these injuries at 00.06 on 17 August 2017.

xvi) There was no evidence of any naturally occurring disease process which might account for any of these acute injuries.

xvii) The resuscitative shake described and demonstrated by the father in his police interview on 3 October 2017 could not have caused the head and spinal injuries sustained by X.

xviii) The bruising to X's chest identified post-mortem was consistent with the efforts by the paramedics and the medical staff to resuscitate her.

xix) Neither parent has disclosed any accidental trauma which might account for the acute injuries to X.

xx) Both the acute and older injuries were inflicted, non-accidental injuries.

xxi) No person other than the mother or the father was responsible for inflicting injuries to X.

xxii) Either the mother or the father was responsible for inflicting these acute injuries to X.

xxiii) Neither parent has given a truthful account of how X came to be injured whilst in their joint care.

xxiv) Each parent has lied to protect themselves and/or the other parent.

xxv) The parents resumed their relationship on 25 October 2017 and kept this hidden from their legal advisors, the local authority, the children's guardian and the court. They lied about the true nature of their relationship to all those individuals and bodies listed above.

xxvi) The parental reconciliation took place in circumstances when each parent knew that the other might have been responsible for X's death.

xxvii) The parental relationship was volatile and dysfunctional with each parent responding aggressively to the other during rows. The mother was the more physically aggressive of the two.

xxviii) Both parents had a short temper.

xxix) The mother had anxieties about parenting her children arising from her physical disabilities and she would on occasion handle the children inappropriately.

93. My reasons for making these findings of fact on the totality of the evidence before the court are as follows. I have organised this part of my judgment into an analysis of each of the relevant issues in this case.

The Evidence of the Mother and the Father

94. It is important that I make some preliminary observations as to the evidence I heard from the parents. Both have given extensive written and oral evidence in these proceedings as well as earlier giving interviews to the police on two separate occasions. I appreciate and have taken into account that giving oral evidence in proceedings of this kind and under intense scrutiny is a highly stressful matter for

anyone and especially for these young parents with so much at stake. Their respective accounts of what happened to X on 16 August 2017 contained numerous and significant inconsistencies even before each entered the witness box. Their oral evidence was given in circumstances where both parents admitted lying about the nature of their relationship until the eleventh day of the hearing.

95. My assessment of the mother took into account the evidence about her autistic spectrum/social communication disorder and the conclusions reached by Dr Hartshorn. She gave her evidence in a timid and quiet way and answered the questions put to her in a flat and largely unemotional tone. She rarely showed emotion save when asked in chief about not being able to protect X. It was as if she was speaking about what had happened to strangers rather than what had happened to her child and to her family. She seemed willing to agree with almost everything which was put to her in cross-examination and which placed her in a poor light. Thus, she painted a picture of herself as an abusive and aggressive individual and as being a frustrated, anxious and, by reason of her physical disability, clumsy carer for her two children. I wondered whether she was agreeing with much of what was put to her to shorten her ordeal in the witness box. With that reservation about her oral evidence in mind, I was however satisfied about one matter above all others, namely that she had invested heavily in her relationship with the father. She told me that this was because he had given her what she thought she could never have which was children. So great was her affection for him that she would say almost anything to place the father in a good light. Even when suggesting he might have been responsible for X's death, she did so without any real enthusiasm.

96. I also took into account Dr Hartshorn's report on the father when assessing his evidence. He too gave his evidence in something of an unemotional monotone, strikingly similar to how he spoke to the emergency services on 16 August following X's collapse. At some points in his evidence he appeared to be genuinely distressed but was then apparently unmoved when describing what had happened on 16 August when X collapsed. By contrast to the mother, he sought at several points in his evidence to minimise what he had done, particularly about the times when he had lost control of himself and smashed or hit things – I found his evidence about the incident when he had broken the glass in the door on 14 August wholly unconvincing. Like the mother, he too accepted her importance to him because she had given him children whereas his previous partner had miscarried their baby. During his cross-examination by Miss Taylor QC, his responses became more truculent and he became agitated when she put to him that his account was wholly inconsistent with the medical evidence about how X would have behaved when acutely injured. When accusing the mother of having killed X, he did so with reluctance and a distinct lack of enthusiasm.

97. I regret to have to record that neither parent impressed me as a reliable witness and their oral evidence failed, in my view, to shed any real light on how X came to be fatally injured whilst she was in their joint care. Neither advanced a convincing accidental explanation for what had happened to their child and so I was left with two people in the possible pool of perpetrators whose evidence I had to evaluate with considerable caution.

The Parental Relationship

98. This was a relationship hastily cemented by the mother falling pregnant within a few months of meeting the father. It met certain needs for the mother, namely allowing her to justify her exit from her university course and to distance herself from the influence of the maternal grandmother who she found overbearing. Similarly, the relationship gave the father apparent satisfaction in that, at least initially, he enjoyed the role as a carer for the mother.

99. Each parent brought to the relationship their personalities and their respective mental health problems, depression and anxiety for the father and a degree of post-natal depression for the mother. Those factors produced volatile and worrying behaviour for which each was responsible. Each parent accepted they had a temper and I find that each flared up quickly but was equally quick to calm down. Both used physical violence especially from April 2017 onwards – the father by breaking glass in the door on 14 August 2017 and the mother in the late stages of her pregnancy throwing a glass at the father which hit the wall and smashed. There were frequent loud arguments with shouting and swearing evidenced by the parents' own admissions and the unchallenged testimony of neighbours.

100. The mother accepted that she was the more physically violent of the two, admitting to regularly hitting, slapping and kicking the father in anger. She said that the father did not usually respond save to restrain her good arm. The mother said he used physical force on one occasion, this being the episode she described to JJ when she said the father tried to strangle her. She retracted that allegation saying that he had pushed her away on the upper chest during an argument, thus aligning herself with the father's account of the incident. I accept her evidence in this respect as it is supported by both the evidence of the maternal grandmother and the accounts of the mother's violent conduct contained in the social work records about her childhood, adolescence and young adulthood. The father denied ever being violent towards the mother and the mother in her oral evidence stressed that she was not a victim of physical violence by the father save in very limited respects. Though there was evidence upon which I might conclude that the mother has been dishonest about physical violence she experienced from others - for example telling the paternal grandmother that she had been assaulted by the maternal grandmother when in fact she had had an accident with a car door – I am reluctant to conclude that the father was not violent to the mother. His own mother and sister attested to his violence towards others and to his volatile Jekyll and Hyde character - his behaviour on 12 August 2017 demonstrated a frightening loss of control in front of small children and adults. Balancing all this material, I am however able to find that there is sufficient evidence to justify a finding that the mother resorted to physical violence towards the father far more often than he did to her

101. The volatile nature of the parental relationship had, I find, become entrenched by the time of Z's birth. By summer 2017 I find that the atmosphere in the family home was one of simmering discontent. Both adults had realised the move away from the locality in which the paternal grandmother lived had been a mistake which had left them isolated and deprived of practical family support. The physical and emotional strain of a pregnancy that had come as a total surprise to both parents was beginning to tell on the mother and, on his own admission, the father who was becoming increasingly resentful of caring for the home and, I infer, for the mother herself. A

row in June led to the parents' separation for a day or two when the father left the house and slept in homeless accommodation. Thereafter, the text and phone evidence showed the father having flirtatious contact with other women. The mother was aware of some of this behaviour which fuelled her jealousy and led to further rows, during one of which the mother threw a glass at the father in Z's presence. The atmosphere prior to X's birth could not have been more strained.

102. Following X's birth, the fault-lines in the relationship were equally evident. The party on 12 August 2017 was anything but a cause for celebration. The father lost control in front of the adults and the children, banging the wall with a frying pan and rushing out armed with that pan to confront a neighbour. On his return inside after the police had left, he banged his head against the wall in rage and later punched the shed door after a row with the mother. Whilst drink and pain from a tooth abscess might have contributed to the father's loss of temper, it was a frightening incident. Over the course of the next few days, the father smashed a pane of glass in a door following a row with the mother; the mother was in significant discomfort from the after effect of her caesarean; and neither was getting much sleep because of X's feeding routine. I note that, though the mother did the night feeds, her need for support with some of the practicalities of changing nappies meant that the father would often have a disrupted night's sleep as well.

103. On 16 August 2017 both parents stated they had not argued at all and presented a picture of a calm home environment. I am disinclined to believe those assertions based on the history outlined above. The father spent some considerable time that evening messaging the mother's friend, JJ. When I asked the mother what she thought about this, her answer suggested she had become jealous. Though the father claimed to be unaware of her feelings, the ingredients for a jealous row were plainly present that evening.

104. Standing back, I find that the volatile home life to which both Z and X were exposed placed them at risk of significant emotional harm. I agree with Mr Rothery that, on this ground, the threshold for public law proceedings was plainly crossed. By remaining in this profoundly dysfunctional relationship, both parents had prioritised their own emotional needs above those of the children.

105. The covert resumption of the parental relationship in late October 2017 raises some serious question marks about the credibility and reliability of each parent. Though the mother was the initiator, the father went along with the breach of their respective bail conditions willingly enough. The mother's strong feelings for the father were evident in the letter: *"...If I can't have you as my boyfriend/fiancé/husband then I don't want to be with anyone ever again … Because I don't think I will ever find a guy to love me unconditionally the way you do. I really mean that. I will spend the rest of my life single if you or anyone says for us not to be together…"* These words were written two days before she sought the father out after his contact with Z. I find that the mother was, and is, besotted with the father and that his feelings for her were equally strong as evidenced by the note he gave to the police officer at the end of September 2017.

106. Their respective October 2017 statements filed in the family proceedings were signed by them in the knowledge that both were in contact with each other and had breached their bail conditions. Those statements gave a wholly misleading account of their

relationship. The parents continued to lie about their relationship to the local authority, to their legal representatives, and to the children's guardian until the maternal great-grandmother bravely told the truth. The contempt both parents have shown for the court process is striking.

107. I agree in part with Mr Rothery that the covert resumption of the relationship has an effect on their credibility so obvious that it does not require further comment. Nevertheless, I must approach the issues mindful that lies told about one matter do not mean that a person has lied about everything. I agree with Mr Rothery that what does require careful consideration is that one of the parents willingly resumed a relationship with the killer of their baby daughter. It is difficult to understand how an innocent parent could contemplate a resumption of intimacy with the perpetrator in circumstances where it was clear to that person that experts and the police were raising the likelihood that X had been killed by one or other of her parents. As Mr Rothery suggested, this raised the distinct possibility that the fatal injury occurred in circumstances which both parents played a part. The alternative scenario is that the innocent parent's attachment to, or emotional dependency on the other, was so great that they could not remain separated despite knowing the other parent fatally injured their daughter. Though Mr Rothery submitted that the mother's actions in initiating contact with the father suggested either an emotional dependency or that she wished to keep the father on side lest he reveal something about 16 August that she wished to keep secret, I observe that the same motivation applies with equal force to the father who welcomed the mother's advances with open arms. I will return to this issue later in my judgment.

Child Care

108. The parents agreed that the father had a better attachment to Z than the mother did. That evidence accorded with the professional assessment of their respective contact with Z. The mother too admitted that, arising from her significant physical disabilities, she had anxieties about parenting her children and about her ability to cope. I accept that evidence as well as her evidence that she became frustrated at things she could not do for her children. When there were adults around who were trying to tell her how to care for the children, the mother struggled with such advice, however well meant it was, because she saw it as a sign of failure. Her response, as the evidence from a wide range of sources demonstrated, was to allow others to take over the task in hand rather than complete it herself with assistance.

109. In his evidence the father described some incidents when the mother hit Z's leg, pushed her away and dropped her but he was very clear that he had seen nothing which would cause him to believe the mother had hurt X. The mother admitted to "*tapping*" Z on the leg on one occasion when changing her nappy. She demonstrated in the witness box what was a sharp slap rather than a gentle tap.

110. The mother's physical disability has obvious significance because of the way it affected her handling of the children. I was told by the paternal grandmother that the mother would put her good left arm under Z and use her right arm when changing Z on the floor or on her knees and would also use her mouth to take Z's baby grow off. Likewise, she changed Z or X's nappy by using her right arm to hold their legs up and she would pull their legs to shift their position so she could accomplish a nappy change. There was an element of professional concern about the mother's handling of

Z when she was observed by RR in August 2017 to pull Z's leg so that Z tipped backward suddenly in her cot. I have thought carefully about what RR told me but I cannot extrapolate from this incident, which caused no harm to Z, so as to find that the mother was always ungentle with her children when changing them. No other health professional – such as the community midwife who saw the mother with Z in February 2017 – who had observed the mother's handling of either child expressed any real concern about what they had seen. Even the father, who had everything to gain from painting the mother in a bad light, was clear that her handling of either child had never caused him to suspect the mother might have hurt X.

111. Additionally, the evidence was that the mother lifted the children by holding their clothing at the front with her good arm. She handled X in this way when X did not have the head control to make this manoeuvre anything other than very unsafe. The father did not act to stop her even though he recognised what the mother was doing was unsafe.

112. Balancing all this evidence, I find that the mother's disabilities would cause her on occasion to handle the children inappropriately. She had a low tolerance for frustration but was more likely to abandon the child care task in hand to others than to complete it herself.

The Medical Evidence

113. By the conclusion of the hearing, neither parent was advancing a case that there was a natural cause for X's injuries or that there was an accident which might explain either the older or the acute injuries. Both accepted that X had been assaulted on more than one occasion and that X died as a result of an assault on her shortly before the father made the call to the Birthing Centre and then rang 999. The schedule of findings lists the injuries I have found were inflicted on each occasion.

114. Standing back, I find that, in the 2/3 days before 16 August 2017 and arising from an event additional to but separate from the event which fractured X's femur, X had also been subjected to an assault resulting in trauma to her head involving impact - being thrust or thrown onto a hard surface - and possibly shaking. She also sustained bruising to her lower back which I find was most likely caused by impact trauma at the same time as she sustained her older head injuries. I find the evidence of Mr Jayamohan persuasive as to the rarity of contrecoup in small infants and thus reject the suggestion of Dr Wilson and Dr du Plessis that X sustained this particular injury in the days before her death. I accept Mr Jayamohan's description of what happened as a complex episode of head trauma.

115. I find that X's fractured femur occurred when she was assaulted in an incident separate from but additional to the incident which caused her head injuries. It was caused by pulling X's leg with a degree of accompanying twisting. To inflict this injury would have required considerable force though I accept the evidence of Dr Morrell that it could have been caused by an adult twisting with one hand only.

116. The earlier head and bruising injuries may have been asymptomatic and I find that it would not have been obvious to a carer what was wrong with X if that person had not been present when the injury was inflicted. Likewise, though X would have screamed or cried for about 30 minutes after the femur fracture was inflicted, she was more

likely than not to have shown few if any symptoms once the pain had subsided. I find that a carer who was not present when the injury was inflicted would not have recognised that there was a problem with X's leg and may have attributed her distress to other causes. It also follows that the perpetrator of the older injuries failed to seek appropriate medical attention for X in circumstances where it was obvious she had been hurt/distressed by what an adult had done to her.

117. X's acute injuries were caused by a shake and impact injury very shortly before X's collapse. I accept the evidence of Mr Jayamohan and Dr Morrell that this would have caused X to have become rapidly and obviously unwell almost immediately after she was assaulted. I find that X would not have behaved normally after the head injury but before her collapse – her breathing would have been compromised and her heart rate would have been dropping until she went into cardiac arrest. I find she would not have been screaming in the manner described by the father when he came into the rear living room if she had already sustained the head injury which eventually killed her. The evidence of Dr Morrell and Mr Jayamohan on this issue is supported by that of Dr du Plessis who identified that, prior to X's cardiac arrest, her level of consciousness would have been depressed and her breathing irregular. The immediate trigger for those two clinical signs would have been the head injury.

118. I am also satisfied that the resuscitative shake described and demonstrated by the father in his police interview on 3 October 2017 could not have caused X's acute head and spinal injuries.

The Older Injuries: Perpetrator

119. There was little evidence to assist me in the identification of which parent caused X's older injuries as their timing cannot be identified with any degree of precision. Both adults were physically capable of causing the injuries to X's leg. It was less certain on the evidence before me whether the mother's physical disabilities rendered her incapable of causing head injuries to X by a combination of shaking and impact. She was, however, plainly able to pick X up by her babygrow in circumstances where X's head was dangerously unsupported. Given that, it struck me as possible, on the balance of probabilities, that X could have been injured by the mother using the mechanisms described by the medical experts.

120. I concluded that I was more likely to be assisted in identifying who hurt X prior to 16 August if I could make a finding about who hurt her on 16 August itself.

121. There was one matter which I was invited to consider relevant by the local authority, the father and, to a lesser extent, by the children's guardian. The mother accepted that she did not leave the house after 11 August 2017 whereas the father was out of the property on a number of occasions namely, on 13 August when he purchased formula feed; 14 August when he went to the doctor early in the morning and went shopping later in the day; 15 August when he went shopping; and 16 August when he once more went shopping. It was submitted that the mother had the opportunity during his absences – each of which was certainly more than 30 minutes in duration – to harm X without his knowledge. I note that the mother confirmed in her evidence that, during the time X lived with her parents, she would not have been away from X for more than 10 minutes at any one time even when using the bathroom. Had X been injured by the father during one of the mother's absences, she would – on the medical

evidence - have been aware of distress from the leg fracture as X would have been very upset for at least 30 minutes following such an injury. I note however that the mother would not have recognised what it was which was causing X's distress.

122. I will return to identification of the perpetrator of the earlier injuries later in this judgment. I record that I am not persuaded that the above evidence in relation to the older injuries, either by itself or in conjunction, with other matters would assist me in finding that the mother alone was responsible for the injuries to X. Both parents had the opportunity to inflict injuries within the home and, though the mother had the greater opportunity, I cannot conclude on this basis that the father should be totally excluded.

The Acute Injuries - Perpetrator

123. In some cases, it is relatively straightforward to determine which of two parents, in all probability is the perpetrator of injuries to a child. Sometimes the timeframe has the effect of excluding one parent to the detriment of the other. Sometimes there is a history of violence and failure to control temper, even within the court-room setting, which may assist in identifying an individual who has caused harm. Sometimes the accounts given to the police, the medical staff and the local authority shortly after the final incident of assault illuminate a sound starting point for ascribing responsibility to one person and exonerating the other. Sometimes analysis of the accounts given by the parents helps identify coherence and consistency which might help. The possibilities are many and varied. In this instance I have searched for evidence of sufficient weight to guide me to a clear conclusion. My quest has been in vain and I have concluded that I cannot exclude either the mother or the father from being the perpetrator of X's old and acute injuries.

124. I have already observed that the evidence of X's parents – the people who should have been able to explain clearly and convincingly what happened to their child shortly before 11pm on 16 August 2017 – shed little light on what had happened to her. Something was being left unsaid by both of them. The impression they gave was of an unremarkable evening where all was well between them and with X. I have already expressed my scepticism about the impression they sought to create. The injuries which killed X were not inflicted spontaneously but arose in a context where an adult lost control of themselves to such an extent that fatal injuries were inflicted on a tiny baby. The triggers for such a loss of control can be a crying baby who will not settle or parental disputes causing resentment and frustration – the list is infinitely varied. I remind myself that both parents have a short temper. Both argued with each other and responded aggressively though the mother was the more physically aggressive of the two. Of the two, the mother sometimes struggled with the care of her children which frustrated her and which had led to her occasionally hitting Z. There was nothing decisive about the evidence of propensity which would allow me to confidently exclude either parent.

125. The key issue was who was with X when she collapsed/stopped behaving normally and showed depressed consciousness and irregular breathing. There were three potential scenarios:

A. X awoke whilst in the mother's care whilst the father was in the kitchen or in the yard smoking. The mother injured X and, realising what she had done, she put X

back in the cot and went upstairs. The father heard something, possibly a cry, and found X in a distressed condition.

B. X was asleep and the mother went to the bathroom. Alternatively, X woke up crying but the mother decided to let the father look after her. The father attended to X and inflicted the injury. X cried out and the mother came downstairs to find X in a state of collapse.

C. Neither of the above is true and both parents are concealing the truth about which of them injured X.

The difficulty I find myself in is that the parents' accounts have changed over time and there are clear discrepancies between what was said at the outset and what was said in the witness box. This is sadly not unusual in cases such as these as the comments of Jackson J (as he then was) in Lancashire County Council v The Children suggest. I have also commented adversely upon their credibility given their lies over a lengthy period of time about the nature of their relationship. That does not automatically mean that they are culpable in relation to X's injuries and I must assess the possible reasons for them to give inaccurate and misleading information.

126. I have concluded that a detailed line by line analysis of the parents' respective accounts will not assist me greatly. This was because a straightforward examination of how their accounts have developed over time raised real concern about the reliability of those accounts particularly when given by witnesses who lied to the court about a matter as fundamental as their continuing relationship and in circumstances where neither was able to explain cogently how it was that their accounts of who had been with X when she collapsed had developed over time.

127. Taking each of the scenarios identified, I consider the evidence in support.

Scenario A

128. The father was more comfortable managing the practical tasks associated with caring for a very small baby whereas the mother was less confident and could become frustrated when performing parenting tasks. The mother has slapped Z and picked up X inappropriately by her babygrow whereas there was no evidence that the father had handled the children roughly or inappropriately. Given what the mother said was the volume and nature of X's scream, it was unclear why the mother left her or continued up the stairs instead of returning to see what was wrong unless she had been responsible for hurting X. I disagree with that proposition given the mother's willingness to let others take over the care of her children – she might well have assumed that the father would deal with X whilst she went to the toilet, knowing that he was a competent parent. The father described rocking, winding and picking X up, all of which were natural reactions to a crying infant if he did not know why X was crying. Finally, the mother had the greater opportunity to inflict the older injuries making it more likely that she was the perpetrator of both older and acute injuries.

129. Mr Momtaz QC referred me to the evidence of a paramedic, DD , who was present at the home when X was being readied for transport to hospital. DD was not called to give evidence and the relevant part of her statement read as follows: "*…at some point before we set off for the hospital, I heard baby's mum said [sic] to baby's dad*

something similar to 'told you shouldn't have left her alone with me'…" He submitted that this was particularly significant and telling evidence. I disagree. DD's evidence refers to words "*similar to*" and, in the absence of DD's oral evidence to attest to what she actually heard, I can attach little significance to this piece of evidence.

130. The children's guardian suggested that, until he gave his evidence in court, the father had consistently said one scream got his attention, making his earlier account potentially more reliable. It was submitted that the account of X's sustained crying which the father gave in his oral evidence was a mistaken attempt to improve an honest case. The difficulty with that submission is two-fold. First, I would have to ignore the father's account to the paediatrician and to the police in August 2017 in which he made it plain that (a) the mother had been upstairs at the point he first heard X scream and (b) he had been with X. There was no proper basis established in the evidence on which I might do so. Second, the account now relied on by the father was simply at odds with the medical evidence. Whilst X might well have cried out or screamed whilst being assaulted, on the father's account she continued to scream for several minutes whilst he tried to comfort her. Continued screaming after the head injury was not consistent with the medical evidence that X would have become rapidly and obviously unwell almost immediately she had been injured. For these reasons I cannot accept that submission.

131. In conclusion, I find Scenario A with the mother as perpetrator unconvincing – in essence, it rested upon the mother's clumsy handling, her inappropriate behaviour to both Z and X, her temper and her opportunity to injure X whilst the father was out of the house prior to 16 August 2017. If I were to accept it as an account of how X came to be acutely injured, I would have to ignore the uncontroversial medical evidence about X's presentation after she was assaulted and ignore the significant inconsistencies in the father's accounts. He did not even attempt to explain to me how it was that his accounts of what had happened had altered so radically over time.

Scenario B

132. The father's account about whether he was in the house or not when X began to cry was inconsistent. Thus, in his oral evidence, the father said X was screaming when he entered the back room and when X collapsed, the mother was not in the room at that point. His account about X's continued screaming was inconsistent with the medical evidence as I have already observed. Finally, the father accepted that he had told the mental health worker that his head had "*gone west*" and then explained how he had shaken X. His admission that he shook X to revive her was made for the first time on 6 September 2017 but was not then repeated in his statement filed in the family proceedings in late October 2017. Mr Rothery submitted that, in his October police interview, the father may have sought to minimise the effect of the resuscitative shake – certainly the experts who viewed his demonstration of what he said he had done to X were clear that his actions could not have caused her brain and spinal injuries. Finally, until her oral evidence, the mother maintained she was out of the room when X began to cry yet this detail also changed in that she admitted under cross-examination that she was in the room and the father was not present.

133. I find Scenario B with the father as perpetrator equally unconvincing. The mother confirmed in her October police interview that the resuscitative shake occurred in her presence. She said nothing about this in her police interview in August 2017 though

she told her friend about it in a message on 1 September. She could not explain why she had not said this earlier to those investigating X's death. It was difficult to envisage the father injuring X prior to 16 August 2017 without the mother being aware of what had happened – yet she said she saw nothing untoward about either his or X's behaviour during that time. The mother's account of where she was when X began to cry was inconsistent. Finally, the father told me that the phrase "*my head went west*" referred to his panic at having to perform resuscitation on X. Even if that explanation might appear at odds with his account to the mental health worker, it suggested that he was in a state of panic when X collapsed and this prompted him to shake X.

Scenario C

134. On 18 October 2017 the mother's letter to the father read as follows: *"…We both know what happened that night, I still can't see how it was murder like everyone says, as there was no indication or opportunity plus neither of us would do that!*". The mother was unable to explain to me what she meant by that statement and the father could shed no light on it either. Mr Rothery submitted that this was a statement which the mother wrote without ever expecting it would be revealed and thus had weight. Whilst I agree that it raised many questions, it was ultimately an ambiguous statement capable of interpretation either to suggest that both parents knew what happened or that both knew nothing happened.

135. Both Scenario A and B were unconvincing for the reasons outlined above. The evidence in support of each scenario either did not accord with the medical evidence or was insufficiently persuasive to make the finding of perpetration sought against either the mother or the father. Above all, the inaccuracies and inconsistencies in the parents' accounts over time were such that I had to ask myself whether lies were being told by them about who hurt X and if so, what was the reason for this.

Perpetrator: Conclusions

136. Additional to the analysis set out above, I record that both parents lied about the nature of their relationship, a matter of fundamental importance. Moreover, they reconciled in circumstances where each knew that the other might have been responsible for X's death. I have already commented that their reunion appeared inexplicable from the perspective of an innocent parent. Neither had any explanation when asked why they had reconciled in these circumstances and my impression was that each parent was being evasive about their motivation for doing so. Their reconciliation suggested inexorably the conclusion that they were intent upon conspiring together to suppress the truth. The only other possibility was that the innocent parent was so intellectually or emotionally compromised that they could not appreciate the reality of the other's guilt. I reject that explanation – both knew in plain terms what was being suggested by the police in interview on 3 October 2017 and, in their statements filed in the family proceedings at the end of that month, each said the other had been responsible for assaulting X.

137. However, the resumption of the parental relationship appears less inexplicable if both parents knew what had happened to X during the time they cared for her in the home. I have come to the conclusion that (a) the lies told and the concealment of this relationship were deliberate so as to mislead the court; (b) both parents would have

known that the resumption of their relationship would have cast grave doubt upon their respective accounts that each was not with X when she collapsed; (c) each would also have known that the resumption of the relationship would have raised serious question marks about whether each of them knew who was responsible for hurting X; and (d) their lies were motivated by a fear of the truth coming out. I am satisfied that the lies told about the relationship were of fundamental importance to the issues I had to determine, especially that of determining who injured X. My conclusion in this respect means I simply cannot rely on the evidence of either parent as to how X came to be acutely injured on 16 August 2017 or indeed about how she came to be injured before that date.

138. I am guided by the case law not to strain to make a finding to identify a person as a perpetrator when the evidence does not permit me to do so to the requisite standard. With considerable regret, I find that I am unable in all the circumstances to decide which parent was responsible for X's injuries. I am however satisfied that neither was telling me the truth and that each was telling lies to protect themselves and/or the other parent. I am also satisfied that both the mother and the father are in the pool of possible perpetrators in that there is a real possibility that each was involved in injuring X on more than one occasion. No other person was involved in harming X other than one or other of her parents.

CONCLUSION

139. For all the reasons I have set out, I make the findings of fact set out in this judgment. I am also satisfied that the threshold criteria are made out with respect to Z who would be at risk of substantial physical harm for so long as there is continuing uncertainty as to which parent inflicted X's injuries. Z would also be at risk of substantial emotional harm given the volatile and abusive relationship between the parents.

140. Neither the mother nor the father have given an account of all they know about the circumstances in which X came to be fatally injured. I have had to try and determine what happened when the two people who know have chosen not to assist the court. If the mother and the father consider that my conclusions do not represent the full picture of what happened to X, the responsibility for that lies solely with them.

141. That is my decision.

[Note added by Mrs Justice Knowles: Both the mother and the father were eventually convicted of causing or allowing the death of a child, namely X, and were each sentenced to a significant term of imprisonment. This judgment has been carefully redacted to remove material which might identify Z]

SCHEDULE OF FINDINGS

i) Between 36 and 72 hours before her death at 00.06 on 17 August 2017 and prior to 16 August 2017 X sustained the following injuries:

a) Distal left femoral metaphyseal fracture;

b) Bilateral subdural haemorrhage;

c) Intracranial and spinal subarachnoid haemorrhage;

d) An intracortical bleed or contusion in the right temporal lobe over the crest of a gyrus;

e) A deep bruise to the back of her scalp;

f) A deep bruise to her spine.

ii) The femoral fracture was caused by pulling X's leg with a degree of accompanying twisting. To inflict this injury required considerable force though it could have been caused by an adult twisting with one hand only.

iii) The femoral fracture mostly likely occurred during an incident additional to but separate from the incident which caused X's brain, spinal and bruising injuries.

iv) X would have screamed or cried in pain for about 30 minutes after this fracture was inflicted but would have shown few if any symptoms once the initial pain had subsided. A carer who had not been present when the injury was inflicted would not have recognised that there was a problem with X's leg and may have attributed her distress to other causes.

v) The head and spinal injuries together with the scalp bruising inflicted prior to 16 August 2017 were caused by X being assaulted resulting in trauma to her head involving impact – being thrown or thrust onto a hard surface – and possibly shaking.

vi) The bruising to X's spine was caused by trauma and was probably sustained at the same time as the assaulted which caused the head and spinal injuries and the scalp bruise.

vii) These older injuries (excluding the femoral fracture) were likely to have been asymptomatic and it would not have been obvious to a carer what was wrong with X if that person had not been present when these injuries were inflicted.

viii) There was no evidence of underlying bone disease or any other naturally occurring disease process which might account for any of these older injuries.

ix) Neither parent has disclosed any accidental trauma which might have accounted for these older injuries.

x) Either the mother or the father was responsible for inflicting these older injuries to X.

xi) The perpetrator of the older injuries failed to seek appropriate medical attention for X when she was assaulted.

xii) On 16 August 2017 shortly before 23.00 X sustained the following injuries:

a) Bilateral acute subdural haemorrhages;

b) Brain swelling;

c) Hypoxic ischaemic encephalopathy;

d) Three deep scalp bruises to the back of her head;

e) Spinal subdural haemorrhage with spinal root nerve haemorrhage;

f) Small single focal areas of haemorrhage in the retinas of each eye;

g) And subdural haemorrhages in the optic nerves and external to the nerve sheaths in the orbital tissues.

xiii) All of these injuries resulted from a shaking injury with impact.

xiv) X's deterioration after she was injured would have occurred very close in time to that event and she would not have behaved normally after the event but prior to her collapse. She would have become obviously unwell almost immediately as her breathing would have been compromised and her heart rate would have started to drop. She would have been incapable of screaming for several minutes after being assaulted.

xv) X died as a result of these injuries at 00.06 on 17 August 2017.

xvi) There was no evidence of any naturally occurring disease process which might account for any of these acute injuries.

xvii) The resuscitative shake described and demonstrated by the father in his police interview on 3 October 2017 could not have caused the head and spinal injuries sustained by X.

xviii) The bruising to X's chest identified post-mortem was consistent with the efforts by the paramedics and the medical staff to resuscitate her.

xix) Neither parent has disclosed any accidental trauma which might account for the acute injuries to X.

xx) Both the acute and older injuries to X were inflicted, non-accidental injuries.

xxi) No person other than the mother or the father was responsible for inflicting injuries to X.

xxii) Either the mother or the father was responsible for inflicting these acute injuries to X.

xxiii) Neither parent has given a truthful account of how X came to be injured whilst in their joint care.

xxiv) Each parent has lied to protect themselves and/or the other parent.

xxv) The parents resumed their relationship on 25 October 2017 and kept this hidden from their legal advisors, the local authority, the children's guardian and the court. They lied about the true nature of their relationship to all those individuals and bodies listed above.

xxvi) The parental reconciliation took place in circumstances when each parent knew that the other might have been responsible for X's death.

xxvii) The parental relationship was volatile and dysfunctional with each parent responding aggressively to the other during rows. The mother was the more physically aggressive of the two.

xxviii) Both parents had a short temper.

xxix) The mother had anxieties about parenting her children arising from her physical disabilities and she would on occasion handle the children inappropriately.