IMPORTANT NOTICE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. Nevertheless, the parents and children must not be identified by name or location and their anonymity must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court. The judgment is reported for reasons of transparency only. The judge does not believe it raises any new issue of law.

Case No: ME19C00883

IN THE FAMILY COURT

[2019] EWHC 3851 (fam)

Canterbury Combined Court Centre
Chaucer Road
Canterbury
CT1 1ZA

Date: 17 December 2019

Before :

Mr Justice Moor

- -

Between :

Kent County Council

Applicant

-and-

Ms P (Mother)

First Respondent

-and-

Mr Q (Father of S)

Second Respondent

-and-

Mr R (Father of T)

Third Respondent

-and-

S and T (Children)
(by their Guardian, Rebecca Tait)

Fourth and Fifth Respondents

-and-

Ms Z

Intervenor

- -
- -

Mr Christopher Barnes for the **Applicant**
Ms Barbara Connolly QC and Ms Caroline Pearson for the **First Respondent**
Ms Jo Delahunty QC and Mr Stephen Chippeck for the **Second Respondent**
Mr Adam Clegg for the **Third Respondent**
Ms Tina Cook QC and Ms Alexa Storey-Rea for the **Intervenor**
Ms Joanne Porter for the **Fourth and Fifth Respondents**

Hearing dates: 2 to 11 and 16 to 17 December 2019

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JUDGMENT

MR JUSTICE MOOR

1. I have been hearing applications for care orders in relation to two young boys, S and T. S was born in 2018, so he is soon turning 2. T was born early in 2019. He was premature and had to remain in hospital for five weeks after his birth. The mother of both boys is Ms P (hereafter "the Mother"). The father of S is Mr Q. During the proceedings, it was discovered that he was not the father of T. Following DNA testing, it was established that Mr R is the father of T.

2. There are other important adults in the life of the two boys. As I will explain, for a time, the family stayed with S's paternal grandfather (hereafter "the Paternal Grandfather"). He is an elderly man. For the entirety of the proceedings with which I am concerned, the boys have been residing with the paternal grandmother (hereafter "the Paternal Grandmother") and her husband. Finally, the boys' maternal grandmother is Mrs U, who has played only a very limited role in their lives.

3. The Applicant is Kent County Council (hereafter "the Local Authority"). It first had contact with the family in November 2017 during the Mother's first pregnancy due to concerns of neglect. The Mother was, herself, a care leaver. On 13 June 2018, S was made subject to a Child Protection Plan under the category of neglect.

4. As already noted, T was kept in hospital for just over a month following his premature birth. It is asserted that the Mother and Mr Q hardly visited him. The Mother responds that she had undergone a Caesarean Section, so found it very difficult to travel on the bus and had her hands full with S. It is said that the Paternal Grandmother, on the other hand, visited regularly. The Mother did stay in the hospital with T for the two nights before he went home. It is further said that the Mother failed to attend follow up appointments or follow health guidance.

5. On 18 February 2019, S sustained a torn frenulum, which bled significantly. He had to be taken to hospital. The Mother's explanation has, consistently, been that it was caused when she tried to remove his jumper. It got stuck, probably on his dummy and she then pulled harder to get it free. She asserts that this must have caused the injury. The Local Authority asserts that considerable force would have been required. There were a significant number of hospital attendances for one or other of the boys, often involving the children vomiting. I have not investigated these and say no more about them other than that there was significant concern, at times, as to the state of the family home. The Paternal Grandfather was incontinent. The home smelt strongly of urine. On 28 March 2019, the Health Visitor reported that the property was in an "atrocious" state, but it had been improved by the time the Social Worker, Denise Sweeney visited the following day.

6. It is clear that there were significant difficulties between the parents during this period. I have been referred to a number of text messages, particularly on 14 April 2019, when the Mother was in the lounge area at the flat and Mr Q was in the bedroom. The Mother texted Mr Q seeking his assistance and demanding that he "COME AND FUCKING GET [T] RIGHT NOW I'M LOSING MY MIND!!!" Mr Q did not assist, leading to further desperate attempts made by the Mother to get his help. She pleaded with him and said she was crying her eyes out. He responded that she could "Fuck off". She then banged on the wall, which upset him more. He claimed he had been intended to come until that point. She then texted "PLEASE [redacted] I'M LOSING IT". The Mother's friend, Ms Z had cared for S overnight on 13 April 2019. She agreed to have T overnight on 14 April 2019 but cancelled as she was not feeling well.

7. Ms Z did, however, have T overnight for the one and only time on 15 April 2019, as the Mother had to take S to hospital in relation to vomiting, a temperature and a rash. Ms Z insisted that the Mother take T back the following morning, when the Mother tried to extend the stay. Ms Z says there had been no difficulties overnight, but she lied and told the Mother she had been up with T since 2am as an excuse to justify not keeping him any longer. She said her concern was that such extensions had been a regular feature when she had been looking after S. When Ms Z telephoned the Mother on 16 April 2019, she says she heard T screaming in the background.

8. On 23 April 2019, the Mother took the bus and visited her sister arriving at approximately 11 am. They went shopping in Aldi. No bruising was seen. On the way back, they visited Londis, another shop and T started crying. They noticed a rash forming over his body. They returned home, where the Mother called 111 at 1241 and reported the rash, a bloodshot eye and bruising including under the eye. The Mother texted Mr Q at 1314 to tell him that there were bruises and a rash over T's body together with a bloodshot eye. Mr Q responded by asking how that happened. T was taken to hospital at 1345 and found, upon observation by Dr S, to have a bruise on the left cheek, a bloodshot left eye, and a circular mark on his right knee that looked like a burn mark. A CT scan and skeletal survey was undertaken. The Mother offered no explanation for the injuries other than saying that the burn mark could have

been sustained by rubbing his knee on the Moses basket. The doctors were not satisfied with the explanation and suspected non-accidental injury (hereafter "NAI") given that he was a non-ambulant baby. On the same day, two Police Officers, DC Bonello and Robertson, attended the property at which the family had been living with the Paternal Grandfather. They found it to be in a "disgusting" condition, alleging that it was "not a safe place for children to live in." The following day, S was placed with the Paternal Grandmother, on the basis that there would be an urgent assessment of her.

9. A letter from Dr S dated 24 April 2019 said that T had been found to have a significant subcutaneous (deep tissue) bruise on his left cheek and a very small blood shot eye (subconjunctival haemorrhage). There was a rounded lesion on the lateral edge of his patella on his right knee. The epidermis was missing. It was a regular circular shape measuring 5 millimetres by 5 millimetres and was, in the opinion of the doctor, traumatic in origin. T could not have injured himself. The doctor considered the obvious explanation was NAI and that the circular burn was most likely a cigarette burn. The following day, 25 April 2019, the skeletal scan of T revealed a fracture to his left wrist. Again, Dt S considered this likely to be NAI.

10. An application was made for an Emergency Protection Order and was granted, out of hours, on 24 April 2019 by Jenkins DJ. On release from hospital, T also moved to the Paternal Grandmother's home. The following day, 25 April 2019, the Local Authority applied for care orders and interim care orders, relying on the injuries. The statement of the social worker, Zoe McDonald, in support said that it was the Mother's sister who noticed the bruising to T's face on 23 April 2019 and that the Mother had no explanation save that the scab on the right knee might have been caused by T rubbing his leg on the Moses basket. The statement mentions that there had been uncertainty reported as to the paternity of T. A second statement on 25 April 2019 dealt with neglect, saying the home conditions were often unsanitary and the parents needed regular prompting and encouragement to complete basic hygiene tasks, particularly in the kitchen. The floor was often dirty and sticky with food debris. The children had been placed with the Paternal Grandmother which was familiar to them and where they would be free from the risk of harm. The same day, the parents were arrested on suspicion of grievous bodily harm with intent and child neglect. Initially, they were bailed on terms that they had no contact to the children although this was subsequently amended with the support of the Local Authority. HH Glen Brasse made an interim care order on 26 April 2019 on the basis of placement with the Paternal Grandmother.

11. Mr Q's initial response to threshold is dated 20 May 2019. He said that he works long hours in his mobile phone shop. He only saw the injuries on 23 April 2019 when he attended at the hospital, other than the burn mark, which the Mother had brought to his attention a few days earlier. He did not cause the injuries and there were none present on the morning of 23 April 2019. He added that he does not smoke. He did, however, accept that threshold was met on an interim basis. The case came before HHJ Scarratt, the DFJ for Kent, on 20 and 22 May 2019 when various directions were made in relation to the instruction of experts. The case was re-allocated to me. The Mother was

offered three supervised contact visits per week, but this was suspended when seven visits were missed. On 31 May 2019, the Mother signed an agreement to attend contact, but it is alleged she still did not do so consistently. On 13 June 2019, Mr R was confirmed by DNA testing to be the biological father of T.

12. The Mother's initial response to threshold is dated 17 June 2019. She disputed that the injuries were NAI and did not accept the scab to the knee was caused by a cigarette burn. She mentioned rough handling by S and the boys' two-year old cousin. Her statement of the same date said that, at a family gathering on 20 April 2019, she saw the nephew with his hands over T's face and he seemed to be poking T in a similar place to where the bruising occurred, although there was no sign of any bruising. On 23 April, she took a bus to visit her sister. They went shopping at Aldi with her sister, her sister's partner and their son. She saw no bruising or marks on T. On the way back, T started to cry and when she got back to her sister's house, she noticed a rash had appeared all over his body. She had noticed an abrasion to T's right knee a week or so prior. She believed he had been rubbing his leg against the side of his Moses basket. She found blood on the side of the Moses basket. She said she does not smoke around the children. She gave various possible explanations for the injuries, such as friction burns from a carpet; that she bruises easily so T might as well; that S was rough with T; and that a canula on T's wrist in the hospital could have caused the fractured wrist. She added that the Paternal Grandmother said she had to stop S hitting T. She said that nobody had noticed that T had a broken wrist.

13. Denise Sweeney, another social worker, filed a statement dated 20 June 2019. She referred to the Mother's history as a child in care herself and someone who has suffered historically from depression. She said that Mr Q had a good upbringing, but he appeared apathetic in relation to the children and did not provide much care for them or carry out household tasks to ensure the environment was clean and hygienic. On 4 July 2019, the Health Visitor filed a statement in which she said that she was concerned as to sleeping arrangements for T. Her advice had not been followed. She claimed that the children had no routines; there had been prop-feeding of T; that the kitchen had no water at one point; that worksurfaces were covered with dirty pots, pans and cutlery; that appointments were missed/cancelled; and there had been some rough handling by the Mother, who once called one of the children, a "fat little shit". Mr Q was attentive, but she had concerns as to the home conditions being dirty, sticky, and cluttered. The conditions led to food sticking to people's shoes.

14. I first heard the case on 10 July 2019. I joined Mr R as a party. I directed that the Mother should confirm if she was attending supervised contact on the day of the contact between 0845 and 0900. I reduced the contact to two sessions per week for two weeks, but it would increase to three times per week if she attended regularly. Mr R was to have supervised contact with T once per fortnight. I set the case down for this final hearing commencing on 2 December 2019 with a time estimate of just under three weeks. At that point, it

was still not clear if the Local Authority intended to argue that the children had been subject to Fabricated or Induced Illness (hereafter "FII").

15. Dr S, the treating consultant paediatrician reported on 8 August 2019. He did one report in relation to each child. So far as S was concerned, he had bleeding from the mouth in February 2019 caused by a torn frenulum of the upper lip. This would have been caused by applying inappropriate power, which could have been caused by taking a jumper off over his head. Turning to T, the rashes were not a problem. He had a deep tissue bruise on his left cheek and a very small blood shot/subconjunctival haemorrhage particularly on the upper lateral quadrant. The was a significant traumatic lesion on his right leg. It was on the proximal lateral edge of the patella and was a rounded lesion with missing epidermis measuring 5 by 5 millimetres. It was already crusted at the bottom and the edges. It was most likely a cigarette burn. A skeletal survey showed a fracture of the metaphysis of the left distal ulna. As T was non-ambulant, the injuries were likely to be NAI.

16. A staff nurse filed a statement dated 8 August 2019. She said that the Mother was not attentive on 12 March 2019. She did not wake when T cried. The same was the case on 24 April 2019 when he was crying again. She would give him large feeds and then permit a long gap.

17. Although I will deal with the expert evidence later, it is important to note, at this point, that Dr Oates, a paediatric radiologist reported on 16 August 2019. He said that the window for the fracture of the wrist was from 27 March 2019 to 17 April 2019. He also said that, on radiological parameters, the bone density and morphology of T appeared normal, but he suggested the instruction of a metabolic bone specialist. I heard the case for a second time on 22 August 2019. I increased Mr R's contact to T to once per week for two hours. The contact would be reviewed after the conclusion of his parenting assessment. I gave permission to the Mother to instruct an intermediary to assist her with the litigation. The Mother and Mr Q were directed to file statements of evidence by 4pm on 6 September 2019 dealing with those who had care of T from mid-March 2019 to 24 April 2019, the likely period of the injury to the wrist and to deal with whether any concerns were raised as to the wrist during that period. I should add that, on 19 September 2019, Dr B, a treating Consultant Paediatrician retracted the allegation of FII, saying his reference in the medical records to FII was wrong and should have referred to NAI. The Local Authority abandoned any allegation of FII at that point, but the case remained with me due to it having already been listed before me.

18. The Local Authority's final schedule of findings sought is dated 1 October 2019 although there were some further small amendments made on 1 December 2019 to delete some particular allegations. In essence, three matters were pleaded, namely NAI, exposure to neglectful home conditions and exposure to domestic abuse. I do not need to repeat the allegations of NAI in detail as they are set out above, although the document does say that the Mother's jumper explanation for the torn frenulum is not plausible as it would have required considerable inappropriate force. It is asserted that the injury to T's left cheek and eye would have required considerable force and been

caused by a blow to the face or by pushing T's face against a solid surface. The bruising would have emerged within a few minutes or up to one to two hours of the injury occurring. The circular lesion on the right leg was a burn and caused by a direct cigarette stub and would have occurred several days before 23 April 2019. T would have screamed loudly for 3 minutes or more. The fracture to his distal left ulna metaphysis would have been caused by a forceful twisting/pulling action to his wrist. He would have cried inconsolably for 3-5 minutes. In relation to domestic abuse, it was alleged that the parents had a turbulent pattern of break-ups and reconciliations. It referred to abusive text messages and the Mother alleging that Mr Q slapped her but immediately regretted it. Finally, in relation to neglect, the document asserted the poor home conditions as observed by the Health Visitor and the Police on 24 April 2019. Photographs showing allegedly insanitary and unsafe conditions were relied on.

19. The current social worker, Anna Hamilton filed a statement dated 2 October 2019 saying that the parents had missed seven out of seven of the parenting assessment appointments in September 2019 and on 1 October 2019. She was of the view that the parents were fully aware but chose not to engage.

20. The Mother did file a statement dated 4 October 2019. She mentioned that there were two nights in or around April 2019 when a friend of hers, Ms Z looked after T overnight. She believed one such day was 15 April 2019, but she said that Ms Z was brilliant with both children. She is no longer in contact with Ms Z after the Police visited her about the various allegations of NAI. The Mother said that she had always said that the frenulum injury was caused by her pulling S's jumper over his head and that it got stuck in his mouth and caused the injury to his frenulum. She said that she was worried he would no longer be able to breathe so she did find it necessary to be much more forceful than she would usually think appropriate. She added that she had a photograph taken on 18 March 2019 of S hurting T by pulling his arm. She said she recalls having kissed his wrist and it "bending" towards her but she said that this comforted and soothed him rather than causing him further pain. She accepts, however, that this is outside the likely timeframe for the wrist injury.

21. The case came back before me on 4 October 2019, when the Local Authority acknowledged that it did not seek any findings of FII. In consequence, I refused permission for any further questions to be asked to the experts on the subject. As Ms Z had the sole care of T overnight on 15 to 16 April 2019, as corroborated by text messages, I joined her as an intervenor. I directed two further additional sessions in relation to the parents' parenting assessment, given that they had not attended any of the previous appointments.

22. The final statement of the social worker, Anna Hamilton is dated 31 October 2019. She said that the parents lacked emotion when she discussed the injuries with them. They did not react as she would have expected. The Mother initially blamed her Caesarean section and later said that she bruised easily although she later retracted that. She said that she had noticed that the Mother smokes cigarettes not roll-ups, as the Mother had alleged. Mr Q should have

noticed the injury. Although the Mother blamed either S or the cousin for the bruising, Ms Hamilton did not consider they would have had sufficient physical strength. The Mother regularly left S for days with the Paternal Grandmother. The parents did not consistently visit T in hospital during the five weeks he was there following his premature birth, although he was visited by the Paternal Grandmother. The parents had missed many appointments. The home conditions were the worst she had seen and she had not been allowed to view the parents' current home. She said that the Mother conceded that T spent long periods of time in his Moses basket due to her mental health problems. Ms Hamilton alleged a long history of fiery break-ups and reconciliations between the parents although the Mother's allegations against Mr Q were always withdrawn by her later. The Mother accepted that the parents managed their differences through arguing and shouting. The care plan is for the boys to live with the Paternal Grandmother under a Special Guardianship order with contact, after two months, reduced to six times per annum to the parents with a duration of 90 minutes each, supervised by the Paternal Grandmother. The same would apply to Mr R and his Mother, Ms G. She said that the parents have shown a lack of insight and understanding of the concerns, which they do not appear to accept, other than the poor condition of the home. They did not engage with the parenting assessment. Although they did attend the two further arranged sessions, they refused to answer questions relating to issues they did not want to discuss. The Mother has missed 64% of contact sessions and Mr Q has missed 75%. Mr R does not possess the skills to provide good enough care for T, but he strongly feels T's family should care for him not a family unrelated to T. The children have a very positive and safe attachment to the Paternal Grandmother and Step-Grandfather. This placement will provide stability, security and love. The Grandparents consider the identity of T's father makes no difference and they desperately want to keep the boys together. The assessment of Mr R's mother, Ms G was negative due to her poor health, lack of experience, openness and honesty.

23. The Mother's final response to threshold is dated 11 November 2019. She repeats that the injury to S's frenulum was caused by pulling the jumper over his head, causing the dummy to become stuck and stretch his mouth. She accepts she used more force than would usually be appropriate due to the dummy becoming stuck. There were no incidents in which significant force was used in relation to T as far as she was aware. He cried for a short time once in his pram, but it was not out of the ordinary. He may have bumped his head inside his carrycot when the Mother's sister was present. She did not think the injury to his knee was a burn and medical treatment did not seem to be required. She believed it was a small injury caused by rubbing. She had no knowledge of the wrist injury and T did not react in a way that made her believe an injury had been caused to him. She disputes the allegations of domestic abuse against Mr Q. She accepts she made the allegation, but she says she was suffering from depression. She accepts the neglect allegations in their entirety although says it was difficult in a small property with two young children and the care needs of the Paternal Grandfather. She only smoked in the property after the children left her care.

24. Mr Q's response to threshold is dated 20 November 2019. He says that he was present when S's frenulum was torn and confirms the Mother's explanation of the jumper getting caught on the dummy. He says it was not a deliberate attempt to harm S. He did not witness any injuries to T and has no explanation for them. He had thought the "burn" was some form of friction contact/graze on his leg. It was certainly not inflicted by him and he does not smoke. He has no idea how the other injuries were caused and had no reason to believe T had been subject to NAI. He accepts there were some separations between himself and the Mother. They were spiteful to each other and said nasty things, but he denies any violence and reiterates that the Mother has retracted the allegations. He does, however, accept the allegations of neglect.

25. His final statement is dated 20 November 2019. The parents are now living at [redacted]. He says that his relationship with the Mother commenced in October 2016. He was renting a room in a house in [redacted] from mid-2017 where they lived for a time. They then spent some time with the Maternal Grandmother before separating in March 2018 when he returned to the [redacted] property. He says he was concerned as to S due to the Mother drinking and there were times when he would keep S in his care. There were other times when the Mother would stop him seeing S. The Mother stayed at various different places. The relationship commenced again in July 2018 and the Mother returned to the [redacted] property in October 2018. In December 2018, they moved to the Paternal Grandfather's flat. He says that the home conditions were not bad in the beginning, but he worked long hours and he accepts he did not do much, if anything, at home. He acknowledges that the house was unsafe. He realised it was possible T was not his son, but he still treated him as if he was his son. He admits that he "pretty much failed as a father" and accepts he was "apathetic." He bought a mobile phone shop. Initially, he was unable to take time off, but he has now been able to employ staff so that he can be released. He says that the Mother "denies things" to get herself out of trouble and she re-writes history. She has mood swings, depression and anxiety. He thinks she should take medication. He accepts he can be snappy and they could be spiteful and nasty to each other when stressed or tired, but he denies any physical violence. The relationship was unhealthy, but the Mother just makes up allegations. He confirms the frenulum injury was caused when the Mother "yanked the jumper quite roughly" and S's mouth must have got caught on the dummy. A short while later, he noticed blood. He accepts the evidence about the burn but does not smoke and did not do it. He says the Mother told him it must have been caused by T's leg rubbing in the Moses basket when he was kicking. He accepts that, if it was a burn, it was evil. In relation to the broken wrist, he says that he did get a text on 14 April 2019 from the Mother in which she said "come and get [T] right now Im losing my mind!!!!" One night, T was particularly unsettled and screaming. He did not see any bruising on 22 April 2019 and was shocked to see T in hospital. The Mother initially told him that T had been playing with his cousin. He acknowledges that the Paternal Grandmother has helped out a lot and she has a great relationship with the children. Having seen how the children have settled in the Paternal Grandmother's care, he would like them to remain there.

26. The Mother's final statement is dated 23 November 2019. She asks the court to consider returning the children to herself and Mr Q. She asks for a smooth transition over a month. She would expect the Paternal Grandmother to remain very important in their lives. She accepts that the step-Grandfather also has an amazing bond with S, but she says that she and Mr Q are now able to provide a safe tidy healthy home. She has struggled with her health and has found the court process very stressful, but she is now registered with a GP. She would like the court to see how different she can be when she has no anxiety and depression. The distance to the Contact Centre has contributed to missed appointments but some were missed due to her ill health, when she has struggled to sleep. If the children are not returned to her care, the contact proposed is grossly insufficient and it should remain at its current level.

27. Mr R filed his final statement on 25 November 2019. He says in the statement that he would like T placed with him and he would live with his mother, Ms G. He would be the main carer, but his mother would help. He does not work although he would like to go to College. He is generally fit and well, but he has had a bad back recently. His GP has said it is stress related and he is feeling much better now. His mental health is now better too. He has no recent criminal convictions. He missed 4 – 5 contact sessions recently due to illness and two due to mistakes as to timings. He believes the criticisms of him in relation to contact are unfair as he has felt so nervous and it has really affected him. If it is not possible for either him or his mother to care for T, he would like T to remain with the Paternal Grandmother, although he makes the point that she is not a blood relative. He argues that he should have more contact than six times per annum.

28. Two statements were filed on 27 November 2019 on behalf of Ms Z, namely one from Ms Z and one from her partner, Mr Y, who is the father of Ms Z's two children. Ms Z confirms that she was a friend of the Mother, who looked after S when he was newborn. She says they fell out in April/May 2018 as the Mother would not repay her for money Ms Z spent on S. S stayed with her on 12 and 13 April 2019. T stayed with her and Mr Y on the night of 15 April 2019, as S had to go to hospital with breathing problems. She says there was no sign of any injury or discomfort to T. He slept in the bouncer in the living room, which was where the adults were also sleeping due to decorating works in their bedroom. Mr Y did not handle T. T woke at 2am and Ms Z changed and fed him. He went back to sleep easily. When he left, there were no marks on him and he seemed fine. The Mother asked her to keep him for longer, which was something she regularly did. Ms Z did not want to do so. She therefore texted the Mother to say she had been up since 2am with T, so could not have him any longer. That was not true. When Ms Z called the Mother on 16 April 2019, she could hear T screaming in the background. The following day, the Mother said she had been up all night with T screaming and Ms Z could hear him very distressed in the background, but the Mother said there was no need to take him to a doctor as he would be fine. On 16 October 2019, the Mother admitted to Ms Z that Ms Z had not done anything wrong. It is right to note that Ms Z has had some serious health issues and she has to take significant medication which makes her anxious and drowsy.

29. Mr Y confirms in his statement that he was present on 15 April 2019 when T stayed with Ms Z. Ms Z cared for T not him. He had no concerns and T suffered no injuries. He woke once in the night but went straight back to sleep after being fed and changed by Ms Z.

30. Finally, a statement given to the Police by the Mother's sister confirms that she met the Mother and the boys on 23 April 2019. T was whingy, bright red and covered in a rash. She picked him up in Aldi to comfort him but did not see a bruise. When they got to Londis, he was still upset so she got him out of the pram and noticed the bruise. She postulated that it could have been caused by a toy in the pram, but I have expert evidence that disputes that. When they got home, she noticed a couple more bruises and so they phoned 111 and were told to go to the hospital, which they did.

The expert evidence

31. Directions were made for expert evidence by a consultant paediatric radiologist, a consultant paediatrician and a forensic plastic surgeon/burns consultant. Dr Adam Oates, a consultant paediatric radiologist, reported on 16 August 2019. He says that, in the absence of a predisposition to fracture, or accepted history of a traumatic event, fractures in non-ambulant infants always raise very significant concerns of abusive injury. Whilst prematurity can increase the likelihood of fractures, based on radiological parameters alone, there is no feature to suggest any such predisposition in T. His bone density and morphology are within normal limits. There was a displaced fragment of bone derived from the distal metaphysis (the end of the shaft of a long bone in an immature skeleton) of the left ulna. The fracture was less than four weeks old as a discrete fracture line was evident, but there was very modest evidence of a fracture healing response. Although caution was needed, he gave a timeline for the fracture from 27 March to 17 April 2019. It was not birth related. The force required to cause this fracture was not what would be expected to occur with normal activities, accidental falls or playful handling by an older sibling. The mechanism was likely to have been a twisting or pulling action.

32. The consultant paediatrician, Dr Elhassan Magid reported on 23 September 2019. In relation to S, he reported that the frenulum gets torn if something hard is pushed inside the mouth. It is rarely accidental. He considered no plausible explanation had been given. In his view, it therefore remains unexplained and NAI was more likely than an accident as the frenulum is protected by the upper limbs and therefore rarely injured in an accident. Turning to T and the injuries found on 23 April 2019, the blood shot red eye could have been spontaneous in isolation but, given the other injuries, NAI is possible. The haematoma (bruising to the left cheek) was likely to have been inflicted as it would have required relatively strong force as the haematoma was big and lobulated. The abrasion/burn to the right knee was likely to have been inflicted. As it was almost perfectly circular, the Mother's explanation was impossible as that would have caused irregular scratches. He was not 100% certain it was a cigarette burn. It was likely to have been between 2-5 days old on 23 April 2019. The fracture was likely to have been inflicted. It

would have required bending, twisting or a direct blow to the forearm. Prematurity would not have been a contributory factor. The injury to the left cheek would have led to T crying loudly for 2-3 minutes. The bruise or swelling would be visible either within a few minutes or up to 1-2 hours. The abrasion/burn would have been very painful and he would have cried or screamed loudly for 3 minutes or more which would alert any parent or carer at home at the time. The mark would be clear. The fracture would have been very painful. He would have cried inconsolably for 3 – 5 minutes. The area would have been tender to the touch for 2-5 days. Any adult at home at the time of the injury would have been alerted.

33. Colin Rayner, a forensic plastic surgeon and burns consultant, reported on 11 September 2019. The injury to the right leg was typical of the size of injury left by a direct stub injury with a cigarette against the skin. There is no possibility this could have been caused by rubbing against the inside of the Moses basket. It is a burn. The scar would have matched the original lesion size. It was probably a cigarette burn. The likely time of injury was several days before 23 April 2019.

34. Dr Russell Keenan, a paediatric haematologist reported on 30 June 2019. T's haemoglobin and white blood count were normal. His PT (Prothrombin Time) and PTT (Partial Thromboplastin Time) were both normal. In essence, this is the time it takes the blood to clot. As a result, Dr Keenan was able to exclude clinically significant deficiencies in blood clotting factors. He did say that it was important to identify the presence or absence of an underlying blood clotting abnormality, such as Von Willebrand; Factor XIII; Fibrinogen clauss; platelet function testing; and platelet count but I considered at the time that this was what might be called "belt and braces". Although I believe some additional tests were undertaken, the Paternal Grandmother took T to London for further samples just prior to this hearing. It was a difficult journey for her. Worse, the samples were not despatched by the Testing Centre in time. Ms Connolly QC, who appears with Ms Pearson on behalf of the Mother took instructions. The Mother, very responsibly, did not press for further tests to be undertaken. There has been no evidence of any of these very rare disorders in T. The test for expert evidence is "necessity" and there must be good reason for undertaking further tests. There was none in this case. I therefore proceed on the basis that there is no blood abnormality in T that could account for the bruising evident on 23 April 2019.

35. Psychological reports were prepared on both the Mother and Mr R. Dr Sarah Hartley reported on the Mother on 29 July 2019. She found that the Mother was functioning at a very low level. She was tested as being above only 0.5% of her peers but this appears unlikely to be the case, given that she functions in the community. The tests suggested her working memory is particularly impaired, with her level of functioning above only 0.3% of peers. Other scores were extremely low or just within the borderline range. The doctor was, however, of the view that the Mother had deliberately underperformed, due to the manner in which she approached the tasks. For example, she gave very quick answers, looking for a response. She failed the introductory task which is very uncommon. The doctor was therefore unable to say if the

Mother needs an intermediary. She described a very disrupted childhood when she had been sexually assaulted three times by three different people. She was emotionally abused and neglected by her mother and her partner. She had witnessed domestic violence and rape as well as her mother's ongoing alcohol abuse and mental health problems. All of this would be expected to result in emotional difficulties, personality difficulties and mental health difficulties. The court, obviously, has very great sympathy for those who have encountered such abuse during childhood, although the doctor was not sure of the extent to which the Mother had exaggerated her difficulties. In any event, her profile suggests she might suffer from personality difficulties, persistent depressive disorder, generalised anxiety disorder, psychotic illness, symptoms of trauma and somatic disorder. I make it clear, however, that there is no evidence at all of a psychotic illness. The doctor says that the Mother said she may have inflicted the injuries on T by being heavy handed. The doctor thought that she may have hurt her child at times of intense and overwhelming feelings of emptiness, isolation and self-loathing. The Mother finds it very difficult to empathise with the children's experiences. She has had difficulty in attending contact due to her distress when it ends. It follows that there has been an inability to prioritise the children's needs over her own. Notwithstanding the reservations of the doctor as to the accuracy of the test results, I approved the instruction of an intermediary for the Mother who has assisted her throughout the trial. I did my very best to ensure that she was able to understand the questions put her to in cross-examination and I am entirely satisfied that she has had a fair trial in accordance with Article 6 of the Convention.

36. A cognitive assessment was also undertaken of Mr R by Dr Alison Conning dated 2 August 2019. He was found to have a full-scale IQ of 79 which is borderline and on the 8th percentile. His verbal comprehension was on the 3rd centile but his perceptual reasoning was on the 39th centile. These are the percentage of the population who are below him in terms of their IQ, verbal comprehension and perceptual reasoning. He said he was diagnosed with Autistic Spectrum Disorder and learning difficulties when a child. He has capacity to litigate as he can recall and weigh up relevant information but would benefit from an intermediary. Simple language and questions should be used as he would find it difficult to understand concepts such as neglect and difficult to understand written material. There was no need for a PAMS based parenting assessment. In fact, Mr R was unable to attend for an assessment by Communicourt for the provision of an intermediary due to his bad back and, by the time he could attend, there was no intermediary available. As things have turned out, this has not mattered as I will explain in due course. In particular, he did not need to give oral evidence.

Other witness evidence and assessments

37. A significant number of other witness statements were filed and assessments were undertaken. These included a statement from Mr R's mother, Ms G dated 27 November 2019 in which she said that she would like to care for T. It is fair to say that Ms G did not look after Mr R when he was a child and she had very little contact to him until he was much older. She suffers from very

painful conditions that can, at times, incapacitate her. She has also suffered from depression. A viability assessment of her was negative and she has not challenged the assessment before me.

38. A previous social worker, Emily Harrington filed a statement dated 28 November 2019. She was the social worker assigned to the case from November 2017 to July 2018. It deals with a number of issues, such as failure to engage with professionals and allegations of neglect, that are now not relevant to my determination for reasons I will explain in due course. A parenting assessment of the parents was undertaken by Denise Sweeney in December 2018 before the birth of T. It is fair to say that it did find that S was developing well and meeting his milestones, although it is only fair to wonder how much the involvement of the Paternal Grandmother played in this. Again, however, it does refer to the neglect issues and lack of engagement although, at the time, the Local Authority did not consider there was sufficient evidence to institute care proceedings.

39. A parenting assessment of Mr R by Julia Fagg, dated 16 October 2019, was negative. Again, I take the view that it is not necessary for me to go into any detail, although I do note that it was said that Mr R struggled with supervised contact sessions due to his anxiety as a result of him feeling he was being constantly watched and criticised. He has attended 60% of contact visits but had missed sessions for about a month due to back pain, that may have been caused by stress.

40. A Special Guardianship Order assessment of the Paternal Grandmother and her husband, also by Julia Fagg and dated 16 October 2019 was positive. It records that the household also contains two children of the Paternal Grandmother and the step-Paternal Grandfather. The Paternal Grandmother has five older children aged 29 – 19, including Mr Q, from her two previous marriages. She lives with her husband in a three-bedroom end of terrace property that is rented. Ms Fagg finds them to be loving, warm, fun and kind parents. They are assessed as being very strong applicants, who are highly motivated and have managed the boys needs comprehensively. Contact to each parent was suggested at six times per annum.

41. A parenting capacity assessment of the Mother and Mr Q was undertaken by the current social worker, Anna Hamilton. Again, it is now not nearly as relevant as it was at the time. It is fair to say that the parents entirely failed to engage with the original assessment, missing every assessment appointment. A further two sessions were offered in October 2019 and accepted but Ms Hamilton considered that the parents were entirely uncommitted to the process. The report mentions that they had failed to attend over half the contact sessions organised for the boys in the supervised Contact Centre. The Mother had missed 64% of these sessions and Mr Q had missed 75% but he had attended a significant number of contacts at the Paternal Grandmother's home. Ms Hamilton considered that the parents had failed to understand the importance of contact to the boys. At the two sessions in early October 2019, the Mother was at times very "closed off", refusing to answer some questions. Mr Q was "virtually mute". The assessment was negative.

42. Finally, the Cafcass Officer, Rebecca Tait, reported on 28 November 2019. She says that the boys are both very happy and settled with the Paternal Grandmother. The Mother had not been able to evidence that she is able to make the necessary changes to her parenting. She had prevented observation of home conditions. Mr R believed that his assessment was "50%" lies. He had not attended contact for four weeks due to his back pain. T was distressed on his next visit, but Mr R thought that it was "due to him being unwell". He had been unable to settle T and had struggled to maintain parenting advice. He does not have parenting capacity at the current time. S has had no hospital admissions since being with the Paternal Grandmother. He is very settled and comfortable in her care although he has had some night terrors after he saw his Mother for the first time in a few weeks. He does still smack quite a lot. The Paternal Grandmother says that T was very unhappy when he first moved to her, screaming constantly and arching his back. He also has had no hospital admissions since. He is eating solids and is rarely sick now. He has a particularly close relationship with the Paternal Grandmother. The Guardian says that both these boys require more than good enough care which the Paternal Grandmother can provide. The Guardian is not confident that the Mother would engage fully with support and does not appear motivated to change. The only realistic option is a Special Guardianship Order in favour of the Paternal Grandmother and her husband. The Guardian recommends that contact remains at its current level for 4 – 6 months before reducing further given that the children have appeared unsettled after periods of no contact.

The Hearing

43. I commenced hearing the case on 3 December 2019 after a reading day. Mr Q's Case Summary, filed on his behalf by Ms Delahunty QC and Mr Chippeck said the following:-

> "*…Mr Q has responded to the challenge put to him by his legal team and has made difficult admissions about his failure to prioritise the children's needs which has led to a recognition that he, neither alone nor with the Mother, can offer the care that the boys deserve."*

44. The case was opened by Mr Barnes on behalf of the Local Authority on the morning of 3 December 2019. When he had concluded his remarks, Mr Clegg, on behalf of Mr R said this:-

> "*Mr R has thought very carefully about his position. After careful reflection, he has decided to support the making of a Special Guardianship Order in favour of the Paternal Grandmother and her husband in relation to T*."

45. The evidence then commenced but, on 5 December 2019, Ms Connolly QC, who appears on behalf of the Mother with Ms Pearson, addressed me as follows:-

"The Mother has been considering her position all week. As far as the welfare issues are concerned, she makes it clear through me that she would dearly love to have her children home to live with her, but she realises that is not possible. She also supports the making of Special Guardianship Orders to the Paternal Grandmother and her husband"

46. Although the parents accepted that the threshold in section 31 had been established, there remained the very serious allegations of NAI that were not admitted. It was agreed that I had to determine those issues. There also remained a few welfare issues, largely surrounding contact but also as to T's surname. Nevertheless, it was absolutely clear to me that all three parents had taken a very difficult decision. They clearly love the boys very much but each of them was able to recognise that it was in the interests of both to remain with the Paternal Grandmother and her husband. I am entirely satisfied that they were right to come to this conclusion but, in each case, it was a decision for which they are entitled to enormous credit. All three have put these boys first and it is entirely right that I should pay them a generous tribute for having done so. I have no doubt that, in the long term, this will be extremely valuable to the boys to know that their parents agreed and supported their placement with the Paternal Grandmother and her husband as Special Guardians.

The Law

47. I now turn to deal with the law I must apply. I accept entirely that the parents accept that the Local Authority has established the threshold criteria, namely that S and T are suffering or are likely to suffer significant harm and that the harm or likelihood of harm is attributable to the care given to the children, or likely to be given if the order is not made, not being what it would be reasonable to expect a parent to give [Children Act 1989, section 31(2)]. I must then go on to consider the children's welfare in deciding what order to make.

The burden and standard of proof

48. The burden of proof in relation to any matter that is in issue is on the Local Authority. It is for the Local Authority to satisfy me that it has made out its case in relation to disputed facts. The parents have to prove nothing. I must be very careful to ensure that I do not reverse the burden of proof. It was rightly said by Mostyn J that "*there is no pseudo burden or obligation cast on the respondents to come up with alternative explanations."*

49. The standard of proof is the civil standard, namely the balance of probabilities. This applies to both the determination of whether S and T's injuries were caused non-accidentally but also as to the identity of the perpetrator (see Re B (Care Proceedings: Standard of Proof) [2008] UKHL 35; [2008] 2 FLR 141 and Re S-B (Children) [2010] 1 FLR 1161).

50. The seriousness of the allegation makes no difference to the standard of proof to be applied in determining the truth of the allegation. The inherent

probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies (Re B (Children)(FC) [2008] UKHL 35; [2008] 2 FLR 141)

51. If the evidence in respect of a particular finding sought by a party is equivocal then the court cannot make a finding on the balance of probabilities as the party seeking the finding has not discharged either the burden or standard of proof (Re B (Threshold Criteria: Fabricated Illness) [2002] EWHC 20; [2004] 2 FLR 200).

52. My task, therefore, is:-

    (a) To apply the civil standard of proof on the balance of probabilities;
    (b) In so doing, to have regard to the seriousness of the allegations and the strength and quality of the evidence;
    (c) To give the evidence "critical and anxious" examination; and
    (d) At all times, to apply "good sense and appropriately careful consideration to the evidence".

53. Findings of fact must be based on evidence. The court must be careful to avoid speculation, particularly in situations where there is a gap in the evidence. As Munby LJ observed in Re A (Fact-finding Hearing: Speculation) [2011] EWCA Civ 12:-

> "*It is an elementary proposition that findings of fact must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation".*

Pool of Perpetrators

54. It is trite law that it is in the public interest that those who cause non-accidental injuries to children should be identified, provided it is possible in the light of the evidence. Notwithstanding the advantages if it is possible to identify a perpetrator, there is no obligation on the court to strain to do so if the evidence does not enable the court to make such a finding on the balance of probabilities. In Re S-B, Baroness Hale said at Paragraph 40:-

> "*If the judge cannot identify a perpetrator or perpetrators, it is still important to identify the pool of possible perpetrators…"*

55. The test was laid down in North Yorkshire CC v SA [2003] 2 FLR 849:-

> "*A person comes within the pool of possible perpetrators where the evidence establishes that there is a "likelihood or real possibility" that a given person perpetrated the injuries."*

Failure to protect

56. There is also a benefit in identifying the role of others who may have failed to protect the child. This type of finding will inform future risk assessments and

assist in the formulation of strategies to protect the child in the future (Re S-B at Paragraph 36). In the case of Re L-W [2019] EWCA Civ 159, King LJ concluded that the court must have factual evidence from which it can find a failure to protect and that the court must ask itself whether those facts justify the conclusion that the carer knew or ought to have known that injury would be inflicted. Such a finding must not be a "bolt-on" to a finding of non-accidental injury by the other partner and the court must not assume too easily that cohabitation will lead almost inevitably to such a finding. King LJ confirmed this in the case of G-L-T [2019] EWCA Civ 717 in which she reiterated the need for assiduous care before finding such allegations proved and cautioned against the "*danger that significant welfare issues, which need to be teased out and analysed by assessment, are inappropriately elevated to findings of failure to protect capable of satisfying the section 31 criteria*".

Lies (the "Lucas" direction)

57. There are issues in the case as to the extent to which the Mother and Mr Q have lied to this court and/or to professionals involved in the case. Indeed, both now admit that they did lie in relation to the issue of domestic violence, although they both assert that they are now telling the truth.

58. First, I must decide the extent of the lies in this case. Once I have done so, I have to ask myself why the person concerned lied. The mere fact that a witness tells a lie is not in itself evidence that the person concerned is the perpetrator of non-accidental injuries to a child. A witness may lie for many reasons. They may possibly be "*innocent*" ones in the sense that they do not denote responsibility for the injuries to S and T. For example, they may be lies to bolster a true case; or to protect someone else; or to conceal some other disreputable conduct unrelated to the injuries caused to the boys; or out of panic, distress or confusion.

59. It follows that, if I find that a witness has lied, I must assess whether there is an "*innocent*" explanation for those lies that does not implicate the witness either as the perpetrator of the injuries sustained to T and S or as having information relevant to identifying the perpetrator. However, if I am satisfied that there is no such explanation, I can take the lies into account in my assessment of the identity of the perpetrator or perpetrators.

The position of the Police

60. The Police are entitled to a copy of my judgment. The law is clear in this regard. Section 98(1) of the Children Act 1989 provides that, in these proceedings, no person shall be excused from giving evidence on any matter or from answering any question put to them in the course of giving their evidence, on the ground that doing so might incriminate them of an offence. It follows that both the Mother and Mr Q had no alternative other than to give evidence, although I make it quite clear that both did so entirely voluntarily. Section 98(2) applies to that evidence. Any statement or admission made in these proceedings shall not be admissible in evidence against the person making it in proceedings for an offence other than perjury. It follows that,

although the Police may be able to make use of my judgment in pursuing their ongoing enquiries, they cannot rely on any statement or admission made to me, in any criminal proceedings that they may subsequently bring. In particular, I intend to prevent them from asking any questions under caution about any evidence given to me or findings that I make.

Expert evidence

61. I have heard expert evidence from a number of doctors with different specialisations. It is for me to weigh the expert evidence alongside the lay and other observational evidence. As Ward LJ said in Re B (Care: Expert Witnesses) [1996] 1 FLR 667, "*the expert advises but the judge decides. The judge decides on the evidence*". Butler-Sloss LJ added at p674:-

> "*An expert is not in any special position and there is no presumption of belief in a doctor however distinguished he or she may be. It is, however, necessary for the judge to give reasons for disagreeing with experts' conclusions or recommendations…A Judge cannot substitute his own views for the views of the experts without some evidence to support what he concludes."*

62. This was confirmed by Charles J in A County Council v K, D & L [2005] EWHC 144 where he said that the roles of the court and the expert are distinct. It is the court that is in the position to weigh up the expert evidence and give its findings on the other evidence. The judge must always remember that he or she is the person who makes the final decision. At Paragraph [49], he added that, even where the medical evidence is to the effect that the likely cause of an injury is non-accidental, a court can reach a finding on the totality of the evidence that an injury has a natural cause, or is not a non-accidental injury, or that the local authority has not established the existence of a non-accidental injury to the civil standard of proof.

63. In Re U (Serious Injury: Standard of Proof), Butler-Sloss LJ said:-

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

64. The expert evidence does not sit in a vacuum nor is it to be interpreted in isolation from the other evidence. Even if an expert says that that there are a

number of possible explanations for some occurrence, it is still open to the court to find on the evidence as a whole which is the probable explanation (see, for example, Re B (Non-accidental injury) [2002] EWCA Civ 752; [2002] 2 FLR 1133).

65. The frontiers of medical science are always expanding. In R v Harris & Others [2005] EWCA Crim 1980, Professor Luthert was quoted with approval at Paragraph 135 that "*there are areas of ignorance. It is very easy to try and fill those areas of ignorance with what we know but I think that is very important to accept that we do not necessarily have a sufficient understanding to explain every case."* It follows that it is always open to a judge to rule that the cause of an injury remains unknown. Such a finding does not represent either forensic or professional failure. As Hedley J said in Re R (Care Proceedings Causation) [2011] EWHC 1715 (Fam), it simply recognises that we still have much to learn and that it is dangerous and wrong to infer non-accidental injury from the absence of any other understood mechanism.

The welfare checklist

66. If I find threshold proved, I must go on to consider section 1 of the Children Act 1989. The children's respective welfare during their minorities is my paramount consideration. I must consider the welfare checklist in section 1(3). In particular, I must have regard to

    (a) The ascertainable wishes and feelings of the children concerned (considered in the light of their age and understanding);
    (b) Their physical, emotional and educational needs;
    (c) The likely effect on them of any change in their circumstances;
    (d) Their age, sex, background and any characteristics which I consider relevant;
    (e) Any harm which they have suffered or are at risk of suffering;
    (f) How capable each of their parents, and any other person in relation to whom I consider the question to be relevant, is of meeting their needs; and
    (g) The range of powers available to the court under the Act in the proceedings in question.

67. I must not make any order unless I consider that doing so would be better for the children than making no order at all. It is clear, however, that I must make orders in this case.

68. I am invited to make Special Guardianship Orders pursuant to section 14A of the Children Act 1989 as amended. First, I can make such an order pursuant to section 14A(6)(b) even though no application has been made. Second, pursuant to section 14C, a special guardian is given parental responsibility of the children concerned and is entitled to exercise that parental responsibility to the exclusion of the parents. This does not, however, extinguish the parent's parental responsibility entirely. First, the special guardians need permission to remove a child permanently from the jurisdiction. Second, they are not allowed to change the surname of a child without parental consent or

permission of the court. Third, the parents are entitled to apply, with leave, to vary or discharge the order.

69. It is therefore clear that special guardianship orders are very different to ordinary section 8 child arrangement orders. They are designed to give far greater security and permanence to a placement with the special guardians than would otherwise be the case. Such orders therefore require very careful consideration before they are made.

70. There is an issue about T's surname. I accept the law as set out in Re W, Re A, Re B [1999] 3 FCR 337. On any application to change a child's name, the child's welfare is paramount. The name under which the child was registered is important but not decisive. Relevant factors include factors that could arise in the future. The fact that the surname is not the same as that of the applicant does not generally carry much weight. Any change of circumstances since registration may be relevant. Where the child's parents were not married, the degree of commitment of the child's father, the quality of contact and the existence or absence of parental responsibility should be considered. Butler-Sloss LJ added that "*these are only guidelines which do not purport to be exhaustive. Each case has to be decided on its own facts, with the welfare of the child as the paramount consideration and all the relevant factors weighed in the balance by the court at the time of the hearing*".

My findings as to the expert evidence

71. I heard oral evidence from the three Single Joint Experts instructed by the parties. I did not hear from any of the treating clinicians as their evidence is agreed. This is important in relation to Dr S because he had said that the injury to the frenulum would be caused by a person applying inappropriate force, such as taking off the jumper over the child's head.

72. Dr Oates gave evidence first. In his evidence in chief, he told me that there was no doubt that T had a fracture of his wrist, but it was not typical of a shaking fracture although he told me it would not have been able to occur unless it was NAI. Any fracture would require a significant level of force. When cross-examined on behalf of the Mother, he said that the amount of bone displaced is relatively small, so it is likely that, during a twisting mechanism, the ligaments have pulled off a small slice of bone, amounting to about 3 to 4 millimetres. Although it may have occurred quickly, there is no research to confirm this. It would not occur as a result of routine changing as, even though it is the same mechanism as changing clothes, it is the force used that points to NAI. He made the point that he does not recall seeing many fractures like this which rules out it being caused by routine changing. It cannot be self-inflicted given T's age. There was no evidence of other prior healing fractures which you would expect if there was bone fragility. Moreover, some children have obvious reduced bone density and, even then, it is very unusual to sustain a fracture. Whilst he cannot himself say with certainty that there was not a susceptibility to fracturing, the follow up X-ray on 16 May 2019 showed a rapid healing response which again pointed to normality. He believed it was an inflicted fracture. I accept his evidence.

73. Dr Raynor said, in answer to questions from Mr Barnes for the Local Authority, about the mark on T's knee, that he had been involved in about 40 cases where a burn was alleged. Roughly 25 of them were a burn and 15 were not but, in his view, this definitely came into the first category. He said that the injury in this case is different to when skin accidentally comes into contact with a cigarette as you then get a "tail-off" effect. Moreover, it would be a superficial burn not a deep crater as here. The size corresponds to the size of a lighted manufactured cigarette and it could only have come towards the skin at a right angle or pretty close to it. He would most often associate this type of injury with a form of stubbing. Whilst he could not completely rule out an accidental injury, he could not see how such an injury could have been accidental. It would have been extremely painful. When cross-examined by Ms Connolly for the Mother, he told me that, at the outset, you would see a circular red mark and he would expect a blister and a very distressed baby. The epidermis is very thin and moist in this age group and would be brushed-off leaving a red weepy surface followed by the formation of a rather hard dry scab. The mark in the Moses basked could have been "exudate" which would have been from relatively early in the healing process. Again, I accept his evidence.

74. Finally, Dr Magid essentially deferred to the other two doctors as to the broken wrist and the alleged burn mark. He accepted that, in relation to the wrist injury, the perpetrator would know they had injured the child but there was a possibility of someone not present missing it. He was asked about the injured frenulum and it is right to say that he was not satisfied by the dummy getting stuck explanation as, he said, the motion of pulling the jumper over the head would, in his view force the dummy outwards not inwards. He clearly thought it more likely it was caused by a bottle being forced into the area abusively. He said the fracture was "definitely outside the normal day to day handling" and there was no evidence of bone disease of prematurity or otherwise. He did not believe that T had a significant degree of fragility that would cause him to be more vulnerable to fracture and he relied on the fact that T was not born at 26 to 28 weeks gestation or at under 1.5 kilograms that are the normal conditions for bone disease caused by prematurity. Whilst theoretically anything is possible, he considered it unlikely in this case. T's calcium levels were normal as were his bone minerals and his enzymes were also normal, so he did not think that played any role. In dealing with this aspect, I remind myself that I deal with such matters on the balance of probabilities. Finally, in relation to the bruise, he told me it was deep bleeding and not just under the skin. It would have required significant force. It is difficult to quantify but it would not be mild force. Ms Connolly asked him if it could have been caused by being jolted up and down in the pram. He was clear that it could not. If it was possible, doctors would see hundreds of such injuries. He was asked whether a toy could have caused it. He replied that, whilst a hard toy thrown at a baby, could cause such an injury, S could not have done it as he would not have been strong enough to cause such a deep bleed. In any event, no history is given of such a toy being thrown by anybody at the relevant time. He was asked again about time frames for the emergence of the bruising. He did appear, at one point, to expand the time for

the bruising to emerge from his original opinion when he said it would emerge "within minutes to up to 1 – 2 hours" by giving a period of up to one day. I accept, however, the criticism made of this evidence, in particular by Ms Delahunty for Mr Q. This oral evidence was flatly contradictory to his written evidence when he was specifically asked about this point. I am therefore going to proceed on the basis of his original written report whilst exercising some caution as to the timeframe. There is, after all, quite a difference already between "within minutes" and "up to 1 – 2 hours". I will deal later with his evidence as to the frenulum injury to S as the evidence of the parents is important in that regard.

75. Before reaching my conclusions, it is right to note that when the Paternal Grandmother came to give her evidence, she told me that, the previous week, she had taken T to the doctor. She had previously noticed that he had a sacral dimple, namely a shallow indentation in the small of his back. She had thought it was normal, but she has since realised how deep it was. She described it to me as a "proper hole". The GP referred T to a specialist, the concern being the possibility of spina bifida. She told me that the chances are it is nothing and just the way he was made in the womb, but it should be checked out. I entirely agree. Although I am not medically qualified, I cannot see how this can be an example of one of the most serious types of case of spina bifida, given that it has not previously been diagnosed despite much medical involvement in T's life. Moreover, I understand that, even if spina bifida occulta (the malformation of one or more of the vertebrae of the spine) is diagnosed, it often leads to no long-term problems. I sincerely hope that T will be given a clean bill of health, but I must just consider whether this could be relevant to non-accidental injury given that all three experts concluded their evidence before this possibility emerged. I cannot see how it could possibly be relevant to the alleged burn or the bruise on the cheek. Is the position any different in relation to the fracture? I am satisfied, again, that spina bifida can have no relevance to a fracture. I have never heard it mentioned by any expert as a potential cause of fractures and I am sure that they would have done so if there was any possible connection. It was certainly not mentioned in this case by any of them. Ms Connolly clearly considered the issue as she mentioned it to me after the evidence was given by the Paternal Grandmother but, in my view, entirely sensibly, she did not seek to ask any further questions to the experts. I am therefore entirely clear that this potential development is irrelevant to what I have to decide.

76. In relation to the injuries to T, I can reach clear conclusions without hesitation. I am entirely satisfied that:-

    (a) The bruise to his face was a non-accidental injury caused by the use of unreasonable force. I reject that it could have been caused by movements within the pram, whether caused by kerbs or otherwise. Equally, it could not have been caused by a toy being thrown at him as there is no such history given and the only children around him at the relevant time were too young to be strong enough to cause such an injury. It follows that I am satisfied that it was a blow caused by an adult. There is no history of it

being caused accidentally. I therefore conclude that it was deliberately inflicted although it is not clear from the medical evidence whether it was a punch, a slap or some other kind of blow. It would have occurred in an instant. I am equally satisfied that it was a single blow. It occurred on the morning of 23 April 2019. Whilst it not possible to be certain of the exact time, it is difficult to see how it could have occurred as early as 7.30 am when Mr Q left the home, given the original evidence that it would have emerged within a maximum of approximately two hours. It would have been painful and would have caused T to cry loudly for two to three minutes.

(b) The scab on his knee was caused by a cigarette burn from a pre-manufactured lit cigarette that was applied to his knee broadly at a right angle to his skin. Again, it would be have occurred in an instant, but I reject the suggestion that it was accidental given the depth of the burn and the fact that there was no tail to the injury. It would have been very painful. T would have cried inconsolably for 3 to 5 minutes.

(c) The broken wrist was an inflicted injury caused by a twisting or pulling action to the wrist. It would have involved the use of an unreasonable level of force. Although it could have occurred whilst T was being changed, I reject the possibility of accidental injury. It would have been an abusive mechanism, caused by anger or frustration. I accept that the window for the fracture was from 27 March to 17 April 2019. Again, it would have been very painful and caused inconsolable crying for 3 to 5 minutes. I am, however, satisfied that a parent who was not present when this injury was inflicted would not necessarily know that T had broken his wrist. I remind myself that the broken wrist was not diagnosed by the doctors in the hospital on 23 April 2019 or by anyone else in the run up to that admission. The diagnosis had to await until the result of the X-rays.

<u>The factual evidence as to the injuries</u>

77. Having made my findings of fact as to the injuries, other than in relation to the frenulum, I turn to the evidence of the parents and Ms Z and Mr Y as to these matters. Ms Z and Mr Y went first. They both gave very straightforward evidence. I was satisfied that they were both doing their very best to tell me the truth as to what had occurred. Mr Y told me that this was the first time that T had stayed with them. He was present the entire time from when T was dropped off on 15 April 2019 to when the Mother collected him the next morning, but he did not care for T. T was quiet and asleep. He did not wake up for a couple of hours, but, when he did, he had a bottle/nappy change. T woke again at 2am. Mr Y woke up as he was the lighter sleeper. He therefore woke Ms Z who gave T a further feed/nappy change, after which T went back to sleep quite happily. Mr Y was awake throughout the feed. There were no difficulties thereafter. He was not aware of the text message until after T was

picked up, but it was sent to avoid them having to keep T for a long time as had happened with S. He told Ms Connolly that T did not seem to be in any pain and was quite happy, other than a slight whinge when he woke up.

78. Ms Z confirmed this account in its entirety. She gave quite a bit of evidence about her role in caring for S but, given the Mother's concession as to the boys remaining with the Paternal Grandmother, I cannot see that this is now relevant to my investigation. She told me that the Mother did not bring sufficient supplies of nappies or bottles and the teat of the one bottle she did bring was too large for T, such that he could not drink properly. She had to get a friend to bring round more suitable supplies which arrived within half an hour. She confirmed Mr Y's evidence of the night feed and the reason why she sent the text message to the Mother. She did say that the Mother had subsequently reassured her that she, the Mother, had no concerns about Ms Z's care of the boys and that she did not accuse Ms Z of harming T. She was cross-examined entirely properly by Ms Connolly but on the clear basis that it was not being suggested to her that she had done anything to T. She confirmed that it was not true, as alleged in the text message, that she had not had any sleep since 2 am. The text was sent because the Mother had asked Ms Z to keep T for a couple more hours and Ms Z was worried that she would be stuck with T for far longer, as had happened in the past with S. She did confirm, when asked, that the Mother cared a lot about her children and was worried about them. She also said that she never saw anything that worried her in relation to the care the Mother gave the children.

79. At the conclusion of this evidence, Ms Cook QC, who appeared with Ms Storey-Rea on behalf of Ms Z, invited me to discharge her client as an Intervenor on the basis that it was not being alleged that her client or Mr Y had harmed T. Ms Connolly accepted that there was no evidence that they had done so and it was not her client's case that they had done so. She therefore did not oppose me discharging Ms Z as a party. I indicated to Ms Cook that I would not be finding that her client, or Mr Y, were responsible for any injuries to T, nor that they were in any pool of possible perpetrators, given the evidence that I had heard. I therefore discharged Ms Z as an Intervenor and Ms Cook and Ms Storey-Rea played no further part in the hearing. I make it clear that, at the time, it was appropriate to join Ms Z as an Intervenor given that T had been overnight with her on the 15/16 April 2019 but, having heard her evidence, I am quite satisfied that neither she nor Mr Y harmed T in any way and they are certainly not in the pool of any possible perpetrators either. They will have a copy of this judgment and I give them permission to rely on this Paragraph in the future should they ever need to do so.

80. I now turn to the evidence of the parents. The Mother gave evidence first. She told me that she was living with Mr Q. Entirely fairly, she told her counsel, Ms Connolly that the home conditions with the Paternal Grandfather were not safe or suitable for any children. She added that, at first, they could keep on top of it, but it slowly went downhill. It got too much for them. She was asked about the text messages on 14 April 2019, such as the one where she said "Come and fucking get [T] right now as I am losing my mind." She told me she had been getting little sleep and was exhausted. She just wanted help

and Mr Q would not give it to her. She told me she was very run down. S was ok but T was more difficult that day. She believed he had a cold. When she sent a text telling Mr Q to "come and get your son", she believed she was referring to T. She was crying her eyes out. As he wasn't coming, she banged on the wall and, although this got his attention, he still didn't come, despite her begging him. She did then say she was "losing it." She was getting quite "peed off" with him but she was "more hurt than angry". She was not "losing it" with the boys and she did not take anything out on them. She has never "lost it" with them, nor caused them harm. She told me she has never hit the children, nor punched them, nor deliberately caused them injury.

81. She was then cross-examined by Mr Barnes on behalf of the Local Authority. She accepted that it was difficult at home with T as he was up at night and difficult to feed. He would arch his back and scream. It was hard to manage and was overwhelming at times. She could not answer for Mr Q not doing more. She did lose her temper with him at times, such as when she banged on the wall. She was crying out for help. It would have impacted S and T. She was asked about a contact visit on 13 May 2019. She said that S was playing up and he bit her twice, slapped her and punched her. He had never done that before. All she did was tap him on the back of the hand. It was not a slap. She told me it was the first time she had done so. She denied telling the contact supervisor that she had done it before but I find that she did say that to the supervisor and she had done it before. She did not see anything wrong in doing it, although it is wrong.

82. She accepted, however, that Mr Q did not lose his temper with the children, reminding me that he didn't do much with T, saying he was not comfortable handling T, given how small he was. This has the ring of truth and I accept it. She told me she could not remember Mr Q having T on his own. There was one occasion when he fed T. They both fell asleep whilst doing it, but she was there in the front room. Mr Q only gave T a bottle overnight when she was ill. Mr Barnes then cross-examined her very skilfully as to domestic abuse. She confirmed that Mr Q "does" slap me. He did other things as well. He sometimes did things that were worse than slapping her. There was a long pause at this point before she said that, once or twice, he punched her. This evidence was clearly very painful for her. I had absolutely no doubt whatsoever that she was telling me the truth. She then said that Mr Q did not hit her for a couple of months after T was born but would, sometimes, be verbally abusive. He would argue and call her names. He would then hit her. Sometimes she would hit him back. She was never, however, worried about him with the children. She was asked about text messages on 15 April 2019 when he told her that she could fuck off; that she was fucking thick; and that she was a thick cunt. She confirmed that he also said such thoroughly demeaning things in person.

83. Mr Barnes then asked her if she had lost her temper with T. She said she did not and she denied hitting T at all. She accepted that she had no explanation for the injuries. She added that the fact she may have been losing control did not mean that she harmed her children and the injuries were not caused by her. I then asked her about her explanation to the Police that she could not have

caused any burn mark on T with a pre-rolled cigarette as she only smoked roll-ups. She answered that what she said was true and she only started to smoke pre-rolled cigarettes afterwards. She denied trying to mislead them. I simply cannot accept this evidence. It was a lie and she was trying to mislead them and me.

84. I then permitted a break for Ms Delahunty, who appears with Mr Chippeck on behalf of Mr Q, to take instructions. When she commenced her cross-examination, it was clear her instructions had changed. The Mother began, however, by confirming that, whatever happened on 23 April 2019 must have happened after Mr Q went to work. I take the view that she is correct as to that. She said she could not remember if Mr Q asked about the burn mark when he got home. She accepted that he did ask about the fracture after it was discovered. She was not able to give an answer as to that or the bruise or the burn. She confirmed that Mr Q was present during the frenulum incident, but they did not have an argument with S in the middle and a bottle was not pushed into S's mouth. It was an accident. She has never seen Mr Q be rough with the boys. Indeed, her criticism was that he does not do enough. She has never had doubts about him handling the boys.

85. Ms Delahunty then made it clear to her that Mr Q now accepted that there were arguments that became physical, involving "pushing" and that tended to occur at night. Whilst she agreed in principle, she said that she had not ever started physical altercations. She said she had merely hit back. They did not always take place at night. She denied that it was "six of one and half a dozen of the other". She confirmed that Mr Q would try to avoid such arguments by going into the bedroom although it was not just him who tried to walk away. He said that she did not believe she had ever punched him on the arm or the back. He has punched her a couple of times on the arms, but never on the face. It is not true, she said, that she struck him first. She admitted that she did have a temper. It was suggested that, when he did not react to arguments, she hit him. She accepted she could start an argument, but she had not hit him first.

86. Mr Q then gave his evidence. He said he got home at about 7pm on the evening of 22 April and went to bed quite early. Nothing sticks in his mind about T and he does not think T woke up in the night but, if he had, the Mother would have tended to T. In the morning, he, Mr Q, would have left for work at about 0730, having got up about twenty minutes earlier. The children and the Mother did not wake up. He did not see how T was. When he got to the hospital, he was really shocked as the bruising looked really bad. He confirmed the Mother's evidence as to the injury to S's frenulum, saying he was sitting right next to her and S had the dummy in his mouth. The Mother tried to take his jumper off, but it got stuck and she panicked as she was worried about his airways. She yanked it quite hard, but he did not make any noise afterwards. It was only ten minutes later that they noticed he was bleeding. He told me that he was "quite disappointed" that he did not help the Mother more and he did expect her to do it all. They were not always there for each other. He said he was "quite upset" when "it came out" about the domestic violence, saying that the Mother made it sound like he was the

aggressor, whereas, he said, they were both aggressive to each other. He claimed they were both as bad as each other but there was both verbal and physical abuse. He did lie in his statement, but he was embarrassed, disappointed and ashamed. I cannot accept that these were his reasons for lying. He then said that they would go their separate ways as it was best for them to move on, although he accepted that they had separated before.

87. He was then cross-examined by Mr Barnes. He was forced to concede that he had been "deeply manipulative" when he said in his statement that he feared the Mother would raise the old allegations of abuse after he said that she might lie about the injuries to T. He added that they have both hit and slapped each other but he had never grabbed her hair. She does deserve an apology, but he has never apologised. He accepted that he had separated from the Mother and that he had "dumped" her by text message the previous evening. It was his decision. He was angry as "she was making out it was just me". He accepted that his lies gave rise to credibility issues. He further acknowledged that he did not give a truthful account to the Police. Indeed, this included him telling the Police that he supported the Mother as much as he could and that there was no violence. He denied that he had a problem with anger although accepted he was, at times, angry. He continued to deny any violence after the boys were removed from their care. He was taken to the text messages and he accepted that the Mother was begging for his help and he did not offer help. Instead, he responded by asking her not to bang on the wall. He denied being controlling. Finally, he denied that he has ever lost control and hurt T. He was again forced to acknowledge that, if the Mother was responsible for the injuries to T, he would feel guilt as he had not helped her when she needed help.

88. Ms Connolly asked him about an incident between himself and the Mother six weeks ago in which there was violence. He said he could not recall any such incident but then said it was not correct. I cannot accept this evidence. He reiterated that they were both violent to each other but, in some instances, he started it but not all. He said he was "struggling" and they both "struggled". He was then asked about the way in which he had finished the relationship the day before. He accepted that he left court without telling the Mother although he claimed she saw him at the bus stop. I do not consider that the way he dealt with this goes to his credit at all, but I accept that it is not directly relevant to the issue of the likely perpetrator of the injuries to T.

<u>My findings as to the various injuries</u>

89. I will deal first with the injury to S's frenulum. I accept that the Mother did not mention the dummy either to the hospital or to the Police. I further accept that Dr Magid was of the view that, if the dummy had been in S's mouth at the time, the action of pulling the jumper over his head would have forced it out of his mouth rather than into it. Nevertheless, on the balance of probabilities, I accept the parents' joint account that this incident was caused when the jumper was pulled over S's head. I cannot see why they would both say this if it was untrue. Moreover, they immediately took S to hospital for treatment and the explanation of the jumper having caused the injury has been given consistently by both. Indeed, I can see a mechanism by which the dummy got caught and

did get forced into the mouth as the jumper was pulled hard. There is no doubt, however, that the Mother used excessive force as a frenulum should not be injured by a responsible parent removing clothing from a young child. It may be that she did panic but she should not have used so much force and it did cause injury to S, albeit not intentionally so.

90. I have already found that the three injuries to T were non-accidental injuries. I must now decide if I can identify the perpetrator, reminding myself that I must not strain to do so. I have ruled out Ms Z and her partner, Mr Y. I am satisfied that, other than the parents, there was no one else who could have caused any of these injuries. I have considered very carefully the evidence in relation to each of the three injuries and I have come to a clear conclusion that I can find, on the balance of probabilities, the identity of the perpetrator of each injury.

91. Before I do so, I have applied, with great care, the Lucas direction that I gave myself. It is right that Mr Q did lie to me about the domestic violence. Indeed, he did so in a particularly unattractive way. I accept that he only made the concession that he was the perpetrator of domestic violence after the Mother had given evidence about it in a way that was clearly largely frank and truthful. Moreover, even though he accepted most of her evidence, he did so with bad grace, saying he was angry with her. He ended their relationship as a result when, even on his case, it was quite wrong for him to be angry about her evidence when he accepts she was largely telling the truth. I have decided, however, that his lies in this regard can be explained in Lucas terms and do not lead to the conclusion that he was also the perpetrator of non-accidental injuries to T. When I make my detailed findings as to these injuries, I will explain why I have come to that conclusion but, at this point, I remind myself that the Mother also misled the court as to the domestic violence prior to giving her oral evidence. In addition, she was absolutely adamant that Mr Q was not the perpetrator of any non-accidental injuries to T. Having given basically truthful evidence, save in one small respect, about domestic violence, it is very difficult to see why she would lie about NAI to protect him unless her evidence in that regard was also true. I will return to my findings as to domestic violence once I have dealt with the three incidents of NAI.

92. I have already said that I am satisfied that I am able to identify, on the balance of probabilities, the perpetrator of each of the three injuries to T. There are a number of important factors that suggest strongly that Mr Q was not the perpetrator of NAI to T. Equally, there are a number of factors that point inexorably to it being the Mother who was responsible. I propose to deal with each incident separately but, in doing so, I have had regard to all the evidence in the round and my assessment of the credibility of the parties in general. Before making my specific findings, I intend to make some general findings. First, I am satisfied that Mr Q had almost no involvement in the care of these children. This was, understandably, a source of huge frustration to the Mother. Mr Q's refusal to assist her does not go to his credit in any way and his language in responding to her was totally unacceptable and deeply offensive. Having said that, it is clear from the text messages that the Mother was, at times, becoming increasingly desperate having to care for two such

young boys without support. It cannot have helped that the conditions they were living in were so squalid. The fact that Mr Q offered her no support has two consequences. The first is that it reduces, very significantly, his opportunities to have perpetrated the injuries. Indeed, in the case of the bruising, I find he had no opportunity to have done so. Second, the pressure on the Mother will have increased significantly as a result of having no support whatsoever. At times, it understandably made her angry. Her desperation is obvious from the text messages, such as when she told Mr Q that she was "losing it" or that she was "losing her mind". She was stressed. She was overwhelmed by responsibility and, possibly, by tiredness. She was angry with Mr Q.

93. I will deal first with what I have already found to have been the burn injury to T's knee. First, Mr Q does not smoke. Nobody involved in the case has alleged that he has ever smoked. I consider it almost impossible to see how this injury could be caused by a non-smoker. Second, the Mother does smoke. I am satisfied that she smoked pre-rolled cigarettes both before and after this incident. She lied about this in her police interview and, having given myself the Lucas direction, I am clear that there is only one possible explanation for this, namely that she was trying to distance herself from responsibility. Cigarette stubs were found in her flat and I find that the explanation that she only started smoking pre-rolled cigarettes after the children were taken away as thoroughly implausible. Indeed, there is a photograph in the bundle of her smoking what certainly looks like a pre-rolled cigarette with a buggy visible at H385, although I accept that she was not asked about this in cross-examination. I further accept Mr Q's evidence that he noted the injury on returning from work one day only a few days before the removal of the children on 23 April 2019 and that the Mother gave him the explanation that T must have rubbed himself on the Moses basket. I have, of course, rejected that explanation. I do not accept the Mother's assertions that she sought advice from the GP or from Boots which I am satisfied she would have done had there been an innocent explanation. It follows that I find that this injury was caused by the Mother. It was a deliberate stub. It was therefore very serious. I am satisfied that this was a momentary loss of control, almost certainly caused by frustration and an inability to cope. It is, however, an incredibly serious thing to do to a baby and the Mother would have immediately realised that she had hurt T significantly, yet she did not seek medical treatment, which she should have done immediately. Moreover, she has not been prepared to admit what she had done. Given that the injury was not present when Ms Z had T overnight, the injury must have taken place after 16 April but before 23 April. I am satisfied therefore that her failure to report the matter did have serious consequences in that there was a further serious injury to T thereafter.

94. I now turn to the bruising evident on 23 April 2019. Whilst I have already noted my reservations as to the evidence of Dr Magid as to the time frame, I am clear that this bruising was likely to have emerged sooner rather than later. I have already found that Mr Q hardly ever had the care of T. I also find, on the balance of probabilities, that he left for work on the morning of 23 April 2019 at around 0730. This is the time he usually left, so he could open his shop. The Mother has not challenged this evidence. Indeed, the Mother says

there were no unusual marks on T's body when she got ready to go out several hours later. Moreover, Mr Q's response in the text messages, when he asked her how it happened and his shock in the hospital at seeing T, both point to his innocence of any involvement. The Mother's sister and her partner did not see any bruising on T's face when they picked him up in Aldi. Ms Delahunty postulates that the injury must have been caused shortly before they noticed the bruise. This is the one aspect that I have found puzzling as, while I can see why she makes that submission, unwitnessed NAI in a public place is unusual. Neither of them report hearing T deeply distressed prior to finding the bruising. No other member of the public has come forward so far as I am aware, to report a worrying assault on a very small baby. Of course, it could have happened in a baby changing room away from them or other members of the public, but there is no evidence that the Mother went off to change either boy and I consider it would be impermissible speculation for me to find that this is what occurred.

95. On the other hand, I have bruising that I am entirely satisfied was caused by NAI. I have already found that the Mother had injured T with a cigarette. I have ruled out Mr Q and nobody has suggested the Mother's sister or her partner had any hand in this. Indeed, it would be a remarkable and highly unlikely coincidence if two separate adults were inflicting NAI on the same tiny baby at the same time. I can only conclude, on the balance of probabilities, that, at some point that morning, in the absence of any other adult, the Mother lost her temper with T. It may have been his crying endlessly or his failure to feed or something else. As with the burn, it was a momentary loss of control, but this is made worse by it being the second momentary loss of control. The evidence is that it was a hard blow. I do not believe this Mother would deliberately punch her baby. I find it was a slap, perhaps akin to her slaps to Mr Q but it will have hurt T very much, caused him deep distress and a very serious bruise. Again, the Mother has not been able to admit she did this and I doubt she would have sought treatment had her sister and her partner not noticed it. I do not know whether the subconjunctival haemorrhage to the eye was caused by the slap. It could have been but, equally, it could have had an innocent explanation. Either way, it does not matter given my main finding.

96. I finally turn to the wrist injury. Again, I am satisfied, on the balance of probabilities, that this was caused by the Mother. I have already found two instances of NAI within a very short timeframe. I am, however, clear that this was not a shaking injury. I consider it unlikely to have been a blow to T's arm. On the balance of probabilities, I find this was a pulling and twisting injury as suggested by Dr Oates. It may have occurred when the Mother was removing a baby grow or some other item of clothing, but I accept that such an injury is not normal in the course of changing even a very small new born due to it being so rare. It was an abusive pull and twist, perhaps born of frustration. Excess force was used in both the pulling and the twisting. The Mother would have known she had lost her temper and hurt T. She probably did not realise she had broken his wrist but that is no excuse.

97. I have therefore found that, on three occasions, she lost her temper with T who was a very young, small and vulnerable baby. She did not seek treatment voluntarily and has lied about what she did. I must, albeit briefly, consider whether Mr Q failed to protect T. He undoubtedly failed the baby by not helping the Mother to care for T when she was desperate. He has never said that this was because he did not believe T was his son and, in any event, he did not offer to help with S to make it easier for the Mother to cope with T. To this extent he let the boys and the Mother down badly. I am, however, satisfied that he could not have been expected to know that the Mother had assaulted T in the way that I have found. Dr Raynor told me there was no reason to suspect the knee injury was a burn. Mr Q asked about it and was given an explanation and he was told that the Mother had sought professional attention. In relation to the broken wrist, it is quite common for such injuries not to be discovered, even by professionals. Indeed, it was not spotted in the hospital on 23 April 2019 until after the X-ray results were examined. Dr Oates confirmed this by saying that a non-perpetrator who did not witness the injury would not know it had been sustained. Given my findings, Mr Q was not aware of the bruising to T's face until after he had been taken to the hospital.

98. I will deal briefly with the neglect allegations. They are admitted but the photographs I have seen reveal dreadful unhygienic conditions in the home. The Social Worker commented that it was the worst she had seen. I entirely understand why she said that. I do accept that the situation was made worse by the Paternal Grandfather's incontinence problems. The appalling smell of urine was caused by this, but the parents did nothing to clear up after him or assist him. I recognise that these were two very young parents overwhelmed by the situation, but they did not help themselves at all and they let their children down badly. I recognise Mr Q was working very hard and long hours, but he did nothing to clean or tidy the home. The Mother was clearly quite unable to cope with the boys alone, let alone keep the home clean and safe as well.

99. Finally, I must deal with the domestic abuse allegations. I am satisfied that this was an entirely unhealthy relationship between two young adults who lost their tempers regularly with each other. There were clearly nasty verbal arguments. The text messages show Mr Q was capable of saying some truly dreadful and hurtful things. I am sure the Mother was also nasty. I cannot say who would have started these arguments. I reject the suggestion that they were all instigated by Mr Q. On the balance of probabilities, I find each instigated some of the arguments. The children were present in the home. They would have heard these arguments occasionally, even if they were, at times, asleep. The arguments would have frightened them significantly. The research is clear as to the damage domestic abuse does to children in the long term. In addition to verbal arguments, these arguments regularly turned physical. Both parents admitted they slapped the other. The Mother says Mr Q punched her on occasions but not on the face. She denies that she instigated any physical violence, whereas Mr Q says she did. I remind myself that both have lied to me although I accept that the Mother's account of the violence did, in general, have the ring of truth. I have concluded, again on the balance

of probabilities, that Mr Q did occasionally punch her as well as slap her. I also conclude that he was the instigator of the majority of the physical incidents, but I find that the Mother would have instigated some out of frustration and anger. Given my findings as to the assaults on T, it would be odd if she had been able to control herself throughout all these rows with Mr Q until after he had assaulted her. None of this does any credit to either of the parents although, fortunately, neither seems to have been seriously injured at any point. The damage to the children may, I fear, last longer. I have noted what the Paternal Grandmother said about S's behaviour and night terrors, particularly when he first went to live with her. It follows that I find threshold proved in accordance with my findings of fact above.

Welfare

100. Turning to the issue of the welfare of the boys, I did hear from the two previous social workers, Emily Harrington and Denise Sweeney as well as the current social worker, Anna Hamilton. Much of the evidence of all three went to the issue of the parents' capacity to care for the children and is, therefore, no longer relevant to what I have to decide. It is right to say that both Ms Harrington and Ms Sweeney told me that Mr Q had been very much in the background. Ms Harrington said that the Paternal Grandmother had once contacted her to say that Mr Q had not been in contact with her for a week, but she blamed this on him being back with the Mother at the time. Ms Sweeney told me that she had never seen Mr Q behave in a way that suggested he had anger issues. She found him to be the opposite, namely apathetic and reluctant to engage. This has, of course, proved to be incorrect but I accept it was what she observed. She did tell me that he was very kind and warm with the boys, albeit he did not take his responsibilities seriously and there was a lot more he should have done.

101. By the time Ms Hamilton gave evidence, all three parents had accepted that they are not able to care for the boys. She commended them greatly and said she was glad for the boys. It showed the parents now had a greater insight into the children's needs. She did give evidence about future contact. She considered that the existing contact should be reduced gradually over eight weeks with it taking place for two to four weeks in a Contact Centre with the Paternal Grandmother present to learn the skills to deal with it safely. Thereafter, her recommendation remained six visits per annum in the community. At the time, she assumed the Mother and Mr Q would be having contact together. She did not favour it taking place at the Paternal Grandmother's home. She said that the Local Authority trusts the Paternal Grandmother absolutely to do the right thing even if it conflicts with the wishes of her son. Having heard briefly from the Paternal Grandmother, I accept Ms Hamilton's evidence in this regard. She confirmed that Mr Q had taken up the majority of his contacts at the Paternal Grandmother's home. I took the view that she did get rather tied up in knots by Ms Delahunty's careful cross-examination as to contact. She accepted that more regular contact might be appropriate if the Paternal Grandmother is happy with it, but I take the view that the stability of the boys is the crucial issue and it is important that Mr Q does not have disproportionate contact compared to the Mother and Mr R as that could give the boys the wrong impression. When

cross-examined by Mr Clegg on behalf of Mr R, she said that T can become inconsolable during Mr R's contact. The Paternal Grandmother often has to be called back early to console T. She accepted that it should get easier if there is regular contact, which there has not been to date. She added that her view of contact six times per annum should be the minimum. This figure could be increased if Mr R is consistent, but he has not been consistent to date and he has been unable to take on advice. He does need a high level of support as he has demonstrated that he is not able to meet T's needs. I accept that this is the case, at least at present.

102. The Paternal Grandmother confirmed that she was delighted that all three parents had recognised the benefits of the boys remaining with her and that they were all actively supporting it. I have already made it clear that I entirely agree. It will be excellent for the boys to know in the years ahead that their parents were responsible in relation to their placement and had their best interests at heart. She said it was a relief to her and was encouraging for the future. She told me that, to date, contact has been "rubbish" as the parents have all regularly not turned up, causing S to bang his head on the floor. She does not want to put him through that again. I agree on this as well. The parents must realise how important it is that they stick to the contact arrangements and how upsetting and damaging it is for the boys if they are unable to do so. In answer to questions from Ms Delahunty, the Paternal Grandmother told me that contact with the Mother could not take place in her home as her husband had banned the Mother from going to the property due to some allegations the Mother made of sexual abuse against Mr Q. It follows that any contact will have to be in the community. She said that her son accepts that she must put the boys first, saying that he has not tried to take advantage of her, but she does want him to be involved in family parties and the like. I understand why she says this. She did, however, add that the Mother should broadly have as much contact as Mr Q.

103. The final witness was the Guardian, Ms Tait. She confirmed that contact should reduce to monthly after the transition plan and be reviewed after six months. She reminded me that this would involve 36 visits per annum if the Mother and Mr Q are indeed separated. The Mother's contact should be in the community, supervised initially by the Local Authority and then by the Paternal Grandmother. Mr Q's contact should be at the Paternal Grandmother's home to make it as natural as possible for the boys. The Paternal Grandmother should be fully aware of the admissions made by her son, by having a copy of my judgment. Mr R's contact should be in the community, possibly attending toddler groups and the like. A written agreement between the Paternal Grandmother and the parents is important. When asked by Mr Barnes, she said that contact only six times per annum was insufficient for children so young. It was about maintaining a relationship with the parents rather than identity contact as would be the case if they were in long term fostering. Although 36 visits per annum might be quite onerous, she said it can be reviewed.

104. I broadly accept the evidence of the Guardian. I consider that six contact visits per annum is insufficient for boys of this age. I take some comfort from the fact that, although 36 visits per annum is a significant number, I am of the view that Mr Q's 12 contacts can take place in the Paternal Grandmother's home.

This means that she will only need to take the boys into the community 24 times per annum for the contact with the Mother and Mr R, which is once per fortnight and is, in my view, manageable. The parents must, however, attend regularly. If they do not do so, the Paternal Grandmother will be entitled to bring the contact to an end as the boys need certainty. The reduction to monthly contact should take place gradually over the next two months. Whilst I might have thought this was too soon in some cases, it cannot be asserted that this is the case here given that so much contact has been missed. This has the added advantage that the Local Authority will continue to be involved for the next three months, such that the reduction to monthly will have occurred before the Local Authority bows out, assuming everything has gone well. I am not making a contact order. The Paternal Grandmother will decide but this is guidance to her that I am sure she will respect if everything goes well. Given my serious findings of NAI against the Mother, it is vital that the Paternal Grandmother supervises the Mother's contact indefinitely. I am sure she will understand and respect this need. She must also supervise Mr R's contact given his inexperience and the difficulties he has had with contact to date. I do consider that each parent should have broadly the same contact, but I accept that Mr Q is likely to have slightly more given that I am not restricting him from attending family events provided they are reasonable and proportionate.

105. I now turn to the issues surrounding Mr R. He is entitled to a declaration of his paternity. That is not in issue. Although it will give him parental responsibility, it will immediately be restricted by the Special Guardianship Order. He also seeks a change of T's surname from Q to G-R. I understand G-R to be Mr R's full surname. That would incorporate the surnames of both his parents. I do not consider this to be the right way forward. I remind myself that T has been known by the surname Q throughout his life so far, although he is, of course, too young to know this yet. The Mother does not want him to be known as P (her surname), because she says that she was bullied for having that name. I respect her view in this regard. Although T is not related to Mr Q, he will be living with S who is known by the surname Q. I am of the clear view that there should be a reference to the name Q in T's name to reflect that side of the family even though they are not biologically related to him. I therefore direct that he be known by the surname R-Q. This is the name favoured by the Mother, which is of some significance. I am sure Mr Q and the Paternal Grandmother would prefer some reference to their family and, in the long term, I consider that to be in T's interests. The name will, however, be hyphenated to ensure that Mr R's name is not dropped. In this day and age, it is commonplace for children to have different names to those who care for them and I am clear that this will not be contrary to T's interests. In any event, I remind myself that he is cared for by the Paternal Grandmother and her husband who do not have the surname Q.

106. There will, of course, be Special Guardianship Orders in relation to both boys in favour of the Paternal Grandmother and her husband, with all the legal ramifications that I have set out above. I remind the parents that such orders are more than just a residence order in favour of the Paternal Grandmother and her husband. It will be the Paternal Grandmother and her husband who decide what should happen in relation to the boys, not the parents. This is a long-term order for the foreseeable future, not something for the short term. Any substantive

change can only be achieved by an application to the court and it goes without saying that any judge dealing with any further applications in this case must have a copy of this judgment available to them.

107. I believe that this deals with all the matters in issue before me. I have already paid tribute to the bravery and good sense of the parents in recognising what is in the long-term interests of these boys. In addition, it is important to recognise the role played by their lawyers in giving them such sensible advice. I make it clear that it was exactly the right thing to do. Indeed, in so far as matters have remained in issue, nothing more could have been said or done on behalf of any of the parents than what has been said and done on their behalf.

Mr Justice Moor
17 December 2019