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Case No.: OX19C00010

**IN THE FAMILY COURT AT OXFORD AND IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF D**

Date: 20 November 2019

Before:

**HHJ Vincent**

**Between:**

**OXFORDSHIRE COUNTY COUNCIL**

**Applicant**

**and**

**a mother**

**Respondent**

**and**

**a father**

**Second Respondent**

**and**

**D**

**(By his Children's Guardian Leeanda Morreale)**

**Third Respondent**

Andrew Leong, instructed by Oxfordshire County Council for the Applicant  
Liz Knox, of Oxford Law Group solicitors for the Respondent mother  
Andrew Lorie, instructed by Reeds solicitors for the Second Respondent father  
Michael Trueman, of Trueman's solicitors for the children's guardian

Hearing date: 20 November 2020

**JUDGMENT**

## Introduction

1. D was the victim of a series of significant physical assaults perpetrated upon him by his father between November 2018 and January 2019. D was around 16 months old. At a fact-finding hearing in July 2019 I found that the father had inflicted injuries upon his son. I also found that his mother failed to protect him, that she had prioritised her relationship with the father above the need to protect her son, had failed to seek medical treatment, and that she had lied to nursery staff and health care professionals about the cause of D's injuries.
2. D moved to live with his maternal grandparents at the end of January 2019. They adore him and have provided him with consistent and loving care. D is a happy and settled little boy and is doing very well in all aspects of his development. He continued to spend time with his mother three times a week and since the summer she has been a part of the household and has been caring for D with the support of her parents. It is now proposed that she moves to her own home with D, and that I conclude these proceedings by making a supervision order to the local authority for twelve months.
3. That D can now safely be rehabilitated to his mother's care has been made possible by her receiving intense support and therapy from social work, NHS professionals, as well as her parents. Her parents have accepted huge changes in their lives to provide a home for D, and giving him everything he needed. It has not always been easy to put D's needs before his mum's and at times they have felt pulled in different directions, but it is a credit to them that they have listened to professionals, and always done what is asked of them.
4. It is an exceptional team of social workers who has managed this situation sensitively and gone over and above to support this mother. They have kept faith with her, and committed time and resources to supporting her make the necessary changes in her life so that she could become a full-time parent to D again.
5. The mother has undergone intensive parenting work provided by FASS<sup>1</sup>, attending twenty weekly sessions as well as ten sessions of individual and intense therapy. She will continue to work with FASS, attending a monthly group session to stay in touch and to consolidate what she has learned. She has had an immensely difficult time, she was heartbroken to be separated from her son. The process of coming to understand the harm that her son had suffered at the hand of his father and her role in failing to protect has been very hard for her and she has found the Court proceedings very stressful. However, she should be immensely proud that she has had the strength of character to come through an intensely difficult period in her life. She has worked incredibly hard and it is clear that she is now putting her son and his needs front and centre of her life. There can be no question of her love for him, and of her willingness to commit herself to meeting his needs.

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<sup>1</sup> Family Assessment and Safeguarding Service, Oxford Health NHS FoundationTrust

6. She is well able to care for D on a day to day basis, however the risk to D arises from the role that she played in failing to protect D. The risk is that her own psychological make-up is one where she is vulnerable to prioritising a relationship above the needs of her son, that she may in the future fall into a risky relationship quite quickly as she did in this case, and that she could become once again so preoccupied with meeting the needs of her partner (whether because she is infatuated, or subject to their control and influence, or in some other way blinded to the risks they may pose) that she would lose sight of her son's needs and he could be put at risk of harm. The risk relates not just to D's father but if she were to form a new relationship. Further, because she feared criticism from others, the mother concealed information or gave a misleading version of events. This meant that family, friends, nursery staff and clinicians were either not informed at all or were given false information that meant chances for them to support mother or to intervene to help D were missed.
7. The mother has worked hard to understand this, to work on the personality traits that informed her responses, and to make changes. The case has taken a long time to conclude because although the mother's commitment was never in doubt, a very great deal has been asked of her and it has been a long journey. By June 2020 although she had made good progress, it was felt that she needed to complete treatment with FASS before a final prognosis could be given. There has also been a concern about the extent to which the maternal grandparents would be able to act protectively in this case, having made less progress than the mother in their work with FASS. They rightly blame the father for D's injuries, but have been more reluctant to acknowledge the mother's role, and the continuing risk that, as before, she may not share with them any fears or concerns about a partner of hers posing a risk to D, and that they may not always be able to spot the signs.
8. FASS has also done some work with the father, but they do not consider he was able to take responsibility for causing injuries to his son, or that he was in a place whereby he would benefit from treatment.
9. The report from FASS in July 2020 concluded:
  - a. They did not support any contact between the father and D and would not be offering any reparative parenting treatment to the father;
  - b. The mother had engaged conscientiously in the treatment and had demonstrated good gains in acknowledging her part in the serious harm D had suffered and good gains in actively planning for D's future safely;
  - c. FASS remained concerned that the maternal grandparents are unwilling or unable to imagine scenarios where D may be at risk again in the future and there has been little progress in supporting them to plan for their part in helping the mother manage any future risk;
  - d. The risk to D was from the mother becoming too focused on her adult relationships again and/or finding herself having made a mistake and being too ashamed to ask for help/see a way out;
  - e. FASS suggested a period of the mother caring for D in the same household as the maternal grandparents was considered at this point. This would give the opportunity to strengthen her relationship with D (considered a key risk factor), test the mother's capacity to seek help when she is struggling or has made a mistake in her parenting, and test whether the mother and the maternal

grandparents are able to build a more collaborative stance on safeguarding (another key risk factor).

10. FASS filed an update on the mother's therapeutic progress in September which reported that the mother has made significant progress, in terms of reflecting on what went wrong within herself which resulted in D being injured, developing a more complete and nuanced picture of the father to manage future risk, and working on providing D with age appropriate answers to assist him in understanding his circumstances. The recommendations in that update do not raise any objection to the mother moving with D back into the community, but suggest a high level of monitoring and support from the local authority as the mother moves to independent living with D and she continues to test out her capacity to stay focussed on D as and when stressors arise.
11. The local authority's plan was originally for the mother and D to move into the community around the middle of September 2020. Unfortunately, due to the restrictions around COVID-19, that move has been delayed. However, the move is now imminent; the mother has secured a tenancy and has spent this week getting the property ready to move into and preparing D for the move.
12. I have read the local authority's final evidence, final care plan and updated reports from FASS. I have read the final statements from the parents.
13. The mother agrees with the plan and in addition seeks an extension of the non-molestation order against the father for a period of six months beyond the expiry of the supervision order.
14. The father does not oppose the supervision plan nor the extension of the non-molestation order.
15. The maternal grandparents agree with the local authority's plan, and will continue to offer vital support their daughter and D, as they have done since he was born.
16. The guardian has filed and served a position statement endorsing the local authority's care plan and recommending that these proceedings are concluded at this hearing by the making of the orders sought by the local authority and the mother.

## **Conclusions**

17. I have had regard to all the evidence and considered the welfare checklist factors and I am satisfied that D's welfare needs would best be met by his returning now to his mother's full-time care in an independent setting, but with the framework of support from family and the local authority in place.
18. I agree that the order which would now best meet D's needs is a child arrangements order confirming that D lives with his mother, together with a supervision order for twelve months. This will entail core group meetings every six to eight weeks and monthly visits, with additional contact as and when required.

19. I am satisfied that the non-molestation order should be extended for a further six month period beyond the expiry of the supervision order. Although there have been no further incidents between the mother and father, he remains a risk to her and to D while there is no evidence that he has changed his behaviour or level of insight into his actions.

## Contact to father

20. The father had been serving a prison sentence for threatening the neighbour of his partner with a kitchen knife during a violent altercation. The father had been released on licence on 10 March 2020. The father has since been recalled to prison due to a breach in his licence conditions and a further domestic abuse verbal incident with the mother of his daughter, [name redacted]. The father is also facing a pending criminal prosecution in relation to his infliction of the injuries on D.
21. The father has not accepted the findings of his infliction of the many injuries upon D. In his final statement he acknowledges the fact that findings have been made against him, but maintains his own version of events, *'I understand that for D his recollection of his time with me such as it is from that young age is likely to be different from mine.'* The report from FASS sets out the outcome of two sessions with the father in which his responses to the judgment were explored in some detail. Although it was identified that the father could reflect on some positive memories of D and wanted the best for him, he did not demonstrate any interest in identifying what had gone wrong previously or in wanting to understand his own part in making changes for the future. He wholly denied causing injury, which is not an unusual response, but he was a long way from acceptance of the judgment. His explanations were said to be confusing to follow, *'he variously minimised harm, distorted or confused facts from the finding of fact, or externalised the blame for the injuries. For instance, at times he misremembered whether he was present when D was injured, underreported how serious the bruising was, and at other time blamed the mother for the injuries, or cast D as simply an accident-prone child.'* His explanations were described as *'busy, defensive and somewhat incoherent.'* He had not read the judgment, and denied that he needed any help with his parenting.
22. His failure to see things from his children's perspective was described as striking, and concerning.
23. The father accepts that at the moment there should not be any contact between him and D. In his conversation with Dr Mein from FASS he suggested that it was his intention now to wait until D was much older, around sixteen, before he pursued contact with him.
24. However, on his behalf, Mr Lorie suggested that the local authority might at some point in the future carry out a risk assessment and look at this again.
25. The evidence at the moment is unequivocal. FASS has expressly considered this in a careful letter which considers the potentially harmful impact upon D and his mother of receiving letters in circumstances where the father has not demonstrated any insight or understanding of the potential impact of contact upon them. The author suggests that directing that D receives letters or photographs from his father would represent an

imposition on him and could risk either perpetuating feelings of fear or of being intruded on that mirror his early experiences as a victim, or may hamper efforts to help him build a coherent narrative of his early life at his own pace, for example if the letters had not been preceded by an apology and an acknowledgment of what had happened to him, or if D had not developed a level of understanding about this that enabled him to cope with these letters. The same considerations apply if D was told that information about him was being shared with his father by his mother or through any school he attended.

26. The mother is at an early stage of recovery from the impact of this relationship and these proceedings and there is no doubt that she would be at risk of being very destabilised by continuing contact between D and his father. She is not in a position to support D at this time with receiving letters and her ability to care for D could be impacted. An order for direct contact between D and his father or for information about D to go to his father would not be consistent with the terms of the non-molestation order, which is designed to protect her and D.
27. Following discussion with the parties in submissions, I am satisfied that the child arrangements order should not provide for D to have any contact with his father, either direct or indirect. The father should be prevented from attending any nursery or school that D attends and I shall make a specific issue order providing that the school does not send information about D to the father or invite him to attend the school or parents evenings. While this is a significant restriction on the father's exercise of parental responsibility, it is consistent with the recommendations from FASS which are carefully thought out and based on the evidence. The local authority's position about contact is supported by the mother, grandparents and guardian.
28. In the event that the father applies to the Court in future for a change to the terms of this order, he should attach to his application evidence of a significant change in his circumstances, which might include for example that he has undergone a domestic abuse perpetrators' programme, or other similar course, and he should confirm that he has contacted the local authority and invited them to carry out a risk assessment, and to exhibit correspondence with the local authority showing the outcome of such assessment. This should be recorded on the order, and serves the purpose of setting out for the father what he might need to show for his application to progress, and provide some reassurance to the mother that she will not be subject to any private law proceedings, unless there has been a substantial change in the father's circumstances.

HHJ Vincent  
Family Court, Oxford  
20 November 2020

## Annex: Fact-finding judgment 31 July 2019

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Case No.: OX19C00010

### IN THE FAMILY COURT AT OXFORD AND IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF D

Date: 31<sup>st</sup> July 2019

Before: HHJ Vincent

**Between:**

**OXFORDSHIRE COUNTY COUNCIL**

**Applicant**

**and**

**A mother**

**Respondent**

**and**

**A father**

**Second Respondent**

**and**

**D**

**(By his Children's Guardian Leeanda Morreale)**

**Third Respondent**

Matthew Brookes-Baker, instructed by Oxfordshire County Council for the Applicant  
Isabelle Watson, instructed by Oxford Law Group solicitors for the First Respondent mother  
Andrew Lorie, instructed by Reeds solicitors for the Second Respondent father  
Michael Trueman, of Trueman's solicitors for the children's guardian

Hearing dates: 24<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup>, 29<sup>th</sup>, 30<sup>th</sup> and 31<sup>st</sup> July 2019

## **JUDGMENT**

## Chronology of events leading up to issue of proceedings

1. I am concerned with D who will be two next month. His mother is [*name redacted*] and his father is [*name redacted*].
2. The parents got in touch through a dating app and met in person for the first time sometime in August 2016. In November 2016 the mother discovered that she was pregnant. She decided to keep the baby whether or not the father chose to be involved in his life, but she very much hoped that he would be. The father was already in a long-term relationship and a few weeks later his partner discovered that she was also pregnant. The mother says at that time the father made it clear to her he did not want to be involved, and both he and his partner sent her threatening messages telling her not to contact the father. She says the father sent her a message saying that he would assault both her father and brother and burn down their home if she continued to contact him.
3. However, the mother subsequently invited the father to come to the twenty-week scan and he did. The next time he saw her was on the day D was born in August 2017. In her statement the mother says that the father did not visit her again in hospital, but she took D to see him and his family in [*place name redacted*] when he was a few weeks old. In her oral evidence she told me that the father had visited a few more times than that, and that when D was four weeks old she agreed to him going to spend a whole weekend with his father at the paternal grandmother's house.
4. The father's daughter was born at the end of September 2017 and the father did not see D again that year. The father was in prison between November 2017 and March 2018. Upon his release he returned to live with his partner and daughter.
5. Contact between him and his son appears to have resumed sometime thereafter, but was sporadic. Neither parent gave reliable evidence to me about how much time the father had spent with D in the summer of 2018, and I have not been able to piece together the dates. In general it seems that when things were going well between the father and his ex-partner he did not see D, but when they were not, he did. He attended D's christening in May 2018 with members of his family. The mother said that after that he did not see much of D, and it was not until the father split up with his girlfriend and moved to live with his mother that he started seeing D more regularly.
6. In around June 2018 the mother moved out of her parents' house where she and D had been living since his birth, and into her own flat, with D. The mother works as an assistant in a nursery Mondays, Tuesdays and Wednesdays. D started going to the nursery in April 2018 on Mondays and Wednesdays.
7. D was in the care of his father in [*place name redacted*] when he sustained an injury to his face on **17<sup>th</sup> June 2018**, which was father's day. The father apparently reported to the mother that it was caused by his two-year-old nephew pushing D who fell to the floor and hit some Lego. The nursery notes record redness and bruising to D's face and ear, and that he had been pushed by his cousin and fallen on some wooden blocks. The parents took D to hospital in [*place name redacted*].



8. The notes made by the nurse carrying out the initial assessment make no mention of any incident involving lego or wooden bricks. The note reads:

*'D with dad this weekend. Playing with older cousin .. dad doesn't think he took his eyes off the children at all. D then put down for a nap around 13.15 ... prior to mum [returning?] at 14.15 when facial marks were noted. Both parents brought immediately to AE to be seen. ... [on examination] sitting happily eating crisps and smiling with substantial red marks on his face and bruising of his inner ears, appearance of markings possibly have appearance of a pair of small children's hands rather than a rash due to the linear white marks between stripes of erythema. Normal eye movements, engaging well with both parents and both appear concerned, discussed need to rule out any concern so that mum not faced with accusations when he goes to nursery in [place name redacted] tomorrow and to have a review in case fits with an atypical rash.'* The notes record the management plan is of a referral to a paediatric registrar to assess due to the possibility that D had sustained an inflicted injury, although the nurse making the note records his or her view that they do not think this is a case of NAI. However, the note then records 'no show' and that paediatrics confirmed *'the child was never brought to be seen by paediatrics.'*

9. On **25<sup>th</sup> June 2018** D had a bruise on his inner thigh. When pointed out to his mother by nursery staff, she said she had not been previously aware of it but suggested it might have been caused in a paddling pool. She said she would call father and ask if he had noticed it.
10. On **9<sup>th</sup> July 2018** the mother called her general practitioner asking for a blood test for D on the basis that she said he bruised easily. D did not attend nursery on that day, reported to be sick. The next date that he attended nursery was **13<sup>th</sup> July** and he was noted to have a scratch on his left cheek. His mother said it was from another child at the splash park.
11. On **22<sup>nd</sup> July 2018** D was taken to hospital. He had an injury to his head and had been vomiting. His mother reported to doctors that he had 'headbutted the floor' three days previously.
12. On **23<sup>rd</sup> July 2018** the mother called the general practitioner again with concerns that D was an 'easy bruiser'. She attended the surgery with him the next day, and old bruises were noted, the mother said they all had an 'obvious trigger'.
13. D did not attend nursery on **25<sup>th</sup> July 2018**.
14. On **26<sup>th</sup> July 2018** D had another bruise to the middle of his forehead, which his mother reported was caused by him walking unaided and falling, bumping his head on a door frame.
15. In her witness statement the mother says that it was not until the end of July 2018 that D's father showed an interest in D again, and she then allowed D to stay with his father for the weekend of **4<sup>th</sup> August**. The mother says the father told her that he and D would be staying with the paternal grandmother, but in fact the father went to his partner's home, having promised her he would not. The mother was in her car when she saw the father walking with D in his pushchair in the direction of his partner's home. She says

she stopped the car, that they had an argument in the street and the father punched, pushed and kicked her, D was in his pushchair at the time and was crying, holding out his hands for his mother to take him. The father accepts they had an argument but denies assaulting the mother.

16. Notwithstanding this incident the mother says that the father came to D's first birthday party a few days later, and she thereafter 'resumed a relationship' with him, and he was coming down to [*place name redacted*] to spend time with her fairly regularly.
17. On **9<sup>th</sup> August 2018**, [*redacted*] D had another bruise on the left side of his head, the mother said he had fallen over in the park, bumping his head on concrete.
18. D fell over at nursery on **9<sup>th</sup> September** and bumped his head.
19. On **10<sup>th</sup> September 2018** he was off nursery; the mother reported that he had tonsillitis and had an allergic reaction to penicillin.
20. On **14<sup>th</sup> September 2018** D had been in the sole care of his father at his mother's flat. After he left his mother noted a mark on the back of his head which she has described as a friction burn. Photographs show quite a livid red mark at the base of the skull. The father told the mother he thought it had happened when D had rubbed his head against the back of the sofa. The mother accepted this explanation.
21. On **1<sup>st</sup> October 2018** D was noted at nursery to have a red mark on the right side of his head. His mother reported that he had been walking towards the washing machine and as she opened the door, he walked into it.
22. On **11<sup>th</sup> October 2018** the health visitor noticed a bruise below D's right eye and this was also noted by nursery. The mother said that D had slipped on a rug and fallen onto the corner of a bed. The mother sent a photograph to the father on 12<sup>th</sup> October. In the photo D has got a nasty triangular shaped graze underneath his right eye and there is a patch of reddened skin directly above it. The mark looks red and raw and very sore.
23. On **22<sup>nd</sup> October 2018** the mother sent the paternal grandmother a text reporting 'a day in the life' of their grandson - noting he had three accidents in one day and that she had taken him to accident and emergency. She described him as having 'a huge egg on his head' and a cut lip. She admitted in Court that she had not in fact taken D to hospital. She said that all the accidents had happened while D was at nursery, she trusted their procedures and did not feel the need to take him to hospital, but at the same time she didn't want the father's mother to think that she was not taking proper care of her grandson. She said this is why she told her that she had taken D to hospital when this was not true.
24. On **25<sup>th</sup> October 2018** the father was arrested on suspicion of strangling and punching his ex-partner in the face, causing a black eye and a split lip.
25. On **17<sup>th</sup> November 2018** the mother was out for the evening and D was in the sole care of his father when he sustained a significant bruise to his forehead. The father messaged the mother with a photograph at about 8.30 p.m. in which D looks extremely sad. His eyes seem to be wet with tears and his bottom lip is jutting out in a sorrowful expression.

He has a very large, very dark bruise on the left side of his forehead which is purple and red and is surrounded by a significant area of red skin extending down to the eyebrows. This is not a medical photograph but it would appear that there is significant swelling around the bruise. D's left cheek is also very red and looks tender and sore. On any view this photo shows a very young child with a significant and concerning injury.

26. The father sent a text message saying *'fucking jesus lol'*. The mother responded, *'ohh no is he okk??'*. Father responds *'yeah he's fine just playing with his footballs'*. Mother responds, *'his cheek is so red as well'*, and then seconds later, *'glad he's okay though won't be long.'* Ten minutes later she asks father to keep him awake *'because of that bump'* the father replies *'what do you mean keep him awake why he's fine just bump his head with excitement'*. The mother apologises and says *'ok just check him regularly sorry, it looks like a big bump that's all.'* She was repeatedly asked in cross-examination whether she was worried at this point and she said no she wasn't, because the father said D was fine.
27. D was with his father the next day in [place name redacted] when the father was arrested by the police at the house of his ex-partner and mother of his daughter. The father's evidence about this was unclear he suggested that he took D to his partner's house but when things between him and his partner started to get a bit heated he left, taking D back to his mother's and then he returned on his own. Contemporaneous records from the police record that D was in fact present when an incident took place, and a referral to social services was made due to a report that the father had been shouting and had kicked the door breaking the lock, and that D had been present. The mother went to collect D and later sent a reassuring message to the father telling him he didn't deserve this and to keep his head up. She tells him she would never ever stop him from seeing his son.
28. On **26<sup>th</sup> November 2018** D attended nursery and a red mark on his head was noted, cause unknown. The same day his father texted the mother and reported *'an accident .... just a little scratch to the head, I bring the form home for you to read later.'* It appears that D was in the care of his father on both 25<sup>th</sup> and 26<sup>th</sup> November because at 7.58 a.m. on 27<sup>th</sup> November the mother reports that she has *'just got back'* and thanks the father for spending the last couple of days with D.
29. On **1<sup>st</sup> December** the mother went out for the evening leaving D with his father. At 7.28 p.m. she texted him asking if D is ok and whether he has eaten. The father replies, *'... he's not eaten a damn thing and was sick again so went to get new clothes with him fell over his push chair with him in my arms his face a bit red but he's fine not crying anymore.'* The mother does not reply for half an hour when she simply says, *'has it gone down x'*. Four seconds later she texts her brother asking him to get a bottle of wine. At 8.23 p.m. the father asks the mother when she is going to be back as he wants to go to the shop. He says that D is asleep. The mother comes back to the flat, the father brings D out to the car and the mother drives him to the shop to buy cigarettes. Later on they visit the mother's brother.
30. A photograph sent by mother to father on **2<sup>nd</sup> December 2018** shows D with a red-purple mark on his left cheek with smaller dark red marks within it. He again looks rather sad and there appear to be also more linear marks on his forehead.

31. The next morning the parents took D to Socratots football club. Neither parent sought to challenge a witness statement made to the police by the coach, which includes the following:

*'December 2nd is the most memorable session. It started at 10:15, so it would have been about five past or ten past that D first came in. He came in with his mum, and his dad came about three or four minutes after. D was covered in bruises, he was very bruised. They were purple bruises, deep bruises. His face was purple and he had bloodshot eyes. Both of his eyes were bloodshot, one was completely red. He was fully clothed so I only saw his face. I don't think I saw his feet touch the ground; every time his mum went to put him on the ground he'd cry. Not an angry cry but a whimper. He wasn't being naughty — looking back I can see that he was in pain. At the time I thought he was off, he wasn't himself. He seemed poorly. I can't say if he limped or anything because I didn't see him walk.*

*I said "good morning" but when I went close to him he'd start crying and back away, and cower into his mum. Usually he'd run over to me and say good morning. I could see he was not himself — physically and his personality. I said to his mum "is everything alright?" and she said "yeah, he's just had an accident". I think she may have said he fell down the stairs, I seem to recall this, but I'm not 100% sure. It was D's behaviour that was so concerning. His mum was trying to glaze over it and carry on, saying "come on D". It was all a bit awkward, then after roughly about fifteen minutes his dad said he'd had enough. He didn't speak to me but I was close enough and heard him say "we're going". He said something like "he's not doing it, let's go home". I assumed D was feeling the effects of whatever accident he'd had. His mum seemed a bit cautious and nervous but his dad was decisive and just took him away.'*

32. The mother kept D off nursery on Monday **3<sup>rd</sup> December**. She reported to nursery that D had fallen against a bench at football on Sunday morning. She now accepts that this is not true and that she made up this story.
33. At 12.26 p.m. she texted the father saying, *'he's been calling your name and even went looking for you. Keep your head up daddy <3'*. The mother drove to [place name redacted] to collect the father and bring him back to [place name redacted] on 4<sup>th</sup> December.
34. On **5<sup>th</sup> December 2018** the mother texted the father at 07.12 a.m. saying, *'sorry for this morning, it didn't need to happen. I know your trying your best and can imagine its frustrating but in time I promise it will get easier, I wouldn't ever say no to you seeing or spending time with him. I just want him to have us both in his life xx'*. Neither parent could recall an incident on the morning of 5<sup>th</sup> December 2018, but both of them have described having fairly regular arguments.
35. The father stayed with the mother on the night of 5<sup>th</sup> December and was looking after D while the mother went to work on **6<sup>th</sup> December**. He sent a photo of D in the bath at 7.59 a.m. D looks watchful and sad. This is a photo taken on the phone but the left side of his face appears to have dark red marks upon it and there are dark marks under both eyes. In her evidence the mother confirmed that these marks were bruises left over from the weekend.

36. At some point the father took D round to the mother's parents. She said he was just leaving when she arrived there shortly before 8.30 p.m. At 8.28 p.m. she asked him to ring her, because she had seen red marks on D's forearms. The parents spoke on the phone and the mother says the father said that he might have grabbed D's arms too hard. The father said he did not recall saying this. Photographs of D's arms show clear red linear marks on D's arms.
37. The father appears to have spent the night of 6<sup>th</sup> December in [place name redacted] but returned to [place name redacted] on the morning of 7<sup>th</sup> December.
38. An anonymous referral was made to MASH on **6<sup>th</sup> December**, D had been seen with bruises and the father was described as known to lash out. The referral is believed to have been made by the father's ex-partner [name redacted]. The police notes record that the parents were spoken to and they denied any bruising to D or physical chastisement, and they are reported as saying that the father's contact with D was mostly supervised.
39. At 11.13 a.m. on **8<sup>th</sup> December** the mother texted him, *'I'm sorry, I didn't mean to get upset and cause an argument. It's just because I know you love him and want that bond with him it's just taking longer than we both thought, I know he's okay when I'm not there. Your doing your best and it will pay off I promise xx'*
40. The mother took a photo of a bald patch on D's head on 9<sup>th</sup> December.
41. On **10<sup>th</sup> December** D went to nursery and when changing his nappy one of the workers noticed that he had bruised thighs. The mother was not aware of it, but suggested it might have been caused when D fell onto a dog bowl the day before. A note on the same day in the nursery records identifies the bald patch and says *'mum not aware'*.
42. The mother received notification that day from the MASH team that the case was closed. The mother sent a text to a friend describing the allegation to MASH as 'disgusting' and that she intended to go down to the police to 'prevent anything more happening'. She indicates that the father has told her it was [father's ex-partner] who made the referral.
43. On **13<sup>th</sup> December 2018** the mother called the general practitioner to discuss the bald patch on D's head. The note in his records states that she was advised to speak to a health visitor and she then hung up, and when called again declined the call.
44. On **14<sup>th</sup> December 2018** the mother sent a text to the father: *'you've made me cry and made me feel so shit for nothing I've done nothing but support you and D x'*. The father replied, *'yeah [name redacted] you have but you must understand me when you know I've tried to please him and the reason I ain't seeing [name redacted] is because I want to be in his life it's not my fault he doesn't want to know me the little things are nice but he just needs to trust me I'm not doing all this to not be in his life you saying I'm lashing out didn't help either where are you'*.
45. On **20<sup>th</sup> December 2018** at 6.43 a.m. the mother sent a message to father telling him *'I like having you here'*.
46. On **21<sup>st</sup> December 2018** the mother's car was seized by [name of police force redacted] police. The father had been driving it when it was involved in a crash and written off.

47. At 11.02 a.m on **22<sup>nd</sup> December 2019** the father texted the mother, *'wish my son wanted me like you do'*. At 4.29 p.m. that day he texted, *'I've had enough of trying to make my son like me and you always cuddling him no wonder why he don't want me.'*
48. D was with his father on **23<sup>rd</sup> and 24<sup>th</sup> December**. On 24<sup>th</sup> December at 6.33 p.m. the mother texted to the father, *'don't let this ruin the day you've had with him, he's just being a monkey <3'*. But at 6.51 p.m the father replied, *'yeah I know I'm guna bring him back tonight if that's ok'*. The mother asked why he wanted to bring him back all of a sudden. The father replied *'he's not settling I'm bring him back now'*. The father accepted in evidence that he had told the mother D would be staying with paternal family but in fact took him to stay with a friend. It later transpired that the friend was the brother of the father's new partner, and she was also staying.
49. The father spent stayed the night with the mother on Christmas Eve and on the night of Christmas day.
50. D didn't attend nursery on **31<sup>st</sup> December**. The mother reported to nursery upon his return on 31<sup>st</sup> December that a bruise on the right side of his forehead had happened on 25<sup>th</sup> December when D was playing football and he had fallen over, hitting his head on a wooden bike.
51. On **2<sup>nd</sup> January 2019** the father texted the mother, *'wish he wanted me as much as you did'*. The mother replied, *'It's hard I know but these things sadly take longer than we'd like them to, as long as you continue to do what your doing in time he will trust you again and be happy'*.
52. The father was looking after D again on **3<sup>rd</sup> January** because he texts the mother at 7.43 pm saying *'when you back I need to go D's tired anyway'*.
53. On **4<sup>th</sup> January 2019** the mother texted maternal grandmother to tell her that a doctor had referred D for a blood test about his hair loss. In fact she accepts this was not true, but again says she told this lie because she wanted the grandmother to think she was doing everything a mother should. She repeated this lie to the nursery on 8<sup>th</sup> January 2019.
54. On **5<sup>th</sup> January 2019** the mother's brother texted her at 8.39 p.m., saying *'[father's name]? But after what you said'*. The mother replies that the father just turned up, and the following morning texts her brother to say, *'Sorry [brother's name redacted] but we spoke last night and he apologised but I did say you can't see D on your own any more until he is happy and I won't stand for how you speak to him either and I think it's got through to him ... he really apologised and said he wouldn't ever walk away from D and he is going to sort himself out.'*
55. On **10<sup>th</sup> January 2019** nursery filled out a safeguarding report noting concerns that D was upset when his dad was around and seemed to have a lot of accidents when in his care.
56. The mother alleges that on **12<sup>th</sup> January** the parents had an argument which culminated in the father pushing her against a wall and kicking her, but he returned a short time later

and acted as though nothing had happened. She says she was too scared to raise what had happened for fear of causing another confrontation.

57. On **13<sup>th</sup> January 2019** the mother texted paternal grandmother, *'I hate to get you involved but [the father] is no longer seeing D this is his choice'*
58. On **14<sup>th</sup> January 2019** the mother told her supervisor at work that the father had assaulted her on Saturday 12<sup>th</sup> January. She said that she had called the police to the property and that social services were supporting her to get a court injunction. She commented that D got upset when his dad was around. She reported that blood tests on D had come back and that a paediatrician had told her that D's hair loss was stress-related. The mother maintains that the father did assault her on 12<sup>th</sup> January, but she has subsequently accepted that it is not true that she called the police to the property, not true that she contacted social services and not true that blood tests were carried out on D to investigate hair loss.
59. On the morning of **18<sup>th</sup> January 2019** the mother sent a text to the father telling him that she had taken D to the doctors because she wanted to get him checked over for a rash. There is no record of this within D's medical records. The father doesn't respond but a few hours later, presumably prompted by another message or call from the mother, they have a row by text. The father says *'felt to ignore you .. you always take him to the damn doctors for no reason'*. The mother responds, *'stop being nasty towards D please'*. A few minutes later she says, *'you've said it before D doesn't make you feel like a dad therefore you cant love him like a parent should! ... He is how he is because of yourself ... Stop blaming an innocent child when he hasn't done nothing wrong .. No dad should say and act how you do!'*
60. On **19<sup>th</sup> January 2019** the parents appear to have made up. They spoke on the phone and the father then arrived at the mother's address in the evening to babysit for D while she went out with a friend. They went out about 6.30 p.m. At 6.54 p.m. the mother texted to check on D. At 7.04 p.m. the parents speak for nearly three minutes. At 7.09 p.m. the father sent the mother a photograph of D. He looks sad. His left eye is closed. He has a bruise in the centre of his forehead and his cheeks are red. His father sent a text saying *'he's ok jus this face is red and his eyes half shut but seems good just keeps putting his hands up when I ask if he's ok or if he wants anything.'* The father sends a photograph of the flat to the mother saying, *'trip on the chair and hit the door but no blood lol'*. The photograph shows a high chair folded against a wall next to a door which is ajar. The tray of the high chair is lying on top of a coat to the left of the door and there is a pair of shoes on the floor to the right with I think another coat on top of it. The mother asks what part of the door did he hit as his eye shouldn't be like that, and asks why is it all on the floor. She suggests she might have to take D to A&E. The father replies, *'FFS all the coats were on top of the chair and he must of got tangled and pull it down'*. The mother replies, *'it just look really bad ... what actually happened.'* Twenty minutes later she texts again, *'I'm not questioning you or accusing you of anything, just was wondering how it happened that's all. I trust you with him <3'*.
61. The father reassures the mother by saying he *'would never hurt our boy his my blood I want us to bond as much as you do I'm trying my best he just seems accident prone when I try play something always happens'*.

62. At 7.55 p.m. mother replies, *'I wouldn't ever accuse of that don't be silly, enjoy your evening with him. Your bond will come back in time xx.'*
63. At 9.33 p.m. the mother is still out with her friend she texts to check on D. The father replies, *'he was running kicking the football with his bottle and tripped over the stuff at the door he's face is fucked he's still awake don't want him to sleep his got blood shot eye feel like the worst dad his bottle must of smashed into his face as he fell got a ring around his mouth.'*
64. The mother does not reply. Two minutes later he texts again, *'hope your having a good evening me and D are ok he's tired think he's falling asleep in my arms.'* She then responds, apparently ignoring the news that her child's face is 'fucked', that he has a blood shot eye and a bottle must have smashed into his face, only once again to reassure the father, *'your not a bad dad'*.
65. At 9.39 p.m. the father sends the mother a picture of him and D. D looks exhausted and sad. His right eye is completely closed. On the left side of his mouth is a strong red curved mark from the top far corner of his lip and curving round finishing at the corner of his nose. On the right side of his mouth there is a similar mark running upwards from the top right corner of his lip and then a further more diffuse mark which looks more like bruising underneath his nose. The bruise in the centre of his forehead remains visible. On any view it is a picture of a child with very concerning injuries who looks very unhappy.
66. Notwithstanding this, the mother's response is a text message sent at 9.42 in which she says, *'he loves you [the father] like you said your cuddled upon the sofa enjoy your daddy and son time. I'm happy as long as you both are xx .. <3 <3 <3'*
67. The mother is still out with her friend at 12.46 a.m. when she speaks to the father on the phone. She and her friend later returned to the flat and the friend stayed the night.
68. On the morning of **20<sup>th</sup> January 2019** the parents took D to hospital where his facial injuries were documented and described as follows:
- A bruise in the centre of his forehead;
  - Subconjunctival haemorrhage of the left eye;
  - Petechiae and bruising of the left upper eyelid, extending around the inner part of the left eye/side of the nose, with a small number of petechiae on the lower eyelid;
  - Three separate red/pink curved marks from the corner of each side of the mouth curving up and in towards the nose, and one curving downwards across the lower part of the nose. There was also the faint impression of a set of similar marks a few mm to the right side of these;
  - Several small individual tiny round scratch marks on the right cheek;
  - A 0.5 cm diameter circular pink mark on the right side of the neck;



- On the left cheek two clear parallel pink/blue lines and a fainter line of petechiae, all about 3 cm long. Within a few hours these had matured into three clear parallel lines of bruising;
  - A large number of petechiae on the left side of the neck extending from a point just below the ear and coming down and forwards along the line of skin crease to an area below the chin. There were two very clear dense lines of petechiae (max 4 cm long) and several thinner, fainter lines;
  - On the left-hand side of the back of the neck, some more diffusely scattered petechiae;
  - A bruise on the right knee and a scratch on the left knee. Small bruises on each shin.
69. A full body scan then revealed the presence of three healing fractures to his wrists; two fractures to his left forearm and one to his right.
70. A set of five photographs of D's face and neck were taken. They are distressing to look at. The whites of his left eye are almost wholly obscured because they are bloodshot. He has blue bruising in the corner of his left eye socket extending to the bridge of the nose and a purple bruise extending down from the corner of his left eye underneath it. A faint grey bruise is to the left of centre between his eyebrows. A thin curved red mark extends upwards from the right hand corner of his lip about half way to his nose. Across his left cheek are four distinctive purply-grey linear lines. Between the creases of his neck are a number of petechial marks, a heavier line in the lower crease and a more diffuse mark higher up. D looks tired and sad in the photograph, with a rather solemn expression and a watchful stare.
71. The explanation given by the parents was that D had been playing football in the flat, running around and slipped on the laminate floor in the kitchen, falling forwards. The father initially said he had a bottle in his mouth when he fell but later said it was a beaker. Shortly after he said that D had fallen on a pile of coats and some shoes.
72. The parents were interviewed by the police on **22<sup>nd</sup> January 2019**. The father described the accident as happening when D *'kicked his ball and then he come, went for it and just went face first tripped over and hit his face on the floor, it was literally on the floor.'* Later he says, *'And he come running and he tripped, year I dunno he must have tripped on some coats or some shoes and he just went straight face first into the high chair or the floor.'* He then suggests that D maybe tripped over his own feet, and he describes how D was holding his bottle in either his mouth or his hands and fell face down onto his bottle. He describes the bottle as having a soft teat.

### **The proceedings**

73. Proceedings were issued on **23<sup>rd</sup> January 2019**. I made an interim care order on 24<sup>th</sup> January 2019 and D was placed in the care of his maternal grandparents in whose care he has remained with mother seeing him three times a week. The father attended supervised contact with D on 8<sup>th</sup> February, 14<sup>th</sup> February and 21<sup>st</sup> February 2019, but has not seen him since then.

74. The father was on probation in [*place name redacted*] since his release from prison in March 2018. In June 2019 he was imprisoned again in respect of breach of a non-molestation order in respect of his ex-partner.
75. At directions hearings I gave permission for disclosure of police and medical records, appointed an expert radiologist and paediatrician to report and made directions for filing of statements in preparation for the fact-finding hearing which regrettably could not be listed before July 2019.
76. A final hearing has been listed for 4<sup>th</sup> November 2019.

### **Findings sought by the local authority and parties' positions**

77. In a schedule running to twenty-five paragraphs, the local authority alleges that the father was the perpetrator of a number of serious injuries upon D including the three fractures, that the mother failed to protect her son from the father, that both parents caused him harm by failing or delaying to seek medical treatment for him, and that the mother herself failed to prevent a number of injuries to D through inadequate supervision.
78. The father denies that he is responsible for D's injuries.
79. The mother accepts the vast majority of the local authority's allegations.
80. The guardian retains a neutral stance at the fact-finding hearing.

### **The law**

81. The Court only has jurisdiction to consider whether to make a care or supervision order if satisfied that the threshold test at section 31(2) of the Children Act 1989 is crossed, namely that at the time protective measures were taken, the child had suffered or were likely to suffer significant harm, attributable to the care given to him by his parents, and that this care was not what it would be reasonable to expect from a parent.
82. The Court is holding this fact-finding hearing to determine whether or not the threshold for making orders is crossed, and to try to identify as precisely as possible, the nature of the harm suffered or risk of harm faced, to inform any subsequent assessments of risk and how it may be managed.
83. The approach the Court should take when invited to make findings of fact is summarised by Baker J in *Re L and M* [2013] EWHC 1569 (Fam) at paragraphs 46 to 58:
  - “46) *First, the burden of proof lies at all times with the local authority.*
  - 47) *Secondly, the standard of proof is the balance of probabilities.*
  - 48) *Third, findings of fact in these cases must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation. I have borne this principle in mind throughout this hearing.*

- 49) *Fourthly, when considering cases of suspected child abuse the court must take into account all the evidence and furthermore consider each piece of evidence in the context of all the other evidence. The court invariably surveys a wide canvas. A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof.*
- 50) *Fifthly, amongst the evidence received in this case, as is invariably the case in proceedings involving allegations of non-accidental head injury, is expert medical evidence from a variety of specialists. Whilst appropriate attention must be paid to the opinion of medical experts, those opinions need to be considered in the context of all the other evidence. It is important to remember that the roles of the court and the expert are distinct and it is the court that is in the position to weigh up the expert evidence against its findings on the other evidence. It is the judge who makes the final decision.*
- 51) *Sixth, cases involving an allegation of non-accidental injury often involve a multi-disciplinary analysis of the medical information conducted by a group of specialists, each bringing their own expertise to bear on the problem. The court must be careful to ensure that each expert keeps within the bounds of their own expertise and defers, where appropriate, to the expertise of others.*
- 52) *Seventh, the evidence of the parents and any other carers is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability.*
- 53) *Eighth, it is common for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress, and the fact that a witness has lied about some matters does not mean that he or she has lied about everything (see R v Lucas [1981] QB 720).*
- 54) *Ninth, as observed by Dame Elizabeth Butler-Sloss P in an earlier case:*
- "The judge in care proceedings must never forget that today's medical certainty may be discarded by the next generation of experts or that scientific research would throw a light into corners that are at present dark."*
- 55) *This principle, inter alia, was drawn from the decision of the Court of Appeal in the criminal case of R v Cannings [2004] EWCA 1 Crim. In that case a mother had been convicted of the murder of her two children who had simply stopped breathing. The mother's two other children had experienced apparent life-threatening events taking a similar form. The Court of Appeal Criminal Division quashed the convictions. There was no evidence other than repeated incidents of breathing having ceased. There was serious disagreement between experts as to the cause of death. There was fresh evidence as to hereditary factors pointing to a possible genetic cause. In those circumstances, the Court of Appeal held that it could not be said that a natural cause could be excluded as a reasonable possible explanation. In the course of his judgment, Judge LJ (as he then was) observed:*

*"What may be unexplained today may be perfectly well understood tomorrow. Until then, any tendency to dogmatise should be met with an answering challenge."*

- 56) *With regard to this latter point, recent case law has emphasised the importance of taking into account, to the extent that it is appropriate in any case, the possibility of the unknown cause. The possibility was articulated by Moses LJ in R v Henderson-Butler and Oyediran [2010] EWCA Crim. 126 at paragraph 1:*

*"Where the prosecution is able, by advancing an array of experts, to identify a non-accidental injury and the defence can identify no alternative cause, it is tempting to conclude that the prosecution has proved its case. Such a temptation must be resisted. In this, as in so many fields of medicine, the evidence may be insufficient to exclude, beyond reasonable doubt, an unknown cause. As Cannings teaches, even where, on examination of all the evidence, every possible known cause has been excluded, the cause may still remain unknown."*

- 57) *In Re R, Care Proceedings Causation [2011] EWHC 1715 (Fam), Hedley J, who had been part of the constitution of the Court of Appeal in the Henderson case, developed this point further. At paragraph 10, he observed,*

*"A temptation there described is ever present in Family proceedings too and, in my judgment, should be as firmly resisted there as the courts are required to resist it in criminal law. In other words, there has to be factored into every case which concerns a discrete aetiology giving rise to significant harm, a consideration as to whether the cause is unknown. That affects neither the burden nor the standard of proof. It is simply a factor to be taken into account in deciding whether the causation advanced by the one shouldering the burden of proof is established on the balance of probabilities."*

- 58) *Finally, when seeking to identify the perpetrators of non-accidental injuries the test of whether a particular person is in the pool of possible perpetrators is whether there is a likelihood or a real possibility that he or she was the perpetrator. In order to make a finding that a particular person was the perpetrator of non-accidental injury the court must be satisfied on a balance of probabilities. It is always desirable, where possible, for the perpetrator of non-accidental injury to be identified both in the public interest and in the interest of the child, although where it is impossible for a judge to find on the balance of probabilities, for example that Parent A rather than Parent B caused the injury, then neither can be excluded from the pool and the judge should not strain to do so."*

84. Further guidance in relation to discrepancies or inconsistencies in accounts comes from the case of *Lancashire County Council v C, M and F (Children; Fact Finding Hearing)* [2014] EWFC 3, per Jackson J at para 9:

*"To these matters [the ten points set out by Baker J], I would only add that in cases where repeated accounts are given of events surrounding injury and death, the court must think carefully about the significance or otherwise of any reported discrepancies. They may arise for a number of reasons. One possibility is of course that they are lies designed to hide culpability. Another is that they are lies told for other reasons. Further possibilities*

*include faulty recollection or confusion at times of stress or when the importance of accuracy is not fully appreciated, or there may be inaccuracy or mistake in the record-keeping or recollection of the person hearing and relaying the account. The possible effects of delay and repeated questioning upon memory should also be considered, as should the effect on one person of hearing accounts given by others. As memory fades, a desire to iron out wrinkles may not be unnatural – a process that might inelegantly be described as "story-creep" may occur without any necessary inference of bad faith."*

85. I bear all this carefully in mind, and remind myself again that the burden of proof rests with the local authority, and there is no requirement upon the parents to satisfy the Court that the injuries were non-accidental. In Re M (fact-finding hearing: burden of proof) [2012] EWCA Civ 1580, the Court of Appeal warned against the dangers of inferring that because the parents had not given an explanation for an injury, the real explanation must be a sinister one.

86. In its threshold document, the local authority pleads that the injuries to D were 'non-accidental'. In Re S (A Child) [2014] EWCA Civ 25, Ryder LJ considered the use of the terms, accidental or non-accidental injury:

*The term 'non-accidental injury' may be a term of art used by clinicians as a short hand and I make no criticism of its use, but it is a 'catch-all' for everything that is not an accident. It is also a tautology: the true distinction is between an accident which is unexpected and unintentional and an injury which involves an element of wrong. That element of wrong may involve a lack of care and/or an intent of a greater or lesser degree that may amount to negligence, recklessness or deliberate infliction. While an analysis of that kind may be helpful to distinguish deliberate infliction from, say, negligence, it is unnecessary in any consideration of whether the threshold criteria are satisfied because what the statute requires is something different namely, findings of fact that at least satisfy the significant harm, attributability and objective standard of care elements of section 31(2).*

*The court's function is to make the findings of fact that it is able on the evidence and then analyse those findings against the statutory formulation. .... If, as is often the case when a clinical expert describes harm as being a 'non-accidental injury', there is a range of factual possibilities, those possibilities should be explored with the expert and the witnesses so that the court can understand which, if any, described mechanism is compatible with the presentation of harm.*

*The threshold is not concerned with intent or blame; it is concerned with whether the objective standard of care which it would be reasonable to expect for the child in question has not been provided so that the harm suffered is attributable to the care actually provided. The judge is not limited to the way the case is put by the local authority but if options are not adequately explored a judge may find a vital piece of the jigsaw missing when s/he comes to look at all the evidence in the round.'*

87. Mr Brookes-Baker helpfully reminds me of the test for identification of perpetrators of non-accidental injuries, with reference to the case of *North Yorkshire County Council v SA* [2003] 2 FLR 849. The Court must be satisfied to the standard of a balance of probabilities that there is a likelihood or real possibility that a person was the perpetrator. Where possible it is always desirable for the perpetrator of inflicted injuries to be

identified but where it is impossible for a judge to find on a balance of probabilities that it was one person rather than another, then neither can be excluded from the pool of perpetrators and the judge should not strain to do so (see *Re D (Children)* [2009] 2 FLR 668, *Re SB (Children)* [2010] 1 FLR 1161.)

88. Finally, I note that when considering the evidence of the witnesses I must take care to identify those parts of their evidence which is part of their direct recollection, and those parts of their evidence where they are reporting what someone else has said, and to assess the relative weight of such evidence accordingly. Any findings of fact are for the Court to make based on the evidence before it. No weight should be given to the opinions of others about the credibility of a particular witness.

## **Evidence**

89. I have read and considered the contents of the bundles, which include witness statements, expert reports, and contemporaneous notes, including minutes of safeguarding meetings, nursery incident reports, medical records including letters from treating clinicians, downloads of text messages and photos exchanged between the parents' mobile phones, transcripts of police interviews and contact records.

90. I have seen a set of photographs taken by clinicians at the hospital on 21<sup>st</sup> December 2019.

91. I heard oral evidence from Dr Croft, Dr Oates, [witness X (*mother's friend*)] - who was out with the mother on the evening of 19<sup>th</sup> January - and from the mother and the father. I have read further witness statements including from the manager at the nursery where D attended and where his mother worked, and from a coach at the toddler football club that D attended at a weekend.

## ***Dr Oates***

92. Dr Oates' report contains a thorough review of all relevant evidence, his conclusions were clearly explained and illustrated with helpful diagrams, and the reasons for his opinions were based on research and his own substantial clinical experience as a radiologist. He was an impressive witness. His opinions were in no way undermined in cross-examination and I consider that I can safely rely upon the evidence that he gave to the Court.

93. Having regard to the stage at which the fractures were healing he suggested that they were at least five weeks old on 22<sup>nd</sup> January and could be up to around three months old. That gives a window for the time the fractures were caused between 22<sup>nd</sup> November 2018 to 18<sup>th</sup> December 2018. The fracture lines are horizontal across the bone and at the same level in both left and right wrist. He described this presentation as 'striking' and thought it would be very unusual for fractures like this to be produced from a fall onto outstretched hands, but he accepted that it was possible. He noted that the vast majority of children do not sustain fractures from falling and that significant force is required. He posited that the fractures could also have been caused by a child being struck by a hard object or if the upper limb were gripped at the hand or wrists and then pulled or yanked very forcefully.

## *Dr Croft*

94. Dr Croft is a very experienced paediatrician. Like Dr Oates he recognised that there were limits to the conclusions that he could reach, given that he had not examined D, that no history has been given in respect of the fracture injuries and that D had not been examined by a doctor until some weeks after the fractures were caused. However, there were some matters about which he was able to give a confident and authoritative opinion, supported by a comprehensive analysis of the evidence, by research and his own extensive clinical experience. He urged the Court to consider each of D's injuries as part of an overall picture, not in isolation, and to consider the wider context.

95. Dr Croft's evidence was thoroughly tested in cross-examination. He was open-minded to various theories, but ultimately remained unmoved from the opinions expressed in his original report. I found his evidence to be clear, to be consistent with a disciplined scientific approach, but also to be consistent with common sense, as well as supported by a number of examples he gave from his own significant clinical experience, and the research upon which he relied. I accept his expert opinion.

96. In summary his conclusions are as follows:

- the three and probably four parallel linear bruises with some other areas of pink bruising in between on D's left cheek are very characteristic of a slap mark. It is difficult to imagine anything else causing this;
- petechiae are highly associated with abuse. It is difficult to imagine any accident causing the two parallel lines of petechiae on the left side of the neck. It is likely that D was grasped around the neck or possibly that his clothes were twisted around his neck;
- Although it is possible to sustain accidental injuries to the eye socket, it is a relatively protected area and is less often injured accidentally than say the forehead. D has extensive bruising on and around the left eye with petechial marking. The bruising in isolation could possibly have been sustained accidentally, for example a fall against an object which protruded into the eye socket. More likely, and especially in the presence of a left facial slap mark, is that it was caused by a blow to the eye or blows to the eye;
- Occult fractures are suspicious because it is more likely than not that fractures of a long bone would be noticed by the parents and the child would have been brought into hospital, or at least that the parents on questioning would have given a history consistent with fractures. The fact that neither of these things occurred suggests that the fractures may not have been accidental as there was some motive for concealing them. This fact, in combination with the injuries to the left side of the face, which are more likely than not to be abusive, also throws the fractures into suspicious light;
- After each injury, it is likely D would have cried in distress but for how long it is not possible to say. Most children after a fracture cry for at least 30 minutes with some longer and some (about 9 %) not at all. Even if he did not demonstrate crying or distress, one would have expected D to exhibit other symptoms or signs of these fractures for example swelling, pain to the touch or loss of function;

- The facial injuries, especially on the left side of neck and around the left eye are more likely inflicted or abusive and the two, possibly three, fractures are more likely to have been inflicted.

97. Dr Croft was unshaken in cross-examination. When asked about the marks to D's arms which the mother photographed on 6<sup>th</sup> December 2018 he was not convinced that they were compatible with the fracture injuries or gave any clue as to how the fractures were sustained, although he did not rule out the possibility that the fractures could have been sustained in the same episode that these marks were caused. However, he was clear that the marks were likely to be evidence of abusive handling, which in turn was further evidence that would make it more likely that the fractures could also be considered to have been caused by an abusive incident.

98. Dr Croft rejected the suggestion on behalf of father that a fall onto a high chair on the 19<sup>th</sup> January 2019 could have been responsible for the facial injuries around the eye area, saying *'you are making the fall do a lot of work. It is so unlikely'*. He further rejected the suggestion that accidental 'rough towelling' could have been responsible for the two parallel lines of petechiae on the left side of the neck, making the point that if it was it would be so outside normal handling and that *'you cannot cause pin point bruises by any normal act'*.

99. Dr Croft accepted that D's presentation was a relevant part of the overall context to consider. He did not examine D but he did comment on D's expression in the clinical photographs and those seen in images on the parents' mobile phones. He said that he had in his career seen an awful lot of abused children and the expressions on their faces invariably were similar to the sad expression on D's face in those images. He said that he had seen an awful lot of children who had suffered significant injuries which had not been caused by abuse, and none of those children presented with such expressions.

#### **[Witness X]**

100. [Witness X] gave a statement to the police on 22<sup>nd</sup> January 2019 and the oral evidence she gave to the Court was consistent with the information she gave to the police. I found her to be an impressive witness, independent of mind, with a good recollection for details, but clear about those parts of her evidence when she was not sure – she was not trying to fill any gaps. I consider that her account is reliable. She and the mother had worked together as nursery assistants, they were not particularly close friends. They had become better friends during the mother's pregnancy and she spent time with her when D was very small but they had lost touch and before the evening of 19<sup>th</sup> January 2019 had not seen each other for a long time.

101. Witness X described going with the mother in her car to collect D from maternal grandparents' house and immediately noticing a bruise between his eyebrows which the mother reported happened when he fell off the bed. When they got to the mother's flat Witness X noticed a line made of little red dots on D's neck which she described as being 1cm by 4cm. She said the mother told her D had done it on a mattress. Witness X described the father coming round at 6.15pm and she said, *'D stayed with me and The mother, putting his arms up to me. He wouldn't go to [the father], he was acting a bit funny round [the father], D didn't want to play with him.'* She said that she and the



mother left about fifteen minutes later. She said the mother left first so that D wouldn't get too upset, and asked Witness X to hand D to his father. Witness X said D was still upset, and that he was crying and putting his arms out to her, not wanting to be left with his father.

102. The mother shared with Witness X some but not all of the text messages she received from the father during the course of the evening. Witness X said that the mother seemed to be looking to her to help her respond to the father, but at the same time when Witness X repeatedly said let's go back, she said the mother didn't want to. Witness X said she was concerned at the number of different explanations that were coming from the father, she thought the photograph of the high chair looked staged, and she could not see how D could have sustained the injuries he had if the high chair had been positioned as in the photograph. But despite her feelings of unease and asking the mother if she wanted to go back she said she couldn't make her go. In the end they returned at 1.00 a.m. and she stayed the night.

103. She describes being woken up by D coming into the living room where she was sleeping on the sofa at about 8.30 a.m., crying and holding his arms out to her. She described his eye as *'bloodshot, and half open, massively swollen. I'd never seen anything like. And the bruises – like line bruises on his cheek. And there was a circle around his mouth and his top lip was swollen, and the bit between his top lip and his nose was all swollen.'* She said she noticed another mark on D's neck which was similar to the one she'd seen the night before but it was in a different place and was significantly bigger, about 4cm by 5cm. She said that the mother told her it was caused by a rough towel, but when she showed it to the mother, the mother seemed genuinely not to know anything about this new mark. The father came back into the room and the mother texted her, *'do you think it was an accident?'* She said she texted back that she didn't see how his injuries could be caused by him falling over. She suggested they go to hospital and the parents dropped her back to her house on the way to taking D to the hospital.

104. I accept [*witness X's*] evidence and I commend her for the advice she gave to the parents to take D to hospital. Had she not done so, there is a real possibility that he would not have got the attention he needed, the fracture injuries would not have been discovered, and he would have remained unprotected and at continuing risk of significant harm in his parents' care.

### ***The mother***

105. I am in no doubt that the mother loves her son very much and she is devastated to have been separated from him since January. In many ways she is a very good parent to him but, as she has accepted during these proceedings, her repeated failures to protect him has been extremely serious. Her actions are hard to comprehend.

106. It is mystifying how the mother could look at the images of D that we have looked at again and again during the course of this trial, in particular the photographs of him on 17<sup>th</sup> November, on 2<sup>nd</sup> December, on 6<sup>th</sup> December and on 19<sup>th</sup> January, and to have been blinded to his distress and hurt in the way that she appears to have been.

107. The mother admitted that she has not always told the truth. I have the *Lucas* direction firmly in mind and remind myself that people may tell lies for a whole multitude of

reasons, and that just because a person may have lied about one thing, that does not mean they are lying about everything.

108. The difficulty in applying the *Lucas* direction in this case is that the reasons the mother gave for telling lies seemed to me to be incoherent or half-formed or simply not credible.
109. The mother maintained to the police and in her witness statement that when she was out on the evening of 19<sup>th</sup> January she was meeting a number of friends for a birthday celebration, when the truth was that she was just going out for a drink with one friend. Under cross-examination she said it seemed like a better reason for her to be wanting to be out and having some time to herself away from her son than just going for a drink. She said that she told the nursery or the paternal grandmother that she had taken D to hospital and taken him to the GP about his hair loss it was because she wanted the nursery to think she was taking proper care of her son, and the grandmother to think that she was being a good mother to her son.
110. In her oral evidence she accepted she had lied to the nursery when she said D injured himself at football on 2<sup>nd</sup> December. She was asked if she was scared for her safety or scared that the father would leave her, she said '*she didn't know how he would react*'. She was asked whether she thought she was protecting the father and she said, no but that she did it for her and D's sake as the father was '*temperamental and she wasn't sure how he would react.*' At another point of her evidence she did say that she was scared of the father, and scared of what he might do.
111. This may or may not be the case. I accept that a person may have reasonable cause to be fearful of another person without them directly threatening them or hurting them, but by means of much more subtle pressure and control. The mother did allege the assaults on 4<sup>th</sup> August and 12<sup>th</sup> January but there is little else in her evidence to suggest that she was fearful of the father such that she felt under pressure to tell lies to cover for him. And if so, that does not seem to be consistent with the evidence that she continued to give to the Court that she could never have believed that the father could have hurt her son, never thought it of him, and that time and time again she appears to have readily accepted all his explanations for the accidents that had apparently befallen her son.
112. This is also the impression conveyed by the text messages. They seem to suggest that she accepted everything that he said about how D's accidents had happened and was unwilling or did not think it necessary to challenge him beyond asking an initial question. She consistently sought to reassure him that she trusted him. Even on 21<sup>st</sup> January 2019, the day after D's injuries had been discovered, the mother sent a text message to the father in which she reassured him that she did not blame him for D's injuries.
113. Her own mother has suggested that she was infatuated with the father. Certainly it seems that she did not want to upset him or antagonise him, and desperately wanted to please him. The impression formed is that the mother had fallen in love with the father, that she desperately wanted to have a family life with him, that she found it impossible to say no to his requests – to drive to [place name redacted] to collect him, to lend him her car, to lend him money, to get cannabis for him, to drive back home from an evening out to drive him to the shops, notwithstanding that meant getting her baby out of bed, for him to spend time in her flat and play on his X-box, and for him to spend time with D unsupervised for

long periods of time, notwithstanding that on her case, he had assaulted her, had threatened her, and lied to her.

114. The father admitted in cross-examination that he did not feel the need to tell her things that would be likely to upset her, for example that while he was encouraging her to think that he was committed to her in December, he was in fact pursuing a new relationship and had introduced D to his new partner. Or that although he had reassured her he would not be taking D to see his ex-partner, he fully intended to do so. The impression from the text messages are that they are rather one sided and that he is taking advantage of her, sending her messages when he wants a lift or money or to let her know he is on his way, she responding willingly and generally with affection and encouragement. Both of them accept that they would frequently argue and some of their exchanges can be seen within the text messages. However, there is no evidence within these exchanges of the father threatening the mother or becoming angry with her or putting pressure on her.
115. Apart from the one exchange between the mother and her brother when he questions why the mother is seeing the father again and she explains that she has been satisfied with his apology, there is very little within the disclosed records to suggest that her family was worried about D's or her safety within the relationship.
116. In her statement to the police [witness X]'s first comment about the mother when she first knew her is that *'she would twist things, make little lies'*, and this would cause difficulties within the group of nursery assistants where they were working together. The mother accepted that there had been difficulties there but said it was other people in the group who reported her as saying things about others which were not true.
117. The picture appears to be complex, and I am not able to come to a conclusion about why it was that the mother has not always been truthful. It may be a part of her personality, it may be a desire to be seen as a good mother, it may be to cover up for the father or just because she was fearful that if she told the truth her son would be taken away from her or the father would leave her and D. It may be that she was fearful of the father. There is insufficient evidence to enable me to come to a concluded view. At one point during cross-examination when talking about the father she said that we *'didn't know the half of it'*. Ultimately, that was my conclusion about the mother's evidence. Her remorse and regret for her actions did appear to be genuine. However, there were so many inconsistencies in her evidence, and the admitted untruths with the reasons for them unexplained or unconvincing, that ultimately I was not able to regard her as a reliable witness.
118. Whatever the reason and whether she intended this consequence or not, a number of the lies the mother told are very serious, because they prevented others from taking actions which might have protected D far sooner. Had she not lied he could have been prevented from suffering the significant harm that he did. In particular:
- the mother kept D from nursery on 2<sup>nd</sup> December and falsely reported that D had hurt his cheek by falling on a football bench. She knew this was not true. Her actions prevented the nursery from taking any steps towards investigating D's injuries;

- she told a number of individuals that she had taken D to hospital when this was not the case. Had she taken him to hospital there may have been an investigation into his injuries earlier. If family members or colleagues at work knew she had not taken him to hospital they might well have advised her to do it;
- she told the police who were carrying out the MASH investigation in early December that D's contact with his father was mostly supervised. This was not true. The mother's case is that she knew by this time that the father 'lashed out' when cross. She did not share this information with those investigating, but denied it. If she had, her account would have been identified as consistent with the reports of the father's ex-partner and action may well have been taken to ensure that the father's contact with his son was supervised, in the same way that restrictions on his contact with his daughter were being put in place;
- Witness X said that she was urging the mother to go back to D on the evening of 19<sup>th</sup> January and she just didn't want to and in the end the mother told her that her brother's car was pulling up at the flat. This reassured Witness X to some extent and so they did not go back. It was not true. The mother's brother did not go round to the flat that night. Her explanations to the police and in Court that there had been a mix up about the arrangements and she thought that he might be going round but she didn't check, did not explain why she had told Witness X he was definitely there. This lie prevented Witness X and her from going back to D sooner;
- In telling her supervisor at work on 12<sup>th</sup> January 2019 that social services and the police were already helping her so that she could be protected from the father, she was in effect preventing her supervisor from taking action that could have given her and D the support she needed.

119. I found many of the explanations that the mother gave for D's injuries to be implausible. I doubt that bruising to D's thigh would have been caused by him falling on a dog bowl or playing in a paddling pool. Not only clinicians but [witness X], who had the advantage of seeing the first petechial rash on D's neck, struggled to see how it could possibly have been caused by a towel or a collision with a mattress. The mother has suggested that D sustained bruises to his head by head-banging a mattress or by falling onto the wooden corner of the bed. I am not persuaded that either of these explanations is a likely cause of the grey bruise seen in the centre of his forehead on 19<sup>th</sup> and 20<sup>th</sup> January. I find it surprising that D would have an injury on the side of his temple in July 2018 from 'headbanging the floor', and that no other part of his body would have come into contact with the floor first. The mother accepts that many of these injuries were caused by her lack of supervision, but if she was not supervising then how can she be so definite about their cause? It was difficult to work out whether she was suggesting she had witnessed these incidents or whether she was faithfully reporting what had been told her by others, and if so, why it was that she accepted those accounts.

120. I am not asked to make specific findings about any of these incidents, and the local authority is not asking me to expand the narrative around the findings of lack of supervision that the mother has accepted. But they are part of a pattern of a long history of injuries which appear to have coincided with D's father coming back into his life, where the mother has apparently been very willing to accept as accidental in circumstances where others may be more questioning. Just because the mother now

accepts that she has told some lies, that of course does not mean she has lied in all of the accounts she has given in respect of the above injuries. However, I remain concerned that I have not got the full picture and where there is no other evidence to corroborate the mother's accounts of how a particular accident occurred, and I have not got a clear understanding of the circumstances in which the mother might tell a lie or the reasons for it, I am reluctant to accept her accounts at face value.

121. I remain unclear about the mother's motivation and think there are likely to be some complexities behind the reasons for her actions which may require psychological assessment.
122. The mother reported spending a lot of time with her own family, and on her account she and D were with them on days when he must have had bruises and marks on his face. For example, she says they spent the whole of 2<sup>nd</sup> December with her family. D was at his grandparents' house on 6<sup>th</sup> December when the mother discovered the red marks on D's arms. The grandmother described (in the viability assessment) the mother as a private person and even when D presented with the injuries he did in hospital on 20<sup>th</sup> January 2019 she is reported to have said she was finding it hard to get her head around the idea that they may have been deliberately caused. The ability of the mother and wider maternal or paternal family to act protectively towards D in the longer term is a matter for further investigation as part of the welfare assessment that will take place over the next few months. As part of that investigation it will be important to understand what messages the mother was giving to her parents about D and the father. If D was with his grandparents on the day that he had been to Socratots and presented as described – bruised, bloodshot eyes, in pain, clinging to his mother, distressed – it is concerning that they do not appear to have been worried by this. It may be that they were worried but had their concerns allayed by the mother. The same applies to 6<sup>th</sup> December. I have heard no evidence about this and obviously it is not for me to speculate, but I raise this as an issue for further investigation, given my concern about the mother's evidence.

### *Allegations of assault*

123. The incident on 4<sup>th</sup> August does appear to have been a heated argument in the street. The mother described how she tried to get D out of the pushchair and the father prevented her. The father suggested that he had pushed the pushchair out of the way and he had ended up carrying D away and towards his mother's house. I am satisfied that if the mother was trying to get D out of his buggy and the father prevented her, ultimately succeeding in taking D himself, then on a balance of probabilities the father used some physical force to achieve this. I therefore prefer the mother's account to the father's, and find that he did push her.
124. [Witness X] said that the mother presented to her as happy in her relationship and during the course of the evening did not confide anything to her about the father having been violent towards her or any worries about him so far as D was concerned. The mother told her supervisor at work that the father assaulted her on Saturday 12<sup>th</sup> January and that she had called the police, but the father had left of his own accord before the police arrived. She has given very little detail of the alleged assault and there is no contemporaneous record; no mention of it in any of the messages exchanged between the parties. She did not in fact call the police that evening so there is no record of her reporting the assault to anyone. Her parents do not appear to be aware, but it would seem

to be the case that the mother kept details of her relationship private. The text conversation between her and her brother in which he queries why [*the father*] is coming back to the house, and therefore might suggest an argument and/or assault took place in the week before. The mother does text paternal grandmother on 13<sup>th</sup> January 2019 to report that the father had made a choice not to see D again, but makes no mention of him assaulting her.

125. Having regard to all the evidence I have read and heard, I am satisfied to the standard of a balance of probabilities that the relationship was deteriorating in January 2019, the father was becoming invested in a new relationship, he was becoming more critical of the mother, more blaming of D and at times aggressive towards her, and giving rise to concerns about whether it was safe for him to look after D unsupervised. Given the absence of any other evidence to corroborate the mother's account, I am not however able to find to the standard of a balance of probabilities that the father assaulted the mother as she described on Saturday 12<sup>th</sup> January 2019.

### ***The father***

126. The father was a very unimpressive witness. In general, he was reluctant to give any answer at all until he was directed to the source material so as not to be caught out. He did not give a single answer that appeared to be from his direct recollection. I found his evidence to be self-serving and unhelpful. His witness statement contains obviously false statements, most significantly in it he asserts that he had never spent time unsupervised with his son during December and January. He quickly had to accept when cross-examined that this was not true. He said well he couldn't remember at the time he wrote the statement whether he had or not. I thought this explanation was ludicrous. I find that the reason he lied to the Court about not having cared for D unsupervised was because he knows that D sustained significant injuries when in his sole care, and he was trying to divert blame away from himself.

127. His explanations to the mother, to the police, to treating clinicians and to the Court of how D had sustained various injuries in his care were inconsistent and wholly unbelievable. The image he sent to the mother on 19<sup>th</sup> January 2019 of the highchair with coats and shoes on the floor is obviously staged. The position of all those items was incompatible with any of the mechanisms of the accidents that he described and was inconsistent with both the mother's and [witness X]'s clear recollections of how the flat was arranged when they left. He has given so many different versions of events and moved from suggesting he witnessed D having an accident to making assumptions that he must have tripped or fallen or hit the door or the wall or a skirting board or a high chair. He suggested he was carrying D when he tripped, that D was walking with a blanket and tripped, that D slid on the floor or tripped on shoes or coats. None of the injuries that D has sustained are compatible with the falls and bumps the father described.

128. I cannot begin to see how D could have fallen and either a bottle or cup could have smashed into his mouth as his father described. The father's various descriptions of the injuries D sustained are incompatible with the conclusions of the medical experts.

129. I did not believe the father's description of the incident on 18<sup>th</sup> November 2018 when he says he went to his ex-partner's house with D, had an argument but just as it was getting heated, he decided to return D to paternal grandmother's and go back to the house.

The contemporaneous notes and the text message suggest that D was with him when he was arrested, and that he kicked the door and was very agitated, shouting and being aggressive.

130. The father accepted that he was at times selective with the information he gave to the mother and that he took the view that it would be best not to upset her, for example by telling her that he had a new partner, by lying to her about where he was taking D, or by minimising the seriousness of the offence for which he was sentenced to prison for fifteen months. She believed it was affray; he had been acting in self-defence. In fact he had been the perpetrator of an assault involving a knife.

131. The one area that both the mother and father did give consistent evidence about was the nature of the arguments they had. There was evidently continuing tension between them caused by the mother's wish for him to show his commitment to her and D and what he regarded as conflicting commitment to his daughter and her mother. They both agreed that they had arguments about his and D's relationship and on this the mother's evidence is borne out by the contemporaneous text messages, and the father's own evidence. He said they did *'argue quite a bit, about D, [father's ex-partner], the way she and I were acting. Argued about how she mothered D, didn't let me spend time with him'*.

132. The mother described in evidence that the father did blame D for the breakdown of his relationship with the mother of his daughter, and that D was the reason he wasn't allowed to see his daughter and that he blamed D for the lack of bond between them. I accept this evidence and picked up on this in both text messages and the tenor of father's evidence. For example, when asked to reflect on the reasons for the argument the parents had on 18<sup>th</sup> January 2019 when the mother had told him to stop being nasty towards D, he said, *"I was potentially not wanting to be in my son's life anymore. I had enough. Unsure why. Had enough trying to please him and her. The mother made me feel I wasn't good enough. I wasn't good enough. She would mollycoddle him"*.

133. There is also a range of evidence which supports the mother's evidence that D and his father had a difficult relationship. In particular:

- The text messages in which the father is seen to bemoan that D doesn't trust him, that he is doing everything but D doesn't seem to like him, and as time goes on, increasingly appears to blame both D and his mother for this;
- The father reinforced this view in evidence when he said that there were issues with the bond between him and D and that he felt the mother tended to mollycoddle D and he did not find this helpful;
- The mother's text messages continually trying to encourage the father that the bond between them would improve;
- The observation of the Socratots coach about D's response to his father when together;
- [witness X]'s description of D crying and being distressed when left alone with his father and the awkwardness she observed between them when they were together;
- Reports in the nursery records that D seemed unhappy around his father;

- The three contacts that D has had with his father during these proceedings. On 8<sup>th</sup> February 2019 D cried as soon as he saw his father and was described as being watchful, but did eventually settle. On 14<sup>th</sup> February D clung to maternal grandmother and cried when given to his father. His father ended the contact. On 21<sup>st</sup> February 2019 he saw his father and cried, was described as clutching his grandmother and staring at his father in a fixed manner. It is right to note that he did eventually settle and the contact became more positive.

134. With regard to the issue between the parents about the marks to D's arms which she discovered upon his return to her care on 6<sup>th</sup> December 2018, I prefer the mother's evidence to the father's. I have had regard to the text messages, the mother asking the father to ring her there then being a gap in time which would allow for a conversation to take place, followed by the mother sending a picture of D's forearms to the father which show red marks which would be consistent with them having been grabbed by an adult hand. The father accepts that she sent the photos but denied they had any conversation at all about it, notwithstanding that the mother clearly asked him to call her.

135. The father's recollection is generally poor and I have found him to be a dishonest and evasive witness. The mother's recollection of conversations that she and the father had were generally accepted by him.

136. On a balance of probabilities I am satisfied that there was a phone or video/facetime call between them shortly after the mother requested the father to call her and that in that conversation the father did say to the mother words to the effect that he may have grabbed D's arms a bit hard.

## Conclusions

### *Paragraphs 13 to 20: Injuries sustained on 19<sup>th</sup> January 2019*

137. Both parents accept that D presented at hospital on 20<sup>th</sup> January 2019 with the list of injuries set out at **paragraph 13** and that is my finding.

138. At **paragraph 14** it is pleaded that injuries (a) to (h) were inflicted on D by his father slapping him on the left side of his face, grasping him around the neck or twisting his clothes around the neck and inflicting one or more direct blows to the left eye area. I was not persuaded by the mother's explanation in respect of the cause bruise in between D's eyebrows (injury (a)). I am not satisfied that I have sufficient evidence about when or how this injury was caused and although I doubt it was caused as the mother suggests, that does not mean that I can infer it was caused by his father. I am not able to find to the standard of a balance of probabilities that injury (a) was inflicted upon D by his father on 19<sup>th</sup> January 2019.

139. So far as injuries (b) to (h) are concerned I am satisfied to the standard of a balance of probabilities that each of these injuries was inflicted upon D by his father by him slapping him, grasping him or twisting his clothes and inflicting direct blows to his face in particular the eye-socket. I found the father's explanations of the circular injuries to D's mouth (collectively injury (i)) to be inconsistent, implausible



and I do not believe his account. I am satisfied to the standard of a balance of probabilities that these multiple injuries were inflicted upon D by his father as part of the same assault or assaults in which the other facial injuries were inflicted.

140. In coming to these conclusions I have taken account of all the evidence but in particular:

- The clear evidence of Dr Croft as to the cause and mechanism of the injuries;
- The presentation of a number of injuries together with clear signs of non-accidental injuries in particular the petechiae on neck and eye and the slap-marks;
- That the father accepts these injuries were sustained when D was in his sole care;
- That the father reported to the mother that D had injured himself at or very shortly after the injuries were sustained and sent photographs to the mother of D's face;
- That the father's explanations were inconsistent and unbelievable. He initially reported that D *'trip on chair hit door but no blood lol'*, then *'ffs all the coats were on the top of the chair and he must have got tangled and pull it down'*, later he said D was *'running kicking football with he's bottle and tripped over the stuff at door he's face is fucked .... his bottle must of smashed into his face as he fell got a ring around his mouth'*. The next account he says, *'we was playing football, he started running towards me to get the football he had bottle in his mouth. D then trips over and falls face first catching his face on the corner of his high chair leg.'* In his police he described D running away from him, and within one answer suggests that he tripped and his face *'literally on the floor'* but also *'straight face first into the high chair or the floor ... and he's had the bottle in his face and he must of went straight down'*. He told the consultant paediatrician at hospital that they had been playing football in the flat and D had slipped on the laminate floor, and *'had fallen on a pile of coats and shoes'*;
- That the father had struggled to manage D and appears to have found caring for him frustrating and that he appeared to blame D for not liking him and not doing what he wanted to do and identifying him as a reason for difficulties in his relationship with his ex-girlfriend;
- That the father had struggled to manage his temper in the past and has acted impulsively and aggressively towards others, even in the presence of D.

141. I find that D would have cried out in distress after each injury (b) to (i) was inflicted (**paragraph 16**).

142. I find that the father would have known that his actions were well outside of usual handling in childcare and that his actions caused or were likely to cause D pain, distress and injury (**paragraph 17**).

143. Both the father and the mother failed to seek timely or appropriate medical attention for D in respect of the injuries (**paragraphs 18 and 19**). The father sent two photographs of D to the mother during the course of the evening, both which

presented him with an extremely concerning presentation, and the father described that his *'face is fucked'*, and informed her that D's eye was bloodshot. The mother's evidence to the police about whether or not she had received this second photograph was misleading. She did eventually accept that she received the photo and message but did not show them to [witness X]. Notwithstanding this and that [witness X] was urging the mother to return home, the mother did not come back to see if her son was ok until around 1.00 a.m. She lied to [witness X] by telling her that her brother had gone to the house. She did not look at D's injuries until the following morning and even though she said he woke her at around 7.30 a.m. it was not until around 10.30 a.m. that they attended at the [name redacted] hospital.

144. I am satisfied to the standard of a balance of probabilities that (**paragraph 20**) the mother failed to protect D in respect of injuries (b) to (h) in that she knew or ought to have known that the father posed a risk to D if left alone unsupervised and that she knew or ought to have known that D's injuries were likely to have been inflicted by [the father].

145. I come to this view having regard to the totality of the evidence, in particular the history of incidents that had occurred when D was in his father's care, the mother's apparent unquestioning acceptance of the various explanations given by the father for the injuries, her decision to lie to nursery in early December about how D had sustained the injuries she knew he had sustained in his father's care, and to the police when she told them in respect of the MASH enquiry that the father rarely spent time unsupervised with her son. I take into account the appearance of her son on the images sent to her by the father. I take into account also that she knew her son had sustained some kind of injury to his forearms when in his father's care on 6<sup>th</sup> December and on her evidence, he had told her that he might have grabbed D too hard.

***Paragraph 21: the bruise on 17<sup>th</sup> November 2018***

146. The parents were exchanging text messages on the evening of 17<sup>th</sup> November and neither one of them seeks to dispute what was said. The father first messaged mother at 20.29 reporting that D was ok but *'he banged his head tho he got excited coming home and ran straight the door'*. Thirty seconds later he sends a photograph of D with a very significant bruise on the left side of the forehead, a very red cheek and D looking sad and worried. The accompanying message says, *'fucking jesus lol'*. The mother asks if D is ok. Twenty minutes later she asks what he had hit his head on and the father then replied, *'the floor come running soon as I opened the door and tricked on blanket head first lucky didn't bleed tbh was a hard hit.'* The mother replied that she would be home and to give him half an hour. Her evidence to the Court which was not challenged by the father was that later he said to her that D had in fact hit his head on the skirting board, and not the door or the floor as previously stated. None of these explanations is consistent, none of them is convincing and in my judgment would not account for the injuries visible in the photograph.

147. The father's evidence about this injury did not improve. In his witness statement he says that he cannot recall the incident at all and relies only what he said in his text messages at the time. When he gave his oral evidence he said at first that he didn't remember anything but then said that he could now recall 'certain parts'

and the thought that D had run towards the front door and tripped over something. He said he thought the texts were not worded well and perhaps predictive text had caused an error. He could not remember whether or not he had said something to mother about the skirting board.

148. The father does accept that D sustained these injuries when he was caring for him by himself.

149. In all the circumstances I reject the father's explanations as untruthful and I find to the standard of a balance of probabilities that the injuries seen on the photograph of D on 17<sup>th</sup> November were inflicted upon him by his father as part of an abusive assault, and were not caused accidentally.

***Paragraphs 22 to 24: the injuries from 1<sup>st</sup> December 2018***

150. These paragraphs were added to the schedule after the close of evidence. Mr Lorie accepted that in light of the evidence given by the parents it was open to the local authority to amend but expressed concern that the father had not had more time to deal with the allegation and that Dr Croft had not been specifically asked to consider it in his report.

151. The father initially denied that he had spent any time alone with his son in December. He emphatically denied it. He was asked about this in cross-examination and initially was very clear that he had only spent time with D when the mother or members of her family were present. Within a few short questions he accepted that he must have been mistaken and that he had spent time caring for his son alone. The explanation given was that at the time he wrote his statement he did not have his phone with him and without it he had been unable to remember whether or not he had ever had sole care of his son. Obviously that does not explain his failure to correct his statement at the start of his evidence.

152. When shown the text messages he accepted he had been looking after D on his own, and that he had some difficulties getting D to eat. When asked what happened he read the text message and said that he thought that he fell over D's push chair with D in his arms but immediately then said he couldn't remember anything about the evening in question and remarked that D often injured himself. He said he could not recall D having any injuries at Socratots but did remember he didn't want to play football.

153. He did however accept that D sustained injuries while in his sole care on the evening of 1<sup>st</sup> December 20218 but said that he '*accidentally fell over*' and the bruises were not caused on purpose.

154. As with other areas of his evidence I found his evidence to be unconvincing and I find that the father was lying and is deliberately trying to mislead the Court. It is in my judgment wholly improbable that D sustained the injuries visible in the photograph sent by the mother to the father on 2<sup>nd</sup> December 2018, when his father tripped over a push chair with him in his arms.

155. Neither the mother nor father sought to have the Socatots coach come to Court to be cross-examined. The father was in no position to challenge the contents of the statement because his case is that he had no memory of D having any visible injuries, but did not as I understand it positively assert that he did not. The mother said that she could not remember D having bloodshot eyes but otherwise accepted the evidence of the Socatots coach about D's presentation at the club on Sunday morning.
156. I found the evidence of the Socatots' coach to be detailed, compelling and convincing and I regard it as a reliable account of D's presentation.
157. Mr Lorie suggested there was an inconsistency in the evidence because the nursery recorded only a single bruise in its notes made on 3<sup>rd</sup> December. However, this was just an account of the mother's report to them made by phone. The next time D was seen was 4<sup>th</sup> December and there is no record of an observation of his face by nursery workers.
158. The mother's evidence to the Court was that bruises were still visible on his face on the morning of 6<sup>th</sup> December 2018 – seen in the picture of D in the bath.
159. In all the circumstances I am satisfied to the standard of a balance of probabilities that D suffered bruising to his face and blood-shot eyes on 1<sup>st</sup> December 2018 when he was in the sole care of the father and that these injuries were inflicted upon him by his father as part of an abusive assault, and were not caused accidentally (**paragraph 22**).
160. The mother accepts that D did not go to nursery on Monday 3<sup>rd</sup> December and that she told a lie to the nursery staff that D had sustained an injury at football on 2<sup>nd</sup> December when she knew this not to be the case. She persisted in this lie in her witness statement to the Court, thus continuing to conceal her knowledge that D had in fact been injured whilst in the sole care of his father. **Paragraph 23** is proved.
161. I am satisfied that the mother failed to protect D or seek timely or appropriate medical attention for him in respect of the injuries sustained by him whilst in the sole care of his father on the 1<sup>st</sup> December 2018 (**paragraph 24**) and by maintaining her lie to his nursery she prevented others from taking steps which may have safeguarded his welfare.

### ***Paragraphs 1 to 12: fractures***

162. **Paragraphs 1, 2 and 3** describe the fractures to D's forearms, confirm he has no underlying medical condition predisposing him to fracture injuries or easy bruising and put the window for the fractures as sometime on or before 18<sup>th</sup> December 2018. These allegations are accepted by both parents.
163. I am satisfied that, contrary to what the father said in his statement, D spent periods of time in the sole care of each of his parents between June 2018 and 22<sup>nd</sup> January 2019 (**paragraph 4**).

164. It is accepted and I find proved that D had marks/bruises on his left and right forearms following spending time alone with his father on 6<sup>th</sup> December 2018 (**paragraph 5**).
165. For reasons given above, I am satisfied that the mother did ask the father what had happened to cause the marks to D's arms and the father said that he might have grabbed D's arms too hard (**paragraph 6**).
166. I defer to and accept the evidence of the experts which supports the statement (**paragraph 7**) that the most likely mechanism for the fractures is a direct impact onto a hard object, impact or blow to the forearms by a hard object possibly by taking a defensive position or a gripping at the hand or wrist which was then pulled or yanked very forcefully.'
167. I accept the evidence of the experts that D would have shown obvious distress when he sustained the fractures i.e. crying out in pain and the carer in attendance would be aware either because they witnessed the event or due to the immediate response of the child (**paragraph 8**).
168. **Paragraph 9** pleads that the fractures were inflicted non-accidentally by father on one or more occasions, most probably on 6<sup>th</sup> December 2018 by either gripping D's hand or wrist and then pulling or yanking very forcefully or by some other form of direct impact/blow to the forearms.
169. While it is right that the experts accept that the fractures seen on the x-rays could have been caused accidentally, they both urge the Court to look at the whole context and it is this that leads Dr Croft to conclude that it is more likely than not that they were inflicted as part of an abusive incident.
170. I accept Dr Croft's opinion that in his view it is difficult to connect the marks on the arms seen in the photograph to a mechanism that would account for the fractures. However, I also noted his opinion that without knowing the history he was not able to discount that both marks and fractures were caused as part of the same event. What was persuasive was his clear evidence that the marks on D's arms were strongly indicative of an abusive incident.
171. In the circumstances, and having regard to all the evidence, I am satisfied to the standard of a balance of probabilities that the father subjected D to at least one abusive incident when he was caring for him on 6<sup>th</sup> December 2018 where he grabbed his arms too hard. I am not able to say that the fractures were caused at the same time that the marks on D's arms were caused, nor can I give the precise mechanism or circumstances in which the fracture injuries were caused, but I am satisfied to the standard of a balance of probabilities that the fractures were caused by an abusive injury inflicted upon D by his father which happened at or around 6<sup>th</sup> December 2018 and at a time when D was in his father's sole care.
172. The father had D in his sole care on a number of occasions within the window for causation of the fractures. I have already found that he has inflicted a number of serious and significant injuries upon his son.

173. I have found the father's evidence to be untruthful and unreliable and in my judgment it was so because the father was seeking to conceal the truth about how his son's injuries were caused.
174. I have regard to the evidence of both Dr Oates and Dr Croft, experienced and persuasive experts. In particular Dr Oates highlights how unusual it is for a young child to suffer such fractures without explanation or recognition by supervising carers that a significant traumatic event had occurred, and regards this as important. Both he and Dr Croft highlight their concerns that the parents did not seek treatment for D, and Dr Croft in his evidence explained why a failure to seek treatment is regarded by clinicians as suspicious of non-accidental injury.
175. Having regard to all the evidence I am satisfied to the standard of a balance of probabilities that paragraph 9 is proved.
176. **Paragraph 10**, that the father would have known his actions were well outside of usual handling in childcare and that his actions were likely to cause D pain, distress and injury, is proved. I accept that the mother did not herself recognise any signs or symptoms in D that alerted her to his having sustained the serious injuries that he had, but that does not mean that he did not experience them. I accept Dr Croft's opinion.
177. **Paragraph 11**, that the father failed to seek appropriate and prompt medical attention for D is also proved.
178. I am satisfied, and the mother accepts, that **paragraph 12** is proved. The mother failed to protect D in respect of the fractures in that she allowed him to have unsupervised contact with him knowing that he posed a risk to him. Having identified the marks on D's bruising on 6<sup>th</sup> December she should have sought medical attention.

***Paragraph 25: inadequate supervision by mother***

179. At **paragraph 25 (a) to (i)** it is alleged that D sustained the following injuries due to inadequate supervision by the mother:
- a. 24.06.18 - Bruise to the right inner thigh;
  - b. 22.07.18 – Injury to head;
  - c. 26.07.18 - Bruise to the middle of forehead;
  - d. 09.08.18 - Bruise to side of forehead;
  - e. 01.10.18 - Red mark to right side of head;
  - f. 11.10.18 - Bruise and graze to right eye;
  - g. ~~22.10.18 – "cut lip and huge egg on his head"~~;
  - h. 10.12.18 - Bruise top upper right thigh and inside of leg;
  - i. 25.12.18 - Bruise right side of forehead
180. It is now accepted that the 'cut lip and huge egg on his head' (25(g)) were sustained when D was at nursery on 22<sup>nd</sup> October 2018 and the local authority no longer seeks a finding in this respect.

181. For reasons given above, I am not convinced as to the accuracy of the mother's reporting in respect of the causes of the other injuries sustained by D. However, the local authority is not asking me to come to conclusions as to the specific causes of each of these injuries, or their severity, but simply to find, as is accepted by the mother, that each of these injuries was sustained by D, that they happened when she was caring for D, and that the mother was not supervising him adequately on each occasion.

182. In all the circumstances, and with some hesitation, I am prepared to accept the mother's admissions and find the allegations proved to the requisite standard.

***Pool of perpetrators***

183. For the avoidance of doubt, I am satisfied that D's father was the sole perpetrator of D's injuries. While I have questioned the reliability of the mother's reports about a number of injuries, I am not satisfied that any party has established there is a likelihood or real possibility that she inflicted any injuries upon her son. There is no reliable evidence to suggest this and in my judgment no basis for placing her within a pool of perpetrators.

***Paragraph 26: significant harm***

184. Plainly at the time protective measures were taken D had suffered significant harm and was at continuing risk of significant harm, as a consequence of the injuries deliberately inflicted upon him by his father and his mother's wholesale failure to protect him.

185. The threshold for making public law orders is made out. The next steps in these proceedings will be to consider what if any public law orders should be made in order to secure D's welfare. The parties will need time to reflect on this judgment, to consider what assessments of the parents or potential alternative carers may be required and any further directions that may be needed to progress the proceedings.

Joanna Vincent

31<sup>st</sup> July 2019

HHJ Vincent  
Family Court, Oxford