

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

CASE NO: ZE15C00592

IN THE EAST LONDON FAMILY COURT

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF EF (a child)

Before:

Recorder

VANESSA MEACHIN

B E T W E E N:

London Borough of Newham

Applicant

- and -

AB

1st Respondent

- and -

CD

2nd Respondent

- and -

EF

(By her Guardian Matthew Jeary)

3rd Respondent

Ms May for the Applicant Local Authority.

Mr Leslie Samuels QC and Mr John Ker-Reid for the Mother instructed by Desor & Co Solicitors

Mr Nicholas Goodwin QC and Mr Matthew Stott for the Father instructed by Duncan Lewis Solicitors.

Mr James Shaw for the child instructed by TV Edwards solicitors.

Hearing dates: 7th, 8th, 9th, 12th, 14th and 15th September 2016

Judgment handed down on 15th September 2016

Judgment

ANONYMISED JUDGMENT OF RECORDER MEACHIN

Judgment

1. This case has been before me for a fact finding hearing which commenced on 7 September. In the course of this hearing I have heard evidence by way of video link from PD (8 September), DS in person (8 September), DJ by way of video link (9 September), AB (mother) (9 September) and CD (father) (12 September). I received written submissions by email on the evening of 13 September, heard oral submissions on 14 September and give judgment today 15 September.
2. I begin by expressing my thanks to those witnesses professional and lay parties who gave evidence before me, to the solicitors (particularly Miss Orton on behalf of the applicant local authority), to the Guardian Mr Jeary, the interpreters and to the advocates who appeared before me. All have assisted me in the process of trying to work out what happened so as to cause injury to the child at the heart of this case namely EF.
3. The advocates have been:
Miss May on behalf of the local authority
Mr Samuels QC leading Mr Ker- Reid on behalf of mother
Mr Goodwin QC leading Mr Stott on behalf of father
Mr Shaw on behalf of EF taking his instructions from Mr Jeary.
4. This hearing is the second attempt to have a fact finding hearing. The matter was initially before me in the week of 11 July when it became obvious to all of the advocates it was not possible to proceed to fact finding. It was felt that because EF's level of alkaline phosphatase in her blood samples were exceedingly high in June that further testing was required. It was considered that it may well have a bearing on the expert opinions previously expressed. Certainly DS recommended that further investigation was necessary as may affect his opinion. Thus the matter was adjourned to allow further testing. For reasons set out in the order I made in August such further testing by an endocrinologist has not been possible. See my August 2016 order.
5. The importance of those tests has it seems receded in light of the fact that a recent blood test of EF showed a normal reading.
6. Thus the week of 11 to 14 July became one given to case management and disclosure applications by the police which I refused. See separate Judgement dated 14 July. Given that this case had already been timetabled by HHJ Sapnara to a welfare hearing commencing last week, it was agreed that these dates originally identified for the

welfare hearing should be used for fact finding instead with an increased time estimate. The welfare hearing if necessary is to take place in November.

7. I use the phrase if necessary as it seems that this is a true single issue case namely the investigation in relation to the injuries that EF sustained as to whether they were caused non accidentally (including recklessly or negligently) or accidentally. If the case put on behalf of the applicant local authority is not proved this case will end, if findings are made, there will be a need for the gathering of further evidence.

The findings sought

8. The findings sought by the applicant in its document of May 2016 have been amended by a document dated 8 September 2016. These have been further clarified in Miss May's opening note and written submissions. Whilst not formally responded to by the parents, the earlier finding document dated May 2016 was responded to and the parents' responses are found in the bundle, mother's at A32 to A36 and father's at A37 to A41. The parents have no burden of proof to discharge, the burden and standard of proof remains for the applicant local authority to discharge. However the parents have anxiously considered what could have caused the fractures to their daughter, both consider that the femur was fractured in the accident described by the father, both consider that the rib fractures may have their origin either at birth or in the accident described and indeed both consider that she might have some underlying problems affecting her bones.

The Law

9. The court has been greatly assisted by the written documents provided by the advocates in this case, both in terms of written opening, position statements and closing written submissions. I bear in mind all authorities that have been cited to me, even if they are not recorded specifically within this judgment.
10. The relevant law to be applied is well established.
11. The principles I must apply were conveniently summarised in a passage of the judgment of Baker J in *re JS (A Minor) [2012] EWHC 1370 Fam*;

He said:

[36] In determining the issues at this fact finding hearing I apply the following principles. First, the burden of proof lies with the local authority. It is the local authority that brings these proceedings and identifies the findings they invite the court to make. Therefore the burden of proving the allegations rests with them.

[37] Secondly, the standard of proof is the balance of probabilities (***Re B* [2008] UKHL 35**). If the local authority proves on the balance of probabilities that J has sustained non-accidental injuries inflicted by one of his parents, this court will treat that fact as established and all future decisions concerning his future will be based on that finding. Equally, if the local authority fails to prove that J was injured by one of his parents, the court will disregard the allegation completely. As Lord Hoffmann observed in *Re B*:

"If a legal rule requires the facts to be proved (a 'fact in issue') a judge must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1."

[38] Third, findings of fact in these cases must be based on evidence. As Munby LJ, as he then was, observed in ***Re A (A Child) (Fact-finding hearing: Speculation)* [2011] EWCA Civ 12**:

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

[39] 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. As Dame Elizabeth Butler-Sloss P observed in ***Re T* [2004] EWCA Civ 558, [2004] 2 FLR 838** at 33:

"Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof."

[40] 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. The roles of the court and the expert are distinct. It is the court that is in the

position to weigh up expert evidence against the other evidence (see **A County Council & K, D, & L [2005] EWHC 144 (Fam)**; [2005] 1 FLR 851 per Charles J). Thus there may be cases, if the medical opinion evidence is that there is nothing diagnostic of non-accidental injury, where a judge, having considered all the evidence, reaches the conclusion that is at variance from that reached by the medical experts.

[41] Sixth, in assessing the expert evidence I bear in mind that cases involving an allegation of shaking 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 (see observations of King J in **Re S [2009] EWHC 2115 Fam**).

[42] 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. They must have the fullest opportunity to take part in the hearing and the court is likely to place considerable weight on the evidence and the impression it forms of them (see **Re W and another (Non-accidental injury) [2003] FCR 346**).

[43] 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).

[44] Ninth, as observed by Hedley J in **Re R (Care Proceedings: Causation) [2011] EWHC 1715 Fam**:

"There has to be factored into every case which concerns a disputed 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."

The court must resist the temptation identified by the Court of Appeal in **R v Henderson and Others [2010] EWCA Crim 1219** to believe that it is always possible to identify the cause of injury to the child.

[45] 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 (see **North Yorkshire County Council v SA [2003] 2 FLR 849**). 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 (see **Re D (Children) [2009] 2 FLR 668**, **Re SB (Children) [2010] 1 FLR 1161**).

12 In a later case Mr Justice Baker reiterated these matters and expanded upon them. in **A Local Authority v (1) A mother (2) A father (3) L & M (children by their children's Guardian) [2013] EWHC 1569 (Fam)**. He repeated matters one to eight and developed the later factors.

He said:

"Ninth, as observed by Dame Elizabeth Butler-Sloss 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 presently dark". 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 older two 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 the 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”.

Mr Justice Baker continued:

“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”

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”.

13 All of the above principles appear to me to have relevance to this case.

Background

The mother

- 14 AB is 34 years of age. CD is 27 years of age. As mentioned they are the parents of EF born in 2015. She is their first and only child. I shall refer elsewhere in this judgment at times to the parents as mother and father, without wishing either discourtesy by the use of those terms.
- 15 Both parents are from a European State. The mother's understanding of English both written and spoken is very good. She gave evidence before me in English and only used the assistance of an interpreter at times when she needed clarification. The father's understanding of spoken English and written English is not as good as the mother's by his own admission. His evidence was given throughout with the use of an interpreter. I refer at this point in the judgment to some matters of detail as to their background that they gave in evidence. I will leave to later in this judgment to deal with disputed matters.
- 16 The parents refer to one another as husband and wife although they are not married. They consider that their relationship is a strong and loving one. They met in 2011 and became a couple some time thereafter afterwards. It seems that the mother was aware of some of the detail of the father's previous convictions (he has three) but did not want on her own admission to enquire too deeply of him in relation to them. She considered that she was a sensible person who wanted to judge the father on how he presented to her. She explained that he had never given her reason to doubt how he behaved towards her or their daughter EF when she was born.
- 17 The mother had been married before separated and divorced. She was working in a town away from where the father was living and whilst enjoyed her job decided in 2013 to give it up and spend more time with the father. She did so in 2013, they moved in together and they opened a clothing shop together. She described to the independent social worker Mr M that her childhood was a happy one. She has no convictions. She has no history of drug or alcohol abuse.
- 18 In 2013 the father decided to move to Norway to work and support them in having a better life. The mother explained that she did not agree with the decision that he made but supported him in going. Seemingly her misgivings were well placed as two weeks after arriving in Norway the father was involved in a theft, kept in a detention centre and deported. He made her aware of his arrest by a phone call. On his return, the mother

suggested that they should move to England for a better life which would enable the father to remove himself from “everything” (Para 8.8, E84). I took that to mean the bad influences that had led him astray.

- 19 The mother and father arrived in London in October 2013 initially renting a room and in due course moving to their present address, which is a shared house that they rent with friends. The mother and father both obtained work in England and life became easier for them.
- 20 The mother explained that she and the father were keen to start a family. She experienced two miscarriages before she conceived EF. The second experience was worse than the first as she had not realised that she was pregnant on the first occasion until she miscarried. She explained that she was worried that she would not be able to have a baby and told the father that because she couldn't have children, he should find a relationship with someone else who could give him children. She explained that he reassured her, told her how much that he loved her and that they would have a baby together. Shortly there afterwards she conceived EF. She found out in December 2014 and decided to surprise the father by putting up a Christmas tree and writing him a card explaining that he was to be a father. She explained that they were both overjoyed by the news.
- 21 She had a good and uneventful pregnancy, continuing to work. EF was to be born by a planned caesarean procedure. She was given a choice for the date and chose the day before the father's birthday. She planned and arranged for a cake celebrating his birthday indicating that they would have a baby. She explained that the birth of EF was one of the happiest days of her life.
- 22 On her return from hospital she explained that she experienced some lack of mobility due to the operation. The father cleaned and cooked. They were supported with visits from family including her sister who travelled from Manchester.
- 23 After the visitors left the family unit settled into a routine. The father returned to work. His pattern being to leave the house in the week around 6.30am, returning at 7pm, and working a half day on Saturdays, sometimes on a Sunday.
- 24 The mother was in receipt of maternity pay and predominantly the family relied on the income that the father brought home. They had some savings and were not in debt. Neither reported considering that they had money worries or felt under strain.

- 25 The mother considered that she settled into motherhood well. She explained that apart from EF experiencing colic for a short period (possibly 2 or 3 or 3 or 4 weeks) from early September, things were uneventful. The mother cared full time for EF and described that when the father came home he would immediately want to kiss their daughter and enquire how she was, then kiss her. She considered that this was natural and that there were no strains in their relationship.
- 26 The mother explained that she did not consider that EF having colic was a difficult time. If she was experiencing stress it was because of how her daughter was in pain. She described she would be awake with EF in the night, allowing the father to sleep. If she needed a break for a few minutes she would wake the father up and he would be happy to take over to allow her to have a break. She considered that the father was always very appropriate towards their daughter.
- 27 She described them having a quiet life. She would cook on the father's return from work. They would eat together with one of them holding EF whilst the other ate and vice versa. She would often wait for the father to eat first as he had been working. The family had purchased a baby bouncer (more below) and at times the bouncer would be carried downstairs, never with EF in it and she might be placed in it whilst they ate, but mainly the routine was one of taking it in turns to hold her. She described that sometimes the father would play football after work on Saturday afternoons and then return home. Their routine was that Sundays, if the father was not working, were family days, involving walks in the park, visits to friends, food at a restaurant.
- 28 In this period until 7 November 2015 EF was thriving and putting on weight. The mother's interactions with health professionals had been entirely appropriate. The family were not known to social services or the police. They were no calls out to their home.
- 29 The mother described a quiet but contented existence with the three of them as a tight family unit.

The father

- 30 The father's account both to the independent social worker Mr M and in his evidence written and oral to the court was largely similar to the mother's in relation to their meeting and the development of their relationship.
- 31 He has no history of drug or alcohol dependency. He has three previous convictions. The most serious being when he was a teenager (aged around 18 or 19 years at the time) and he was charged with battery and assault and received a two-year prison sentence with damages and was released after 16 months. There was an earlier offence in 2008 for an offence of theft (I have no details of this) and the third was the offence of theft in Norway in 2013. The details of two of the three offences are contained at para 16.38 to 16.41, E113 and the Interpol report at G90. The detail of the offences and any differences in the father's account featured in cross examination of him by both Miss May and Mr Shaw. I will return to my view of these matters in due course.
- 32 He obtained work shortly after coming to the UK in 2013 and accepted that his employment opportunities would have been reduced in his country as a result of these convictions. He did not disclose the convictions to his employers in this country and explained that he did not consider that he needed to do so.
- 33 He has not been involved in an incident of violence since 2010 and has had no involvement with the police on coming to this country in 2013.
- 34 He too explained his love for the mother, his wish to have children with her, his disappointment at her upset at the miscarriages that she had experienced, his belief that they would have a child and his joy when he found out that the mother was pregnant and when EF was born.
- 35 He too described the family settling into a routine which continued uninterrupted until the events of 7 and 8 November. He considered that the mother coped very well with EF and that he had helped her. He accepted that he was a more inexperienced parent than his wife given that she was EF's main carer. He explained that he had not felt stressed by the fact that EF had had colic, had wanted to help his daughter and help his partner.
- 36 He too considered that they were not under financial strain and the family was functioning well.

37 The events of 7 and 8 November changed this family's routine. Each parent has been assessed by the independent social worker Mr M. He has spent time with them individually and as a couple. Whilst accepting that the couple were aware that they were being assessed by Mr M, his interactions and observations of the couple are extremely positive. The report is 88 pages in length (E55 to E141) and I have read and considered it a whole. Whilst mainly a report to assist in any welfare hearing the advocates have referred me to it, both in terms of direct information, observation and comment. I identify some parts below. At para 24.19 Mr M recorded

“My observation of joint contact indicates a couple working very well together (sharing their attention with EF in an easy and calm manner, both displaying love and affection, being tactile, giving her positive eye contact, handling her safely and with care, responding appropriately to EF's needs, no sign of irritation or frustration on the part of either parent) and AG responding very appropriately to her parents' overtures, happy and relaxed in their company. The Foster carer refers to AB's very good and independent care of EF (prioritising EF's needs above her own, seeking out advice appropriately, ensuring surroundings are clean and organised), her continuing to meet EF's needs appropriately even when she is tired, and a very strong attachment between AB and EF”.

At para 24.23 (E134) he said “CD presented in a calm, relaxed and thoughtful demeanour throughout the assessment, also cooperative and hospitable. He expresses his positivity at being the subject of an independent social work assessment” and at para 24.33 (E137) “my observation of contact suggests positive interaction (including handling EF securely throughout, ensuring safety, demonstrating love and affection and offering praise, providing a variety of stimulation and meeting her basic needs), EF rather quiet but responding happily to her father. He distracted and reassured EF when she became agitated and fed and changed her after recognising those needs. These observations were confirmed by the contact supervisor as being typical”.

In his conclusions at para 25.1, E138, “in my assessment practically all the known risk factors associated with maltreatment and physical abuse are absent in this case (i.e. unrealistic expectations of a child, negative attitudes about a child's behaviour, poor relationship between child and parent, substance misuse, employment and financial difficulties, poor parenting skills, inability to access professional support). There are many potential protective factors that can be identified”.

At para 25.2 “Both parents present as intelligent and articulate individuals openly expressing their views and feelings, engaging well with this assessment, and cooperating well with all professionals. AB has been the primary carer, CD’s parenting role very restricted due to his work commitments (although he has a basic understanding of the child’s needs). The couple appear to be in a stable and loving relationship and seem to have adjusted well to life in the UK. There is no evidence of any conflict or strain in their relationship. Both parents appear to have experienced positive parenting enabling them to develop an internal working model that should provide a platform for offering EF more than good enough parenting. There appear to be no apparent employment, financial or environmental stresses surrounding family life prior to the incident and both parents have supportive family in their home country. All the evidence supports the couple’s strong focus on meeting and prioritising all of EF’s needs (particularly in AB’s case) and their attachment to her. AB presents as a potentially very competent mother able to provide sole care of EF if necessary”

And para 25.3 “both parents describe the incident in similar terms, seriously question medical opinions and are equally emphatic that neither deliberately harmed their child. AB presents as a strong and open personality and a resilient character meeting and overcoming challenges in her life in a determined and solution-focused approach. CD presents as calm, thoughtful and grounded individual conscious of his family responsibilities. Neither parent appears to be rigid in their thinking or expectations or (notwithstanding CD’s previous conviction) prone to violent or aggressive behaviour. There are no indications of any psychological or other mental health issues in respect of either parent. Both parents acknowledge the legal process whilst highlighting the cultural differences in the state response to concern, emphasising the more supportive approach in their home country (I am conscious from my own experience in conducting assessments there of their higher threshold for intervention) in contrast to the UK approach. Both parents (AB in particular) are clear and strongly motivated by the need to meet EF’s needs and if necessary to become sole carers if any finding of non- accidental injury is made against the other parent”.

Para 25.4 “the contra indicators include concerns about delay in seeking medical attention. The couple have difficulties acknowledging the legitimacy of medical opinions. The couple’s informal support networks in the UK appear very limited. CD has a previous offence for

violent behaviour and is likely to experience very significant challenges as a sole carer without substantial informal and professional support”

38 Mr M’s recommendations included that the father undergo a parenting course. He has done so and I have seen his certificate. The applicant local authority gives credit to the father for taking this step.

39 It is probably appropriate at this juncture to also record the willingness of the applicant to accept that both parents love their daughter very much and whilst Miss May was not prepared to agree Mr Stott’s contact summary, she confirmed that:

(a) the applicant had no concerns re contact

(b) the applicant had no concerns re the couple’s relationship re contact

(c) the father engages with the baby

40 I have read and considered Mr Stott’s document, which is agreed by the guardian. The picture that emerges echoes the comments that I have already extracted from Mr M’s report.

The baby bouncer

41 The couple made appropriate preparations for the birth of EF. At some point following her birth they purchased a baby bouncer. The original in which EF had been placed on 7 November 2015 was retained by the police. The police refused to allow the examination of the original bouncer instructing counsel Miss Wheeler who appeared before me in July to oppose the application for its production and seeking disclosure to the police, which I refused.

42 The impasse was eased by the sensible suggestion of the applicant local authority in offering to purchase a replica of the baby bouncer. Mr Ker- Reid sensibly suggested that the new bouncer should be checked against the police exhibit which the police had retained. This turned out to reveal two differences in the bouncers which would have not come to light otherwise.

43 I have already referred to the assistance that Miss Orton, Miss May’s instructing solicitor has given the court, in the preparation of the bundle and the attempts at identifying an expert to

carry out tests upon EF in the adjourned period. Miss Orton has provided a statement at C103 onwards. She assembled the replacement chair and having done so, noticed two important differences between it and the original chair. The first was that the original chair had been assembled so that the rubber grips on the bottom of the frame were pointing up as opposed to down (C103) and the second being the position of the music box, vibration box. On the original bouncy chair this was protruding over the frame of the chair with the battery compartment facing forwards and the control buttons pointing downwards as opposed to being contained in the fabric of the chair as per the instructions.

44 The music box was not on the chair when it was seized by the police. The father was to tell the police in his police interview that it had come off. Thus when the father gave his demonstration to the interviewing officers the music box was not on the chair.

45 Seemingly it was received by the police subsequently as was present on the exhibit when Miss Orton attended at the police station. Whilst she was not allowed to touch the exhibit herself she was informed by DC Lee Wilson that the music box appeared to be clipped on the metal frame. When Miss Orton returned to the office she reassembled the replacement chair so that the front seat of the frame faced backwards. This caused the music / vibration box once attached to protrude over the seat with the battery compartment facing forwards as was seen on the original chair.

46 The chair in this condition was transported to the experts and in due course brought to court. There are photographs of the replacement chair and the original chair in the bundle. I was able to view the chair on the second day of the hearing. The significance of the original chair being wrongly assembled meant that the music box, a hard plastic object protruded over the seat. It was not intended if correctly assembled to be in that position. The bouncy chair had a hard rim but otherwise was covered in fabric. I shall return in due course to my determinations as to the chair and its assembly.

The events of 7 November 2015

47 7 November 2015 was a Saturday. The parents both recall that the father went to work and then on to an event at their country's embassy. He then played football with his work colleagues and returned to the family home. EF was asleep on his return in her cot in their room, with the mother present. On the father's return the parents talked of their respective

days and when EF woke up, her mother picked her up and changed her on the bed. They played with EF together. At some point the father had a shower and returned to the bedroom. The detail of what he was wearing was the subject of cross examination and I shall return to that in due course. The parents describe that the mother went downstairs to start making their evening meal. She believed that she had taken the baby monitor with her and left it on. She was aware of EF upstairs with the father. EF had been placed by her mother in the baby chair. The details of what she heard and how and where the baby chair was, were again subjected to cross examination, to which I shall return.

48 At 6.45pm as the meal was nearly ready the mother called the father to let him know that dinner was nearly ready. After a short period the father decided to get ready and moved towards the wardrobe. He realised that the position of the baby bouncer in relation to the wardrobe doors were such that if opened the doors would bump into the baby bouncer. Again the location of the baby bouncer in relation to the wardrobe doors was a matter of cross examination which I will return to in due course. The father explained that he took a step, picked up the baby bouncer by what he perceived to be the handle (it was in fact a toy bar and not meant to be used a handle) and as he turned with his eyes looking forward at where he was moving it to, he was left holding only the bar. The bouncer with EF in, fell from his waist height, about a metre and landed on the laminate flooring. EF was not strapped in and his recollection was that she "jumped". Her position when she came to rest was lower down when she had been originally sitting.

49 EF immediately cried. Her mother rushed upstairs. She was later to say that she had heard a crash, she was uncertain as to whether this was over the monitor or from elsewhere and she rushed into the room to find the father comforting EF, saying that he was sorry, repeatedly.

50 Both parents described that EF appeared scared. Her mother felt her crying had been different to what she had heard before, her father had thought it was also a different cry but was to say in cross examination that it was a cry similar to when she had had colic.

51 The parents described that they checked EF over, her mother in particular and that they thought that she was uninjured, their impression that she had been scared by what had happened was accompanied by their descriptions of EF's hands being screwed up.

52 During the course of the night, EF was unsettled, she did not receive Calpol, about 3.30 to 4am when the mother was changing EF she noticed that she cried when her leg was touched. The mother monitored her during the night. She said that she did not realise that they could go to Accident and Emergency. In the morning they noticed that she was not moving her right leg. The mother called her midwife who advised them to take her to accident and emergency. At E67 the mother explained to Mr M (independent social worker) that she had thought that she would take EF "somewhere" but wasn't sure where to go and consequently telephoned her midwife whom she was used to calling. She stated that she did not have time to fully explain to the midwife what had happened other than explaining that her "husband had dropped the baby and something may have happened to her leg". She stated that the midwife advised her to go to A& E which where they went in due course. The actions of the couple have been the subject of cross examination to which I shall return in due course.

53 There had been no previous issue with EF being taken to see medical professionals. She was taken for her 6 week check on 21 September 2015 (H319) and received her first injections on 12 October 2015 (H319). She had not been a child that had been hidden away.

The events of 8 November 2015

54 The parents took EF to Newham where she was originally seen. She was x rayed at 10.21 that day (H8) and was found to have a fracture of her right femur. This was the subject of further verification on 10 November by SO who has produced two final reports one describing that she had a "minimally displaced transverse fracture metaphysis of the distal third of the right femur" and the second "there is a transverse fracture metaphysis of the distal third of the right femur".

55 EF was prescribed paracetamol.

56 At 10.30am in light of the information as to her fractured right femur a history was taken from the parents. I interpret that this was from the mother as there is no suggestion that an interpreter was present for the father. At H14 it is recorded as "parents state that the child was in a carry cot/ bouncer yesterday evening (being lifted up by the handle) and the handle broke, therefore the cot fell and hit the ground with child in it. Child was not bending right knee at night and (illegible). Parents brought child in this morning".

- 57 The notes indicated that there was some concern that the fracture was unusual in a 2 month old (in fact EF was 12 weeks 3 days at this point) and “later presentation raising concern for NAI”. It was considered that the fracture was needed to be treated in a pavlick or soft harness or early splint which they did not have at Newham.
- 58 EF was 6.04 kg just above the 50th centile (H15). A later history taken at 12.30, still in the emergency department at Newham is recorded at H16 “history from mother, her mother reported that at approx 19.00pm whilst they were in the room and EF was in a bouncer, her dad tried to transfer her from one end of the room to the other, but unfortunately the handle of the bouncer got disconnected and the bouncer landed on the floor (wooden) about 1 metre high. Her mother stated that EF did not fall to the wooden floor but bounces up and down on the bouncer and think she must have hit her leg to the metal frame surrounding the bouncer. She stated that there was no loss of consciousness, no vomiting but that she cried immediately for a few seconds and settled to sleep. Accordingly to her mother at about 4am she changed her nappy and noticed her right leg was in bending position (flexed in description) and when she touched it, she cried. This morning whilst she (mother) was changing her, the right leg was still in the bending position (flexed) at 8.05am, they therefore decided to come to hospital to get it checked. We could not obtain much information from dad as he does not speak English. Her mother stated that she has been with EF all day and Dad has been at work but came to join in the afternoon at 16.00pm”. The examination of EF described that her development was appropriate, that there was no family history of genetic or metabolic bone disease (H19). She was described as “looking well and kempt, interacting with mother but cried on movement”. The plan formulated at H20 was that there should be a social services referral, that further investigation was needed into the fracture of the femur including care that could be given at the Royal London and an x-ray review was needed.
- 59 The following day the parents were spoken to again at the Royal London hospital by Dr B. Her examination commenced at 12.00 and concluded at 12.20. The accounts of the parents are contained at H26 and later in a more complete form at H203. The mother reported to Dr B the account that she had given previously. The father was able to give an account through language line. He explained in his evidence to the court that this had been given through the use of two interpreters as the first had hung up on him. He corrected the version that was set out in the hospital records as having been what he said. He said that he did not say that

he had saw her leg “leaning over the bouncer”. He said that he thought that the back of her knee hit the edge of the bouncer. I will return to the accounts in due course.

60 The picture that was appearing medically was somewhat confusing in relation to EF at this time.

61 On the 10 November 2015 she underwent a full skeletal survey (E1). This was interpreted by consultants Dr M and Dr CH as follows:

“Normal bone density, no wormian bones. On further inspection there is a soft tissue density localised to the lateral aspect of the left seventh and eighth ribs on the AP chest view, but not seen on other views, and there is no definite underlying rib abnormality. This may just be artefact but it could be related to an occult fracture. Suggest review on the repeat imaging” and “there is irregularity and sclerosis of the left scapular spine which is suspicious of the fracture and in view of the sclerosis it is likely to be healing. Slightly displaced distal right femoral metaphyseal fracture as previously demonstrated on the imaging at the time of admission. No other acute or healing fracture has been identified, the lungs are clear.” and under “impression” “In addition to the known right femoral metaphyseal fracture there is a second fracture involving the spine of the left scapula which may be healing. The findings are suggestive of non-accidental injury, a repeat limited skeletal survey will be required in ten days”.

62 I was informed by Mr Samuels QC that his research had revealed that Dr M is paediatric radiologists, as Dr Co (who became involved later). He had undertaken this research as PD raised a query in his evidence as to whether they were paediatric radiologists as opposed to radiologists.

63 Events unfolded with the police becoming involved on 11 November. EF was made subject to a police protection order (G16) and conditions were placed on the parents’ care of their daughter, they were no longer to be unsupervised in their care of her. This was explained to the mother at the hospital and to the father over the phone.

64 On 12 November 2015 the social worker was looking to the parents to agree the section 20 accommodation of their daughter (G17).

65 The police attended the Rainbow ward at Newham on 13 November (seemingly EF was back there). In light of the fact that the mother was breast feeding it was considered that the most proportionate way to interview her was at the hospital, in a side room on mobile recording equipment. An interpreter was present and the interview was approximately 35 minutes in duration. The mother did not have a solicitor present. The tape has been lost or if it is available has been found to be blank. The officers took notes of the interview, contained at G18 to G22 and handwritten notes at G0a to G0f. The mother explained to the police that she had experienced two previous miscarriages and they were excited to understand that she was pregnant with EF. She was not present when the incident occurred. She explained that she was in the kitchen downstairs and she heard a crash and a baby crying, went straight up and she could see EF crying and CD crying. She picked her up and held her to her chest to comfort her and asked him what had happened. She said that CD had told her that EF was in a baby bouncer in front of the wardrobe door in their bedroom when he tried to move the bouncer to get something from the wardrobe and he picked up the baby bouncer by the arm of the bouncer which goes across the front and with this the arm had come off the side of the bouncer and the bouncer fell onto the floor. She said that he said that when the bouncer fell onto the floor it bounced off the floor. The mother said that she heard her crying and thought that the incident has scared her and didn't realise that she had been hurt. At the time she didn't realise that EF had hurt her leg. She thought that she was scared from the fall. EF went to sleep and apart from her jolting in her sleep she appeared fine. The mother said that she did not have a go at CD as she knew that he was upset and knew that he loved his baby as much as she did so she did not accept that he would have hurt her. The mother stated that during the night whilst she was breastfeeding and trying to change EF, she tried to lift EF's legs to get the nappy on and she noticed that EF was crying when she tried to lift her leg up where the injury was. The mother stated that she checked on her through the rest of the night and she noticed that EF wasn't stretching her leg out at all. She said that EF's leg was pulled up by the tummy but at first she didn't take too much notice as she often has both legs pulled up by her tummy, she states that she felt something wasn't right so the following morning she took EF to the hospital.

66 The father was interviewed later that night on his return from work. He like the mother participated in an interview without a solicitor but with an interpreter. He was invited to give a demonstration in his police interview. This was of limited value. The father attempted

to pick the bouncer up and walk with it as he had done in the bedroom, he was asked to remain where he was in camera shot, he was asked to describe where his daughter had been and where she had moved to in the baby bouncer without the use of a baby doll and the bouncer chair in question did not have the music box on it.

67 I have viewed the father's interview and read the transcript, amended by the corrections of the father's interpreter, which were supplied to me in the course of the hearing. The father repeated the account that he had given previously in relation to picking up the baby bouncer. He explained that he had taken two steps when the handle came off in his hand, the baby bouncer impacted on the floor and the baby bounced up and then back. She was not strapped in. He said that he was in shock when it happened. He considered that this was the first time that he had heard her cry like that. He explained that there was a metal bit at the front of the chair, that there was also a music box which had come off probably because of the impact of the fall. He said that the chair did not roll to one side or the other. He considered that after the impact she jumped up and fell back to her chair. He didn't know how she injured herself he considered that it may have been due to the metal bit on the side. He considered that the chair had a spring in it and that her legs were either side. He intended to make a complaint to the store as it had not been safe as the handle had come off. When he had looked at his daughter the toy had come off, she was still in the chair with her legs towards the front of the chair. She started to cry and he realised that she was not right. He thought that she was scared in the night. He was very shocked when he saw himself holding the handle and her legs were towards the edge of the chair. Normally she would have been sat up, her back and legs slipped down. He didn't know what part of the chair she hit, she didn't come out of the chair or hit the floor.

68 At the time that the father was being interviewed he was being interviewed on the basis that EF also had an injury to her left shoulder. This proved not to be the case. He was also asked about the possible rib fractures. The father maintained his account in relation to the baby bouncer.

69 Later as the interview progressed he was asked again as to the position of her legs and what he had said at hospital. He considered that her legs were not hanging, her legs were near to the edge and he thought that she may have hit the metal bit of the chair. He queried whether she could have hit the metal part of the chair. The police officer considered that what he was saying was a little bit different to what he had said before but the same as what he had

said at the hospital. He maintained that they had not agreed a story to tell. He had told his wife what had happened but not in great detail. He had been upset, it was the first time that he had heard her cry like that. He explained that if he had he known that the handle would have come off then he would have taken appropriate measures. He considered that after god had given them this gift that he would make sure all of his life that she was safe. He had never thought that this type of accident could happen. He had wanted to move her one or two metres. They never carried in her the chair. He thought he had moved her (as opposed to carried) a few times before (when she was in the chair) and he wondered whether the handle had come a bit loose. It had not come off with him before.

70 On 19 November 2015 Dr L prepared a report (E2 onwards). She is a consultant paediatrician at Newham University hospital. At the time of her report she was aware of the report of Drs M and Dr CH and that a skeletal survey was recommended to be repeated in 10 days from the date of their report. EF and her mother had been discharged to a supervised foster placement. She noted that whilst EF had been an inpatient at the Rainbow Ward at Newham and whilst at the Royal London Hospital there had been no concerns as to the care that either parent gave her. She explained that they had planned to do a skeletal survey at Newham that day (19), however this was not done as the radiology department at The Royal Hospital advised that it would be better repeated at their hospital so that the same equipment was used and that the images were more comparable. Dr L had been asked by Mr Y social worker to give her opinion as to whether EF had suffered inflicted injury. Her conclusions were as follows:

“The parents report a plausible mechanism of action for the injury. The fact that they presented the following morning was not unreasonable as she had appeared to settle after the original incident. The account of the accident has remained consistent on repeated questioning. In addition there is further information from the vitamin D levels taken that were done at the Royal London hospital. These are low, measuring 20 nmol/l which is in the deficient category. She does not however have rickets on the basis of her blood tests and x-rays. There is some debate as to whether low vitamin D makes children more prone to fractures in the absence of rickets. At present there is not a clear consensus on this. It is however another factor that complicates this case and should be considered on assessment. If we accept that the femoral fracture could have occurred as a result of the accident, then the only additional indication of non-accidental injury is the reported scapular spine injury. Whilst this is troubling, I am not convinced that it is compelling evidence on the balance of

probabilities that non accidental injury has occurred. In the absence of any other concerns raised during the police and social services investigation. Whilst there would be an element of risk in returning EF to her parents unsupervised, this must be balanced against the harm caused by potentially unfounded suspicion of non -accidental injury. I would be concerned if, on the basis of the skeletal survey result alone, steps were taken to remove the baby from the parents as I would be more cautious in my interpretation of this”.

71 On 19 November 2015 the applicant issued its application for a care order. The interim threshold (A2) pleaded reliance on the fracture of the right femur and the presence in the skeletal survey of 11 November (in fact this was done on 10 November) of the “presence of an irregularity and sclerosis in the left scapular spine. The paediatrician (my insertion Dr B) who carried out an examination of EF has indicated that the finding is likely to represent the presence of a healing fracture to the spine of the left scapular” and reliance on Dr B’s view that it (the baby bouncer) “was unlikely to have caused the injury suffered by EF”. The social work statement in support dated 19 November set out the background known to the applicant including that “the family were not known to social care. Police checks have been completed and indicated that neither parent have any criminal convictions within the UK. However the police have informed the local authority that they have received information from the parents’ home country which suggests that the father had previously served a two-year prison sentence there for serious bodily harm. The police have requested further information regarding this from Interpol and further details are awaited.” (C5). The analysis of harm concerned amongst other matters that “there is no clear explanation of the left scapular fracture (fractured shoulder blade) and an earlier passage “concerns were also reported that they gave different explanation to the cause of the injuries” (C7).

72 I pause to note that I have already considered the same accounts that the medical staff received. I have not been able to discern as between the accounts given by the parents the perceived differences, particularly given that one was in the room (the father) and the other not. The mother did not witness the incident but relied on the father’s account as to what had occurred. I note that the police had reported to the social worker that “the bouncy chair has a heavy metal frame and the “handle” both parents refer to as a handle is not a handle but a toy bar. It is not designed to be used as a handle and easily comes off” (C8).

- 73 A skeletal survey took place again on 24 November 2015, for which no separate report has been provided. My attention has been drawn to E8 where reference is made within the report of the CT scan on 4 December to the following in the conclusion "Rib fractures at the same side as the right femoral fracture. On review of the second skeletal survey there may be some evolution of the appearances of the sixth and seventh rib fracture which were not present on the initial skeletal survey. This suggests a similar age to the femoral fracture". Whilst it would have been helpful to have the actual report of the 24 November I accept that this had been seen by Dr M and Dr CO, both paediatric radiologists at the Royal London.
- 74 A CT scan took place on the 4 December 2015. This was again viewed by Dr M this time with Dr CO (E8). The report indicated that "there are some healing fractures of the right sixth and seventh ribs. Also that there is a fracture of the posterior first rib (in the region of the tubercle), this also demonstrates some healing, although the fracture line remains visible. The left scapular is incompletely imaged, but when combined with the appearances on the previous CT it is likely that the scapula is normal, despite the abnormal appearance on plain radiographs" and their conclusion "Rib fractures on the same side as the right femoral fracture. On review of the second skeletal survey there may be some evolution of the appearances of the sixth and seventh rib fracture which were not present on the initial skeletal survey. This suggests a similar age to the femoral fracture. However it should be noted that rib fractures, including the posterior first rib fracture (which is distant to the other fractures) would require considerable force. The mechanism of injury should be revisited".
- 75 I note that in the absence of Dr B, Dr Mo added her comments "The above comments further qualify our initial concerns as to the mechanism of injury in this case. Rib fractures in this age group take considerable force and falling from a height without movement or falling out of a bouncer, does not account for these rib fractures".
- 76 I pause to note that I am uncertain where Dr Mo has formed the view from that there was no movement.
- 77 She continued that "all injuries are highly suspicious of non-accidental injury. The child's vitamin D level is low, however this child does not have biochemical (blood changes) or radiological (x-ray) changes in keeping with rickets or bone disease. The Royal college of

Paediatrics and child health very clearly state that without biochemical and radiological findings of bone disease a child will not spontaneously fracture bones”.

78 Seemingly the second CT scan (4 December) led to separation of the mother and EF. A strategy meeting was held on 8 December 2015 and EF was placed in foster care under police protection. This was an exceedingly difficult time for the parents. Both spoke compellingly from the witness box as to the pain that the separation brought. The mother explained that they did not want to return home after contact as they would see her empty cot. The mother explained that she asked the foster carer to allow her to wash her daughter’s clothes as she wanted to be able to do something for her daughter.

79 On 10 December 2015 the application for an interim care order was opposed by the parents as its plan was continued separation of the mother and baby EF. Whilst approved by the court on 10 December, the court expressed the view that “it would like the applicant to explore any realistic highly supervised mother and baby foster placements and whilst not making any order for contact, expressed the view that five hours a day would be preferable” (B46).

80 After a week the mother and EF were reunited and have remained together since. They have moved foster placements during this period. I note that both foster carers who have supervised the mother in her care of EF have been exceedingly positive as to her care of her baby such that both have been motivated to write in her support.

81 The applicant local authority took appropriate measures to reunite the mother and baby and have continued to work with the parents throughout this case. I accept that the actions of the applicant have been proportionate and measured in light of the medical evidence that it was presented with.

82 The parents have engaged with this court process and have met with all professionals including EF’s guardian Mr Jeary. He met the mother and EF before separation in foster placement on 30 November and the father separately on the same day (E12). He considered on meeting the parents that EF was “dearly wanted” (E13). He considered that he “saw AB showing a good level of care and warmth towards EF when I visited on the 30 November. This corresponds with the reports from both the hospitals and the foster care of their observations of AB with EF” (E14). The mother explained to Mr Jeary that “nobody else has

ever had the care of EF, AB told me that even when EF is alone with CD, she has a baby monitor that she can hear what is happening” (para 25, E15)

83 CD explained on his meeting with the Guardian that he had stated that “when he was 19 he was involved with a fight with a gang and received a suspended prison status. CD was open about this and said that he had not be in trouble again and that this was a youthful mistake”.

84 This was a matter that the father was later cross examined about by Mr Shaw. As this is a discrete point I deal with it at this juncture. It is correct that the father confirmed that what he had said to the Guardian had been correct. CD accepted that he had had a period of actual imprisonment as opposed to suspended. CD explained that he had served a sentence and had a part suspended. I did not consider that in his exchange with the guardian that he had intended to give the guardian misleading information. He would have known in any event that this was going to be checked. It was clear in any event that the police had conveyed to the social services that they were aware of his conviction for violence in his home country and the period of imprisonment that followed. I do not consider that this is a matter that is probative in relation to the events that I need to consider. Indeed a view that the father was intent of misleading Mr Jeary was not the impression that Mr Jeary had formed of either of them. He confirmed at E 14 that “they both presented very well when I interviewed them, they were both sad but seemingly accepting of the situation”. The Guardian expressed his views in this way E15 “I am very concerned about the current difference between the medical opinion from the Royal London team and the parents’ explanation in relation to the injuries. If what the parents have told me about their childhood and past is true, there is an absence of the usual factors that often present in care proceedings such as this. The only concern so far identified is CD’s conviction for violence when he was younger. Further in depth assessment of the parents is needed to assist the court in this matter”.

85 The mother’s response at A4 and the father’s at A 15 was a denial of the case made against them. These were dated 9 and 14 December 2015 respectively. The mother’s first statement was also dated 9 December 2015, her account of the incident at C24 “I was down stairs cooking dinner at around 7 or 7.30pm...my partner was with EF in our room at the time of the incident. I heard EF crying very loudly and I immediately ran upstairs to see what was happening. I saw my partner holding EF in his arms trying to comfort her. I asked what had happened whilst taking the baby into my arms. He told me that he had grabbed the bouncer

by the toy bar thinking it was the handle and it disconnected whilst in mid-air. My partner told me that the seat bounced onto the floor and EF bounced up in the air and then fell back into the bouncer again. He did not tell me that she had hit the floor or the ground. I noticed that the bouncer had a thick metal frame which the police also acknowledged. I believe that she may have hit the right side of her body on that metal frame during the fall". At C25 the mother gave an account of the event thereafter. I have read and already remarked on the description that she gave of EF to the hospital. I do not propose to repeat the same. She indicated that "in hindsight that she should have taken her to A and E immediately but because she was settled, showed no signs of bruising or swelling and she fell asleep as normal I did not think anything grave had happened to her. I thought that her initial cry was because she remained shocked by the fall itself and was probably scared. I had no concerns as to my partner's state of mind at all that evening, he seemed absolutely fine. I had no reason to think anything untoward at the time of the incident. I would not have even considered the possibility that my partner would inflict injuries upon EF".

86 The father's first statement headed at response at C31 dated 14 December 2015 details at paragraphs 11 (his conviction for theft when aged 19), his conviction for assault, although the description he gave was of "and the bottle broke on his head. The other boys received cuts from the broken bottle" (Para 12) and the sentence that he received. Again as this is a discrete point I will deal with it at this juncture, he was later asked by Miss May in his evidence before me as to the difference between that and the Interpol account, put as "on the neck". This was from the Interpol extract emailed to the applicant on 3 March 2016 (G90) in fact the reference was "he cut the victim in the neck area endangering his life". The father had queried the suggestion that it was a cut to the neck and the Interpol record showed "in the neck area". I did not consider that this was a material difference or inconsistency as would lead me to question the father's truthfulness on this point alone.

87 The father also explained that he had a conviction in Norway for theft (para 13, C35). His account was known in relation to these matters and all three of them by 14 December, approximately 3 weeks into the proceedings.

88 In relation to his account as to the incident on 7 November he explained in his first written statement the following (para 18, C37) "I needed to open the wardrobe to get clothes so in order to do this I had to move the bouncer chair out of the way. I grabbed the bouncer chair

by the big red bar which at the time I considered to be the handle, in fact it was the toy bar. I lifted the bouncer chair and turned to make a step towards the desired location where I wanted to place the bouncer chair. The toy bar suddenly dislocated mid-air and the baby bouncer with EF in it hit the floor. As I had not strapped EF to the bouncer chair she rebounded in the chair following the chair's impact to the floor. EF did not fall off the bouncer chair. I noticed that the bouncer chair had a thick metal frame and it may be possible that EF sustained her injury by impacting with the metal frame during the fall. As far as I can remember, EF's right leg was close to the metal frame".

89 In core respects the father's account as contained in his first witness statement was the same as what he had told the hospital and what he had told the police. He made no attempt to suggest that the child had fallen out of the chair or that her legs were hanging off the edge of the bouncer. In many respects the inclusion of these details would have made for a more serious event which may have eased the concerns of the medical staff. At the time of this statement as it had been for the mother's statement, concern still existed that EF had also fractured her left scapular.

90 The case management hearing on 15 December 2015 (B84) saw directions being given for the progression of the gathering of necessary evidence in this case including a request for disclosure from the police including from Interpol by 9 January 2016. The applicant had already invoked the protocol but no disclosure had been received from the police.

Court appointed experts

91 The court process saw the instruction of three experts. The instruction of PD (paediatric overview), DJ (paediatric radiologist) and DS (endocrinologist). It is important to recognise at the outset that each one gives evidence within their own area of expertise and defers to the others in relation to their specialist area. Thus PD in giving his paediatric overview relies on the expertise of DJ in relation to the dating of the fractures and on DS for his view as to any bio chemistry deficiency within EF's bones. DS is unable to assist the court with timing or mechanism of injury but defers to the other two experts. It is important that I stress this at the outset as there was certainly a tendency within the experts' meeting to draw together the opinions of three experts from very different disciplines so as to give a uniform conclusion.

92 DS was first to report, followed by DJ and then PD. All participated in an experts' meeting in April and all have continued to assist the court with detailed responses to further questions and further reports.

93 I have read all of the material submitted by each of them. I do not propose to record within this judgment the dates of their individual reports as all are found in section E.

94 I turn to my assessment of the evidence that each gave. I have a full note of the evidence of each witness. I do not intend to simply repeat in this note the evidence or the totality of the evidence that I have heard. I shall identify those parts that I consider have been particularly of relevance to me in the exercise that I have to conduct.

PD

95 He confirmed the contents of his previous reports. He explained in answers to Mr Shaw's questions that he did not consider how the incident (the baby bouncer incident on 7 November 2015) could have caused rib fractures. He considered that an understanding of rib fractures involves a squeezing of the chest and it was not easy to see how it would have happened in the incident that was described. He considered that it did not offer a mechanism or event that presented a plausible explanation for the rib fractures.

96 In relation to Miss May's questions he agreed that EF was a normal baby at birth, that his understanding was that she had experienced normal growth and development since then. He considered that there was no evidence that the baby was suffering from any known disorders in relation to bone fragility. He felt that there was no problem with her skeleton. He considered that it was accepted that there can be a degree of bone fragility that is not picked up by X rays. He considered that there was no evidence of bone weakness in EF. He considered that the fracture to the thigh must have been caused by significant force to the knee or thigh. Whilst he suggested that this was a "quite a bad fracture" (I note that this was not a description medically given by the radiologists), he considered that it was very difficult to say where the impact had been on the thigh as would cause the fracture and that was a matter for DJ. He agreed with Miss May that her proposition that he was doubtful as to the mechanism (the father's explanation) but having seen the police interview and examined the

bouncer that he was more certain that couldn't have explained the fracture to the femur. He said that that was "fair".

97 I was somewhat puzzled as to what it was that had caused PD to become more definite in this regard.

98 Miss May asked him a series of questions in relation to other events that had not been described, namely:

- (a) If the father had swung the baby bouncer and the baby had fallen and hit the floor or a piece of furniture? He considered that "It all depends on whether the impact was on the knee or very close to the knee, if the child was air borne and landed and force of body weight on knee itself, has a potential explanation for the fractures not what described"
- (b) If kicked baby bouncer, kicked the baby's thigh through material? "Possible"
- (c) If wearing slippers have a bearing on possibility? "make it less likely not impossible"
- (d) If father had tripped over and fallen on the baby on her knee be an explanation? If he had fallen on her knee or thigh? "That is theoretically possible explanation would depend on how her thigh was supported able to move or not move"
- (e) Hit child on the leg? Punch or hit with an object? "It would be unusual can't exclude it. If child had been struck with a piece of wood, iron bar, sufficiently hard to cause a fracture would have been likely bruise"
- (f) If he carried the baby and fell and baby trapped between body and floor? "We know that if adults fall holding a baby more dangerous than if they fall on their own"
- (g) If the baby's leg bashed a door frame? Table? "Think it all depends on detail as to whether the leg was moving or immobile when the baby was struck or whether plenty of room to move"

99 I note that no bruise was seen at the fracture site.

100 In relation to the rib fractures and the possibility of them being caused by a caesarean birth? PD considered that he had set out his position in his report as to his view that "it was no more than fanciful that rib fractures occurred by caesarean birth". He accepted that had they occurred at birth "that you might not see any symptoms". He considered that the baby's Apgar scores at birth had no connection to whether she had sustained rib fractures at birth.

101 In terms of extract from his report that he was taken to namely E203 he confirmed the extract from his report namely “mechanism is some sort of squeezing of the chest using forces that (in a child with normal bones) are greater than those resulting from normal handling. By this simple process of reasoning, it is hard to see how one can avoid the conclusion that EF received one or more episodes of squeezing of the chest. I can see no plausible alternative and no reason to suspect, for example, that the fractures resulted from one or more blows, which would be unusual as a cause of rib fracture in infancy. The unanswered question is how did the baby come to have her chest squeezed?”

102 Miss May continued her questions as to likely scenarios including, if child dropped and caught tightly? “I can’t say that it is impossible, not aware that it has ever been described. Must have been occasions of this happening not aware of a single case reported that caused injury”.

103 Again Miss May asked in relation to a knock on a hard surface? To which he replied “your word knock isn’t good it implies an impact, in general we don’t think that impact is responsible for rib fractures”.

104 An adult falling on top of her? “It would have to be an event that caused the chest to be squeezed”. He would have expected her to have cried at the time.

105 PD urged caution in relation to the idea of a memorable event and indeed as to the reliance of risk factors or the absence of risk factors being probative as to proving a fact.

106 Clearly it is a matter ultimately for me to weigh all the evidence in this case taking into account risk factors or absence of them and the weight to be given to them.

107 PD readily agreed with a series of general propositions made by Mr Samuels QC namely that he was an expert not a decision maker, that it was for the court to survey the broad canvas including his evidence. That his evidence as an expert was based on facts and an opinion on those facts. He accepted that conventional wisdom can change over time. He accepted as he had in his report at E165 that a point that can be made in relation to “clinical experience”

namely that there could be danger of making “the same mistake with increasing confidence”. That there are grey areas which lead to reassessment of the number of cases of accident or abuse, if parents simply didn’t know.

108 He accepted that he needed to be careful not to exceed his expertise, that he was not a bio mechanical expert, nor did he have any experience re product testing. He accepted that he was not in the best place to carry out a scientific experiment. His response “you are pushing at an open door”. This was in relation to the tests and experiments that he carried out at platform 3 of Stockport train station when he met the representative of the local authority who had taken it there for him to look at. He felt that “don’t think what I did, greatly helped in the conclusion that I reached”. He explained “I have written down what I did, up to the court to decide what I did was of any value. Court may consider no value. Doing my best to help” and “if you decide completely useless piece of work, would accept that”

109 As PD readily conceded it is a matter for me to decide whether the testing that he carried out on the platform assists me in this case. I have reached the view for the reasons alluded to in this passage of the evidence that it does not.

110 He agreed with Mr Samuels QC’s proposition that relatively minor events can have unexpected consequences, although he couldn’t think of an illustration. He accepted that there was huge degree of variability in terms of how a human being reacted to events. He urged caution as he had done in his report in relation to “incorporation bias” in research namely “that in the presence of rib fractures in all probability played a part in diagnosing abuse in the first place, leading to a circular argument”. He accepted that questions of statistics of 95% identified as abusive cause would not be probative in a single case. That the degree of force required was unknown save that it was not caused by normal handling. This passage being in relation to rib fractures. He accepted that a parent who was not present when the event was taking place would not have been aware of the fact that the child had sustained rib fractures.

111 In relation to the suggestion that if the court accepted that the parents’ account was true the most likely event for the cause of the fractures was the 7 November incident. PD reiterated “it’s up to the court what’s likely or true and I can’t comment on that”

112 In relation to the femur fracture he was asked whether EF’s presentation as described by her parents was correct, it looked like the event occurred about 7pm on 7 November? PD

said that the description of her presentation was consistent with it having happened at that time, his problem was the lack of mechanism.

113 He was critical of the police's failure to use a dummy in the reconstruction. He agreed that it was difficult to know what forces impacted on her body. He agreed with DJ's view that if the incident had resulted on an impact on her knee (that would be a cause of the fracture). He considered that his difficulty with the father's account was that it did not provide for impact on her knee.

114 He referred the court to para 77 of his first report, E 177 which I set out "DJ has stated that if the fall resulted in EF impacting on or around her knee, then the femoral fracture could have occurred from this event, and that dropping the child from adult waist on to the knee could result in the fracture that was present. He went on to say that if the impact of the fall was on to the knee, one could not exclude this event as a possible cause of the fractured femur. I agree with that conclusion. Plainly it is going to be for the court to decide, as a fact, what actually happened to the knee and leg as a result of the fall. I am afraid from all the written statements I cannot myself work out what happened to the knee, thigh or leg".

115 In relation to whether impact elsewhere on the leg could result in the femur fracture. He said that "it would have to be the knee or very near the knee, DJ might be able to improve upon that". He accepted that he completely deferred to DJ in relation to timings. Whilst he was then led into a series of questions as to the subjective nature of radiology interpretation which led him to question whether the other radiologists were paediatric radiologists (which they were), it seemed to me that this aspect was best dealt with by DJ.

116 He answered certain questions in relation to fractures being caused in a caesarean birth and considered that "would be breaking new ground in suggesting that rib fractures could be caused". He accepted that there would need to be some caution as children are not routinely scanned at birth. He was unable to help with the Loveseat manoeuvre that was used on EF.

117 He considered that there was no connection between a low vitamin D level in November 2015 and her huge increase in Alkaline Phosphatase. The results of Alkaline Phosphatase had been 342 units per litre on 8 November, 6199 on 10 June and 5709 on 17 June 2016. He considered that the most likely explanation for the increased rise was an uncommon condition called transient hyperphosphataemia, a chance finding and harmless (E164). I

note that in his last report at E664 he returned to this issue as the test result on 6 August was 387. He explained “that I predicted that at some point in the coming weeks or months the level would fall to normal and that is precisely what has happened. The cause for the two highly elevated levels of alkaline phosphatase was transient hyperphosphataemia. This is a totally coincidental matter that has no bearing on the cause of the child’s fractures”.

118 He accepted that there can be a level of bone mineralisation that is undetected on radiology alone.

119 He was not to be moved in relation to his view reliant on DS that “there was no evidence that the child suffered from an underlying medical condition and there was no evidence that the child had abnormal bone chemistry and I agree with him” (E613).

120 Mr Goodwin QC pursued the matters of bone chemistry with PD. Whilst he was content to agree with certain general propositions, he considered, relying on DJ that EF’s skeleton was normal. He agreed with DJ’s para 8, E437 namely that “radiologically there is no evidence of any underlying metabolic bone disease. As I have alluded to elsewhere in response to these questions, it is possible for EF to have an underlying disorder of bone or an inherent weakness within the bone, but the bones to appear normal on x –rays. My opinions and conclusions have been based on radiological findings. I defer to the paediatricians with regard to EF’s risk factors for any other disorders”. It was clear that in relation to some of the questions in relation to bone chemistry he was content to defer to DS. He did draw a distinction between levels of vitamin D in the blood as opposed to levels in the body itself. A matter that he expected Dr Stanhope to return to.

121 He agreed with Mr Goodwin QC as to what he had said in the expert meeting at E420 namely that posterior fractures carry a greater association with non -accidental injury.

122 I note that the rib fractures here are anterior (i.e. at the front) on the 6th and 7th ribs on the same side of EF’s body as she sustained the fracture to her femur. She has no rib fractures in the posterior position (back).

123 He agreed that there was no frame by frame analysis of the fall and indeed that there were potentially a number of variables when analysing the fall. He agreed that it was not up to the medical expert to say what had happened.

124 Thus my summary of PD's evidence was that:

- (a) He relied on DJ as to the timings of the rib fractures
- (b) He considered that rib fractures were most likely caused by compression
- (c) That this was believed to be greater than normal handling
- (d) A person not present would not have known that the child had sustained rib fractures
- (e) He considered that it was "fanciful" that these occurred at birth.
- (f) That the description of EF's presentation on 7 November fitted with the timing (of the femur fracture) but not the mechanism.
- (g) That if there had been impact to the knee or the area near the knee in the incident described by the father that it was possible cause of the child's fracture to her femur
- (h) That ultimately it would be a matter for the court to decide what had happened as to cause EF's rib fractures and femur fracture.
- (i) He did not consider that she had any underlying bone disorder. He considered that she was a healthy infant with normal development.

125 Whilst not a matter of cross examination I note from PD's written report at E182 that he considered the parents' response (in relation to when they took her to hospital) given the reported state of EF as "not unreasonable".

DS

126 DS confirmed the contents of his reports and his involvement at the experts' meeting. He agreed with PD's statement as to the difference between vitamin D levels in the blood and levels in the body. He agreed that EF was a healthy girl, who had grown normally, there had been no concerns at three months in relation to her health. He did not consider that there was any evidence of vitamin D deficiency in her body. He considered that she had had a normal birth weight, no evidence of hypocalcaemic convulsion, she had fed well, evidence that she had gained weight and height normally. He said that this was completely the contrary state to what would see with a child with rickets. The fact that she had demonstrated normal healing meant that she was very unlikely to have a metabolic or genetic cause of bone disease.

127 He accepted that he deferred to DJ in relation to the ribs.

128 He accepted in relation to Mr Samuels QC's questions that the body creates a system of extracting calcium from the bones to remedy a calcium deficiency in the blood. He explained that if bones are not mineralised than they don't grow. He explained that if a child has rickets or is hypocalcaemia the process will start to effect the end of the long bones. If there was a more prolonged effect it would affect the whole of the bone shaft and would reduce the strength of the bone and lead to easy fracturing.

129 DS explained that he had been confused by the two samples showing EF's vitamin D level in her blood on the 8 and 12 November, he was prepared to take it as low at 15 nmol/l.

130 He did not accept that there were clinical indicators that she had been vitamin D deficient from birth. He considered the opposite. He accepted that he couldn't argue and say that she wasn't a baby with vitamin D deficiency, but expressed on the balance of probability there was no evidence that she was. He considered that if she had had clinical vitamin D deficiency resulting in rickets, bone disease, she would not have thrived and grown normally.

131 Whilst he accepted that it was possible that were cases with vitamin D deficiency not showing clinically, he worked on the basis of evidence. He maintained his position that EF had thrived and that the best index of health in children was whether you were growing normally.

132 He explained that the blood results showing vitamin D levels in blood didn't help very much as it was measuring inactive vitamin D. He considered that it was extremely unlikely that we were left with a possibility of bone disease. He considered that there was no bio chemical or radiological evidence that she was, particularly no bio chemical.

133 He said that the clinical pattern for EF was that she had thrived.

134 He accepted that he had supported further testing when told of EF's increased APL. He explained that his initial response was that he may have got it wrong. He explained that the child needed reassessment by a bone expert. He didn't consider that the increased levels of APL were to do with the healing process, he had wondered as to whether he had got it wrong and indeed whether the child had bone disease. He explained that he had given up clinical practice and was not in a position to see the child himself.

135 He considered that this had indeed proved unnecessary once the results showed that the level had reduced. He described that "I can understand the confusion; in a sense it is a "red herring".

136 Mr Goodwin QC explored with DS the possibility as to whether calcium and phosphate levels had normalised in EF's blood by 8 November 2015, the body having homoeostatically drawn down those minerals from the bones to compensate for their reduced absorption in the gut. DS considered that this was unlikely as the PTH levels (parathyroid hormone, the chemical catalyst for mineral extraction from the bones) was normal. In his view if this had occurred that it would remain high for a long time afterwards. Whilst accepting as he did that the timescales for the body to produce PTH vary, he was not persuaded that this had occurred to EF.

137 In summary DS considered that EF had thrived, her bone chemistry was normal and he did not consider that she had any underlying bone disease.

DJ

138 DJ is a paediatric radiologist. He confirmed the contents of his reports and his participation in the experts' meeting. He had prepared his reports against x rays and CT scans that he had seen (rejecting the CT scan on 2 December as poor quality). In his report at E 143 he set out the following "there is a displaced fracture of the distal right femoral metadiaphysis. The femur is the thigh bone and the distal metadiaphysis is at the end of the bone just above the knee. A displaced fracture means that the bony fragments have moved. There is no X ray of any bone healing around the femoral fracture. X ray evidence of bone healing typically starts to appear after 5 to 11 days, indicating the femoral fracture is no older than 11 days of age on 10/ 11/ 2015. The radiological dating of fractures is difficult, imprecise and is a subjective estimation. There is possibly some slight expansion of the anterior aspects of the right 6th

and 7th ribs. The anterior aspect is at the front of the chest. Expansion means that the normal contours of the rib have been distorted. In isolation the significance of these appearances is equivocal. There is also some slight expansion and sclerosis (whitening of the bone) around the posterior aspect (i.e. at the back of the chest) of the right 1st rib. There is also sclerosis around the left coracoid (part of the shoulder blade). All these changes seen on the chest x rays and oblique views of the ribs on 10 November 2015 are equivocal and just these x rays alone, are of indeterminate significance”.

On the X rays of the 24 November 2015

“The expansion of the anterior aspects of the right 6th and 7th ribs is more obvious and in conjunction with the X ray changes seen on 10 November 2015 the appearances are suspicious of healing rib fractures. There is some cortical irregularity (alteration in the normal outline of the bone) of the right first rib. The appearances of the left shoulder are within normal limits. Overall on the x rays of 10 and 24 November the appearances of the left shoulder are within normal limits.

The appearances of the right and anterior 6th and 7th ribs are suspicious of healing fractures. The appearance of the right 1st rib remains equivocal”.

On the CT chest of 4 December 2015

“The presence of the healing fractures of the right sixth and seventh ribs are confirmed. There is obvious periosteal thickening (x ray evidence of bone healing) around the anterior aspects of the 6th and 7th ribs. Periosteal thickening may also be described as callus.

There is an abnormality of the first rib.”

Later at E144 “Therefore the CT chest examination of 4 December 2015 confirms the presence of traumatic injury to the chest consisting of fractures of the right 6th and 7th ribs and a possible fracture of the right 1st rib. The radiological dating of fractures is difficult, imprecise and is a subjective estimation. In my opinion, the appearance of these rib fractures, particularly taken into account the previous chest x ray appearances are at least 6 weeks of age on 24 November. I would estimate that these fractures are probably not as old as 14 weeks of age at this time. Therefore they are most likely in the region of 6 to 10 weeks”.

Later at E145 he expressed that “on the balance of probabilities these are not birth related” (rib fractures) and at E146 “one could not exclude this event involving the baby bouncer as a possible cause for the femoral fracture, if the impact was the knee”.

139 In questioning by Miss May he confirmed his window as 6 to 10 weeks from 24 November 2015.

140 In questioning by Mr Samuels QC he reiterated the difficulties of dating fractures being imprecise and subjective. He was taken to the views of Dr CO and Dr M (Dr M having seen the three images namely 10 November, 24 November and 4 December) and the differences between their view and his were explored. These included amongst others the perceived fracture to the scapular, the difference in relation to on which side of the body the ribs were fractured and which number, the difference in relation to the timing namely that they timed the ribs as the same time as the femur fracture on the same information. Thus the same information was interpreted differently.

141 He was asked as to why not a window that went back from the 24 November 15 weeks to birth if he was prepared to contemplate 14 weeks? DJ explained that "I can't totally exclude it but would consider it unlikely". He expressed himself on the balance of probabilities that did not occur at birth. In relation to the Lovesett procedure he was not familiar with this. He explained that "you need suitable mechanism and suitable level of force, if someone can comment on it being a suitable mechanism and a suitable level of force I do not know".

142 He accepted that there needed to be some compression of the chest for rib fractures "not have to be a human hand".

143 Whilst he was taken to his report as to what he had said re the incident possibly causing the femoral fracture, he explained that "the more information I don't believe would account for a femoral fracture". He was of the view that this was based on the video (I assume the police interview) where he had assumed that the child had fallen from a significant height, he now considered this not to be the case. He accepted that it all depended on what the interpretation of the father's account was taken to be.

144 He explained that in terms of the forces on the femur as to cause it to fracture, he could not say where the location of the impact would have been, side, front, back, near to knee.

145 He accepted that there could be loss of density from bones without any radiological change being noticed.

146 In answer to questions from Mr Goodwin QC he accepted that there was nothing from a radiological point of view as would preclude the baby bouncer causing the femoral fracture, if significant force had been applied to the thigh bone. He accepted that he could not comment as to what the Judge was to think. He accepted that on his subjective interpretation he had come to a conclusion as to what he had considered likely.

147 He accepted that he had not dismissed the views of Dr CO and Dr M that the rib fractures of a similar age to the femur. He accepted that he can be wrong "I don't claim to be infallible, subjective opinion"

148 In answer to Mr Goodwin QC as to why it was not possible for the rib fractures to have occurred on the 7 November, ambiguous signs on 10 November then more developed?, he explained that if "acute would have expected after 2 to 3 weeks signs of fluffy cotton wool, not seen".

149 I was puzzled by DJ's response to Mr Goodwin QC as I had understood that DJ had not been able to see a fracture line on 10 November or 24 November nor sufficient as to the healing process to form any view as to the dating of the fractures. I had understood that it was the scan on 4 December that enabled DJ to make the assessments that he did. There was no mention of being able to see in sufficient detail what the healing looked at, cotton wool or otherwise.

150 I was further puzzled as to why DJ then used the date of 24 November to commence the window of dating when what had been seen until 4 December was equivocal.

151 DJ was not able to assist me with why he had chosen to take the date of 24 November as opposed to 4 December other than he was used to interpreting x rays as opposed to CT scan.

152 I was puzzled in light of the fact that part of the father's account on the event of 7 November was that the "child jumped" or "bounced up" as to why DJ did not see this forwards and back motion as being a possible way of applying compressive forces, akin to a

child in a car accident. He said that he considered this to be unlikely as a child in a car accident would have a restraint and it was that that would lead he believed to compression.

153 He accepted that the rib fractures were on the same side of the body as the femur fracture and that we did not know the forces that had been applied on the child's body and that ultimately it was a matter for the court to evaluate. He explained that it was his view that the two injuries required "two distinct applications of force" and that he couldn't imagine a scenario which caused both to occur.

154 It was my view that the exercise of cross examination had highlighted that the court had treating clinicians who viewed the rib fractures as having occurred at the same time as the femur fracture and a court appointed expert who took a contrary view, but who fairly did not suggest that they were wrong, emphasising the subjective nature of this exercise of interpretation of radiological signs to date fractures.

155 Before leaving the medical evidence I make three other points:

- (a) The lovesett manoeuvre was a procedure carried out to assist EF's delivery by way of caesarean section. Whilst in the medical notes, no expert instructed was able to give me any evidence in relation to it. Whilst Mr Samuels QC and Miss May referred me to it in their written and oral submissions, I have already made the point that I must guard against proceeding on counsel's submissions unsupported by evidence in the case.
- (b) Experts draw upon clinical experience and research. No child is alike. No set of circumstances are alike. Events occur. By way of an example If an expert in a particular case accepted a parent's account that a child has been injured from a fall of less than 1 metre because of the particular circumstances that event which the expert may previously have viewed as unlikely becomes accepted as having occurred, it is no longer as unlikely event. Some circumstances and descriptions of events may not have been seen before by an expert in a clinical setting. Thus it would be understandable for such events to be viewed as unlikely until known to have occurred.
- (c) Experts do not determine cases. If they did so the nature of care proceedings would be very different. It seemed to me that there was a perception that crept in at the end of the expert evidence that the expert view meant that something more serious had occurred, thus requiring the parents to meet a case led by expert opinion. I remind myself that such an approach reverses the burden and standard of proof as it almost

creates an additional burden for a parent to discharge, when the burden and standard of proof remains throughout on the applicant. It would also remove my judicial function which is to survey the whole of the evidence in the case and reach my conclusions.

The Mother's evidence

156 I have already in this judgment related extracts from the accounts that each parent gave at hospital, in interview, written statements to the court, in interviews with Mr M, in interviews with Mr Jeary and of course background information that I have already set out in the evidence that they gave me. It is not my intention for either the evidence of the mother or the father to repeat what I already set out but rather to concentrate on aspects of their evidence that I have not already touched upon.

157 Miss May's helpful opening note and her schedule of findings (amended) pleaded two particular matters in relation to the mother's culpability namely that either she or the father were responsible for the rib fractures to EF by either a momentary loss of control or reckless or negligent handling or otherwise fell below the standard expected of a reasonable person and a separate failure to protect (if the injuries were caused by the father) in that she either knew or should have known that the father presented a risk to EF but left her in his care in any event. This later point of failure to protect led Mr Samuels QC to seek further clarification upon. This was not forthcoming.

158 I note from Miss May's written submissions that the applicant considers at para 56 (iii) that in relation to the rib fractures that they were most likely to have been caused whilst in her father's care and that the standard of care being provided to EF fell below the reasonable standard. Miss May however pursues what I have described as a failure to protect albeit "whether the mother knew or should have known that the father presented any type of risk to the child is a matter for the court having considered the parents' evidence and whether there has been any collusion by her with the father at the time or retrospectively". Again this has prompted Mr Samuels QC to argue that such matters were not put. In addition in relation to both parents is the allegation at para 56 (vii) that the reasonableness or otherwise of the parents' decisions not to go to hospital depends on the court's findings about what either parent knew. Again both Mr Samuels QC and Mr Goodwin QC maintain that this is an additional matter that was not put into question by the applicant during evidence and the effect that has on their client's respective Article 6 rights. I bear in mind all

those points. However I consider that it remains a matter for me to consider the evidence that I have heard and reach my determinations.

159 The mother's account in oral evidence was unchanged from her previous accounts save that she explained clearly that she placed the baby monitor down stairs with her when she was in the kitchen. She explained as she had alluded to in her conversation with the Guardian that this was what she was used to doing.

160 She had described in her oral evidence an unremarkable early evening until she went down to the kitchen to cook. She explained that she could hear over the baby monitor some sounds, the sound of the television, the baby making noises, burbling, could hear him on the phone to someone. She explained that she had gone out twice for a cigarette but that she could still hear the monitor. Shortly after she had phoned the father at 6.45pm to explain that the food was nearly ready, she heard a bang, and a couple of seconds later she heard the baby crying. She could not remember whether she had heard the bang through the baby monitor or separately. She went up to the room where she could see that CD had the baby in his arms trying to settle her and she saw the bouncer chair somewhere in front of the television. She couldn't see the bouncer chair properly but it had no toy bar on it. She said that she was worried about her daughter.

161 She maintained that she had never seen CD either that day or any one behave inappropriately towards EF. She explained that she would leave the family home if she had seen anything like that.

162 She had prepared a plan with the assistance of her solicitors as to the layout of the room and the position of the bouncer when it came to rest. I have also seen a video of the parents' bedroom showing a compact room which clearly functioned as their bedroom and sitting area, when they wanted privacy from their house mates.

163 In cross examination Miss May explained to the mother that the applicant did not criticise her care at all. Miss May properly explored matters with AB in order to see if the mother's priority was her partner rather than her daughter. Whilst the mother may have been upset, bewildered or even angry by what was happening at the hospital to her daughter I did not

discern any evidential platform from this cross examination that would enable me to conclude that the mother's priority was her partner.

164 My view was the opposite. AB impressed me in her evidence as to her focus on her daughter. I did not discern that she attempted to exaggerate or embellish her account of what she had heard that evening in order to assist her partner.

165 Miss May properly explored whether the family had been placed under strain as a result of EF having colic which had started when she was three or four weeks old. Miss May suggested that this was a strain upon the couple. The mother was adamant that it was not. She explained that "I can't say that its really easy, did so through lots of love, I had a chance to sleep in the day, not so difficult".

166 I formed the view that the mother was a capable new parent and took matters in her stride.

167 Miss May explored whether the family was under financial strain, the mother was adamant that they were not.

168 She was asked as to whether she had dropped her daughter after the c section, she denied that she had. She was asked as to whether she had squeezed her too hard. She said "no never". Whilst these were difficult matters to be asked the mother remained calm and unshakeable. I saw no shift in the evidence that she had given.

169 She explained to Miss May that she hadn't known when she had met her partner that he had only been out of prison a month. She was shocked when he told her and then she thought about things. She explained that she had lived with him for four years and that she had not seen him be a dangerous man. She accepted that she had not known as to the detail of the conviction nor of the first conviction for theft.

170 In relation to the incident she explained that the father had come home in a tracksuit and that he had had a shower and changed into a bath robe. She was clear that this was a detail that she remembered.

171 Miss May asked her why in her account to the hospital she had not made reference to a bang, although she had told the police that she had heard a “crash”. She said no one had asked her for that detail she had not been there, she told them what CD had told her. She explained that she had taken a picture of the baby bouncer before she had left home, in case anyone had wanted to see it.

172 She said that she wasn’t changing her story so as to make the story more elaborate. She said that she wasn’t there, she didn’t witness the incident. She heard a bang, heard the baby crying and she saw the bouncer without the toy bar.

173 She said that she only wanted the truth to come out and to discover what had happened to her daughter.

174 I was struck that if the mother had wished to lie to assist her partner it was open to her to suggest that she was present and witnessed the incident. She never did so and maintained an account from the beginning that she had not been present and relied on what her partner had told her. Her account was simple and consistent.

175 She was asked as to who had put the bouncer together. She said that the father was not at home when she put it together but that he helped with some of the screws. Miss May explained that CD had told the police that he had. The mother maintained that his involvement was limited. She had assembled it, she couldn’t manage to fit them (some screws) in properly. He did it when he came home.

176 It seemed to me that given how capable the mother was and is, the description of her being the strong one (put by Miss May) that it is entirely in keeping with her character that she would get on with assembling the baby bouncer whilst he was out, it was only when she lacked the physical strength required to push together that he did so. I note that in the assembling she had put the front on the wrong way round, which may have made it more forceful a job for the screws to be pushed in, given that it had been erroneously assembled.

177 She accepted that whilst the instructions had spoken of strapping the baby in, they had never done given her age. She had explained that she had thought that her daughter was scared, she demonstrated her daughter’s movements. She saw nothing wrong in the fact that he kept on apologising to their daughter as she was crying and they hadn’t heard her crying apart from when she had colic.

178 She was asked as to the account that she gave the midwife and she explained that she had not had time to give her the full details. I saw nothing sinister in this, particularly as she gave a clear account of what her partner had told he had happened, when they arrived at the hospital.

179 She explained that there were no problems in their relationship although they did not see one another alone and that the word "platonic" as it appeared in her statement was one that she did know what it meant. She explained that if the court decided to reunite her family, she would be very happy to do that.

180 She explained that her daughter had cried for some 40 to 50 minutes and she had thought that her daughter was scared. She said that she had said that what she had told the Judge was true.

181 She explained to Mr Goodwin QC that she liked to be close by when her partner was caring for EF. She used the monitor even then as she was the only one who knew when EF was tired etc. She said "I knew her reactions". She would keep the monitor close to her.

182 Again it seemed to me that this was in keeping with her personality and her role as the primary carer.

183 She again reiterated what she had heard on the monitor and the baby "babbling". She said that she would have gone to her if she had heard a cry but not a whinge as she knew the difference.

184 She maintained that the father had never given her a different account than the one she had been told. She said that he tried to be strong but that she had caught him a couple of times crying. She said that someone had told her that as he was a young man, if he was a bad man, he could have packed his bags and gone in with someone else. She considered that he wouldn't have waited so long to finish the proceedings. She said how much he wanted the family to be back together.

185 She said to Mr Shaw that she did not consider that something worse had happened and that CD had been too frightened to tell her. She said that she couldn't see how it would help. She

said that she had picked up the bouncer previously but not by its handle, she didn't consider that CD had done so in her presence.

186 I formed a favourable impression of the mother and accepted the evidence that she gave me as being her truthful account.

The father's evidence

187 The father faces allegations that he caused the leg fracture either by:

(j) In a momentary loss of control and he lied about the cause or

(ii) on the 7 November in the bouncer incident but that the father minimised the nature of the incident and his handling of the child was reckless or negligent or otherwise fell below the standard expected of a reasonable parent.

188 The matters that I have already detailed in relation to the rib fractures as listed, apply to the father. He like the mother faced an allegation in relation to their actions in taking the child to hospital the following morning.

189 The father in chief repeated many of the matters that I have already alluded to in relation to his relationship, his love for his wife and his child. He explained about the pleasure he had experienced in learning that his wife was pregnant and the birth of their daughter. He spoke of his previous convictions and that there were a part of his life and not a nice experience. He spoke of the fact that their life became more beautiful after their daughter was born. He explained that once he returned to work, when he came home, the first thing that he would do was that he would check on her, talk to her, kiss her and also ask her mum if there was anything that she needed for the child's wellbeing. She should mention it so that we could offer her the best a child needs. He explained that he did not spend that much time alone with EF. He disputed that the time that EF had had colic had been hard. He said that he would give his partner a break when she wanted it. He never became upset by her crying or maybe if he lost any sleep.

190 He denied that he had lost control of himself and injured her. His account of the events leading up to and the incident and the aftermath were consistent with what he had already stated previously. He described that his baby was in the bouncer, very calm and peaceful, thought that he would leave her be, he was watching television and at the same time watching her to check that she was calm. He explained that he had a robe on as he had had

a shower. He explained that what he had said to the police was true as to what he was wearing, they had not asked him about what he was wearing after he went to have a wash.

191 I note that his memory of the questions asked of him by the police and the point at which the topic was ended, was indeed accurate.

192 He explained that he received a phone call from his wife to tell him that dinner was nearly ready. He thought that after about ten minutes of him wearing his dressing gown that he had better get ready, to put some clothes on, from the wardrobe. He explained that he needed to move the bouncer to be able to open the wardrobe doors. He explained that he picked the bouncer up. He demonstrated in court that this was about waist height, which I gauge to be about a metre.

193 He picked the bouncer up turned to his left as he wanted to put it by the bed. He made the turn after he had lifted it up and just before he made a step the bouncer fell. He explained by drawing on the map where the bouncer had been and where it landed. He explained that she had been in a normal position before. After it happened he considered that her legs were slightly lower.

194 He explained that he had been looking at where he intended to place the bouncer, after that he had realised that the toy bar was left in his hands and he could only see how the baby had bounced off. He could not be precise as to the incident. He explained that it was "as if her body jumped". He didn't see that any part of her body hit the bouncer on the way down. It had all happened in a matter of seconds. He considered that he couldn't see how she might have hit herself.

195 After he had heard her crying he had realised that something was wrong and that she was scared. He had felt worried and maybe a bit guilty, if he had known that the toy bar detached he would have done things differently.

196 He said that that was the truth of what had happened. He thanked the court for the opportunity of having him. He explained, so "that I could say the truth, so everyone can hear the truth from my own mouth and not just from the papers".

197 He maintained that he had not been frustrated or angry and that he did not see himself as someone who lost his temper easily.

198 He was cross examined appropriately by Miss May. Whilst he was asked to deal with some difficult subjects he did not raise his voice, become angry, argue back or attempt to avoid a question.

199 He was asked as to the matters of his previous convictions, to which I have already referred.

200 He considered that the video and his statements set out the truth and everything that he could remember.

201 He was asked as to the fact that he had not previously mentioned "turning" in his police interview at G47. He said that what he was saying was the truth. I note that I have already referred to C37 where he mentioned "turning" although Miss May's point was in relation to what he said to the police or not said. Whilst I bear in mind that accounts can be embellished in many respects the father's downplayed many aspects that might have assisted him had he been giving a false account. He maintained for example that he had not said that her legs were hanging out of the baby bouncer. He did not say that he had seen her body hit anything and yet he could have done so had he chosen to do so. He did not claim that he had lifted the bouncer higher than he did. Against that background I did not consider that the absence of "turning" in his account to the police was a point that affected his credibility or believability.

202 He maintained to Miss May what he had said as to his account. He said that he had not drunk that day. He sometimes had one or two beers. Miss May explored that he had drunk, one or two beers and that was a reason why they had delayed going to the hospital. I was unable to see why if the father had had one or two beers that would have precluded him from going to the hospital. I note that in any event that the police attended at the parents' property and examined their room for the purposes of videoing the lay out. There is no suggestion that the police found anything untoward in relation to excessive drinking at the property.

203 He maintained to Miss May that he had not mentioned the bath robe as he had not been asked about that sequence of events. It was not a detail that he had made up because his wife had said it.

204 He maintained that he had not stated that he saw the baby's leg "hanging off" the bouncer. He said that he had not said that and blamed the interpreters that he had had through language line.

205 He denied that he had hurt EF. He denied that he had swung or thrown the baby bouncer. He denied that he had fallen on her. He denied that he had lost his temper as he couldn't get to the wardrobe and had kicked the bouncer.

206 He denied that he had been caught in a lie. He said that he had only found out about the fracture from the doctor. I took him to mean that if as Miss May was suggesting he had told his wife a lie to hide something that was wrong with their baby, he didn't know anything was wrong with EF when he told his wife the account of the incident.

207 He was asked as to the fact that he hadn't mentioned the baby monitor being on until his police interview. Miss May explored this as a suggestion that demonstrated that he was lying as his wife didn't say anything to the police about it being on and only told Mr Mann about it in February. This line of questioning overlooked the mother's comments to the guardian in December.

208 I was unable to see that this was a point against the father.

209 He said that he hadn't assembled the bouncer that he had only helped her with the clips and that this was what he had intended to convey to Mr Mann.

210 He readily accepted that EF was not strapped in and agreed with Miss May's assessment that it was dangerous.

211 He readily accepted Miss May's assertion that whatever had happened was not good enough care for their baby.

212 He said that he did not want to disagree with the doctors as to what they said about the ribs but that he didn't know how they had happened.

213 He maintained that he had told the truth.

214 In answer to questions from Mr Samuels QC he explained that he felt fine when he had returned home that day and the description was given of a perfectly ordinary family scene.

215 He explained to Mr Shaw that the bouncer had been carried before by the toy bar but not with their baby in it.

216 The father had faced perfectly appropriate and skilled cross examination. His core account had remained unshaken.

Conclusion

217 I have considered this case at length, the four lever arch files of written material, reviewed carefully both the medical and evidence of the parents and the written material that I have received from counsel. I have reminded myself at the outset of the legal principles which I must apply. I have concluded the following:

- (a) I consider that the father was and is a believable witness.
- (b) I accept his account that he picked the baby bouncer up at about 7pm on 7 November. EF was in it. EF was 12 weeks old, 3 days old and unstrapped. She weighed just over 6kg. He picked the bouncer up by the toy arm believing that to be a handle. The bouncer was held at about his waist height, about a metre. He took a step and turned. He was left holding the toy arm which became completely detached from the bouncer. The bouncer with EF in it fell about a metre on to the laminate floor. EF bounced up and back down coming to rest further down the bouncer. The event lasted a matter of seconds.
- (c) EF immediately cried.
- (d) Down in the kitchen the mother heard a crash and her baby crying
- (e) The mother rushed upstairs and found the father holding EF in his arms and comforting her.
- (f) I consider that the mother was and is a believable witness and accept her account
- (g) I consider that in the fall of the bouncer to the ground, with EF unstrapped she sustained an impact to her thigh area around her knee, possibly on the back of her knee.
- (h) The baby bouncer has a hard rim covered by fabric. It also had a hard plastic object a music box erroneously assembled at the front of the chair. She was unstrapped and her legs were free. In my view she impacted against a hard surface within her bouncer or on the edge of it that caused her to fracture her right femur.
- (i) The impact of the fall was such that the music box fell off the baby bouncer.
- (j) On reaching the floor the baby bouncer remained stationary however EF bounced up and back down. Whilst I cannot be clear as to the height she was lifted back up, it was

significant for the father to have noticed her movement. She landed further down the bouncer.

- (k) In this motion whether up and down or most likely forwards and back she experienced compressive forces on her ribs causing two anterior fractures to her right 6th and 7th ribs. These were on the same side as the fracture to her femur.
- (l) The incident happened in a matter of seconds.
- (m) The incident was an accident and not reckless or negligent behaviour.
- (n) These were loving parents who had given their daughter an exceptional level of care.
- (o) There was no suggestion of loss of temper or irritability
- (p) Her parents believed that she had been scared by the incident but was otherwise well.
- (q) During the course of the night their concerns were heightened given that she cried on changing. Their concerns crystallised in the morning when her right leg remained in the same position.
- (r) They took appropriate action in taking her to hospital. Their actions were reasonable given her presentation after the incident.
- (s) EF was a well baby from birth, she thrived and met her developmental milestones.
- (t) I do not consider that she suffered from an underlying bone disorder
- (u) I do not consider that she sustained two rib fractures at birth.
- (v) Having accepted the account of the father and assessing it in the way I do, it follows that I accept that all fractures occurred on 7 November 2015.
- (w) In reaching that decision I base my assessment on the evidence of the father, and of the mother and my analysis as to the differences that occurred in relation to timings between the treating paediatric radiologists and DJ.
- (x) I bear in mind that DJ could not imagine a scenario which caused both injuries to occur (meaning the two ribs and the femur). He explained that he considered that it required two distinct applications of force. I have identified two as set out above (g) and (k) from my consideration of the evidence overall.
- (y) I consider that an analysis of the broad canvas in this case which I unlike the experts was able to do overwhelming points to the fact that the fractures occurred in the accidental manner described by the father.

218 It follows from my conclusions that the applicant local authority has not proved its case. No threshold is made in this case. These proceedings come to an end, the welfare hearing will be vacated and the family reunited. I understand that there are no bail conditions in

place as would prevent the father and mother living together at their home with their daughter. I imagine that this will happen imminently. I wish them well.

VANESSA MEACHIN

Recorder

15 September 2016

Anonymised version 14 November 2016