



Neutral Citation Number: [2024] EWCA Civ 153

Case No: CA-2023-001814

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE FAMILY COURT AT PETERBOROUGH**  
**HHJ Chaudhuri**  
**PE22C50076**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 22 February 2024

**Before:**

**LORD JUSTICE PETER JACKSON**  
**LORD JUSTICE DINGEMANS**  
and  
**LORD JUSTICE SNOWDEN**

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**R (Children: Findings of Fact)**  
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**Clive Newton KC and Alison Hunt** (instructed by **Hunt & Coombs Solicitors**) for the  
**Appellant Mother**  
**Jonathan Bennett** (instructed by **Local Authority Solicitors**)  
for the **Respondent Local Authority**

**The following did not attend and were not represented:**

- (1) The Respondent Father**
- (2) The Respondent Children by their Children's Guardian**
- (3) The Five Intervenors**

Hearing date: 18 January 2024  
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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 22 February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**Lord Justice Peter Jackson:**

*Introduction*

1. This appeal challenges a ‘pool finding’ in care proceedings concerning three small children. The proceedings began in July 2022 after the youngest child, C, then aged 8 months, suffered a serious head injury at home in the company of six female maternal relatives: her mother, her grandmother, three of her aunts and her sister, then aged 17. The judge found that the child had been shaken by one of the relatives but that the person responsible could not be identified. The mother appeals, supported by the father and the other family members. The local authority opposes the appeal, while the Children’s Guardian remains neutral.

*The background*

2. I will use initials or titles when referring to family members and when quoting from passages written by others. The children are A (now 4), B (now 3) and C (now 2). At the time of C’s injury, the parents’ eldest child T (now 18) also lived at home. The maternal grandparents and the aunts (in descending age order, Aunt 1, Aunt 2 and Aunt 3) live in their own homes nearby. Aunt 2 is the manager of a children’s home and Aunt 3 is a nurse. Between them, the aunts have seven children who have never attracted any professional concern.
3. The local authority evidence described the family in very positive terms. Family life was very stable, filled with attending to the needs of children, father working, family gatherings, school and nursery. The parents were seen as being very capable and as showing a great deal of emotional warmth towards the children. Though somewhat overcrowded, the house was clean and well-maintained, and the children had appropriate routines, with T, A and B attending school and nursery regularly. There were no concerns about substance misuse, domestic abuse, or mental health. Extended family was very important and large gatherings were regular occurrences. There was a close bond between the siblings, nieces and nephews, grandparents and grandchildren.
4. On the evening of 11 May 2022, a number of maternal family members congregated at the parents’ home ahead of a trip abroad by the parents and children. The father was out of the home at work. A and B had been put to bed upstairs. Also present in the home with C were the six relatives mentioned above, and two cousins, aged 10 and 8, the daughters of Aunt 2. The ground floor of the property consisted of a living room and a kitchen, with a connecting corridor. The family (apart from the children who were asleep upstairs) gathered in the living room which, small as it was, contained three sofas.
5. A video of C, taken at 21.47, showed her to be happy and healthy.
6. At 22.24 Aunt 3 made a 999 call in which she said that C had fallen and hurt her head and that she was not breathing. An ambulance rapidly attended, and C arrived at hospital at 22.48. On arrival, a CT scan was performed, showing a large right-sided subdural haemorrhage. C required ventilation and intubation. She was transferred to a specialist hospital for emergency surgery and treatment.

7. A number of investigations were conducted over the following days. They raised the suspicion of inflicted injury, and the police were involved at a very early stage. The parents were arrested and made subject to bail conditions. The family cooperated with the investigations. The initial social work statement (7 July 2022) said this:

“The parents have cooperated with the professionals both from the medical and social care settings. They have given statements to the police reporting C’s fall... They have accepted the restrictions which have been placed on them and the care of the children. The parents want their children to return to their full-time care but understand that C has sustained a potentially life changing bleed to the brain and retinal haemorrhages... Both parents have been praying for C’s safe recovery and have attended all supervised contact sessions to be with her.

The parents have attended all appointments pertaining to the children where it has been possible. They present as doting parents and have reported that their children have all been wanted children and therefore would not put any of them through any kind of harm.

The mother is insightful about the emotional needs of her children and having discussed their separation from their parents she has been able to consider the long-term impact for them and if they will experience any trauma from the processes which have been put into place.

...

The family are dedicated to the welfare of the children and are clear in their understanding of why the parents’ contact is supervised, and whilst they do not accept that the parents hurt C, they accept there is a police investigation and Children Social Care involvement and wish to work with all agencies for the best interest of C, A and B.”

8. Following C’s injury, A and B were placed with a paternal uncle and aunt. Fortunately, C appears to have made a good recovery, and on 8 June 2022 she was discharged into the care of her maternal grandmother. Until August 2023 the parents saw the children throughout each day, but bail conditions required supervision by family members. In August 2023, the father's bail conditions were varied to allow him to be unsupervised with the children, and at that point the three children moved back to the family home, while the mother and T moved out to sleep at the grandmother’s home. In November 2023, the mother was allowed to return to live at the family home, but her time with the children remained supervised. On 19 December 2023, unusually as this appeal was pending, the proceedings were brought to an end with the making of a 12-month supervision order with the agreement of the parties. The mother was to remain supervised with the children for another three months, except that she could take and return them to school/nursery unsupervised. The question of T's return home remained to be considered.

9. It can be seen that, despite suspicion falling on the family, the children have continued to have unbroken contact with them and, in the case of the grandmother, that she looked after C for over a year after the child was discharged from hospital.

*The hearing before the judge*

10. In its threshold document in December 2022, the local authority alleged that C's injuries were likely to have been caused during one episode of abusive inflicted head trauma consistent with a shaking mechanism. The list of possible perpetrators consisted of the six female family members. The local authority submitted that if the court concluded the injuries were inflicted, the family had colluded to invent an explanation for the injuries and to present it to the authorities in an attempt to deceive them into believing that the injuries had been caused accidentally.
11. The fact-finding hearing took place before His Honour Judge Chaudhuri. The parents and T were legally represented, while the other family members were unrepresented intervenors. Additionally, the grandmother does not speak English, and required translation and interpretation throughout. The bulk of the hearing was taken up with medical evidence. The court heard from treating consultants in neurology, neurosurgery and paediatrics, and court-appointed experts in haematology, genetics, neurology, paediatrics, paediatric neuroradiology and ophthalmology. Seven days of evidence were given in February 2023. The case was then adjourned after a medical witness became ill and had to be replaced. In June 2023, evidence was heard on five more days. The seven family members (the six female relatives and the father) were last to be heard, and their evidence collectively took little over a day.
12. The judge gave judgment on 26 June 2023. It is a substantial decision, running to 37 pages (215 paragraphs). On 2 and 3 August, he provided a number of corrections and clarifications and refused permission to appeal in what I will describe as the second judgment.
13. The mother renewed her application for permission to appeal to this court. There were three grounds of appeal. Ground 1 concerned the treatment of the evidence of the family. Ground 2 concerned the treatment of the medical evidence. Ground 3 concerned the judge's approach to the assessment of the probable cause of C's injuries. On 25 October 2023, I granted permission to appeal on grounds 1 and 3 and refused permission on ground 2.

*The medical findings*

14. The judge summarised and assessed the complex medical evidence over the course of some 24 pages, reflecting the degree and detail of the questioning that Mr Clive Newton KC, for the mother, had addressed to the medical witnesses. As the medical findings are not the subject of the appeal, it is only necessary to record the judge's conclusions, expressed in two paragraphs:

“167. Drawing all the medical evidence together it appears that:

- i. Prior to 9:47PM on 11 May 2022 there was nothing that I have read or heard to indicate that C was unwell in any way.

ii. At some time between 9:47PM and 10:25PM on 11 May 2022 C suffered a head injury.

iii. These injuries were identified as multifocal subdural bleeding (the largest collection being over the right cerebral convexity, with collections on the left and in the posterior fossa), global severe hypoxic ischaemic brain injury, a ligamentous injury to the cervical spine, a thrombosed bridging vein and multiple and extensive retinal haemorrhages extending from the posterior pole into the peripheral retina. Both optic discs were pink in slightly congested and there were prominent perimacular folds in both eyes.”

“178. The medical evidence, therefore, points to the following conclusions:

i. C’s subdural haematoma could have originated as a result of the fall but more probably were attributable to a single shaking event.

ii. C became acutely encephalopathic at home sometime between 9:47PM and 10:25PM on 11 May 2022.

iii. The multiple and extensive retinal haemorrhages extending from the posterior pole into the peripheral retina together with the prominent perimacular folds in both eyes could have been caused by raised intracranial pressure, though unlikely to have been caused by surgical intervention, but more probably were attributable to a shaking event between the times that I’ve stated above.

iv. C suffered a thrombosed bridging vein. I accept that these are often seen in anterior to posterior motion head trauma. This motion avulses the subdural veins and some injured veins go on to thrombose or clot off.

v. C suffered a severe, global hypoxic ischaemic brain injury. I accept that her brain was diffusely and globally abnormal. This injury is more probably attributable to a shaking event, again between the times I’ve stated above.

vi. C also suffered a cervical spinal ligamentous injury. It is unlikely that this injury was caused by a fall but more attributable to a shaking event.”

15. In refusing permission on ground 2, I noted that the judge did not treat any aspect of the injuries as diagnostic. The debate about serious head injury from low-level falls is well-trodden territory and the medical picture was bound to remain that these injuries were a very unlikely, but not impossible, consequence of the event described by the family. Indeed, having assessed the medical evidence, the judge then immediately and rightly directed himself in these terms:

“179. As I’ve already stated the court cannot consider the medical evidence in isolation. The evidence in this case cannot be assessed and considered in separate compartments. I therefore now consider the medical evidence alongside the other evidence, particularly the evidence given by the parents and the family members, and consider the wider canvas.”

*The family’s account*

16. In the period between the 999 call and the court hearing over a year later, the various family members were inevitably asked to give repeated accounts of what occurred in the critical half hour prior to C’s collapse. As a result the court had a great deal of evidence about that very short period of time, consisting of:
- (1) The 999 call, of which there is a summary.
  - (2) Accounts given at hospital, noted by medical professionals.
  - (3) First accounts given by family members to the police, recorded in notebooks and marked ‘not verbatim’.
  - (4) Interviews under caution given by the mother and T.
  - (5) Voluntary accounts given by family members shortly after the event, noted and marked ‘not verbatim’.
  - (6) Statements made to the court.
  - (7) Further accounts given to the police a year after the event, noted and marked ‘not verbatim’.
  - (8) Oral evidence at the fact-finding hearing, of which we have transcripts.
17. The accounts given by the family and the judge’s treatment of them form the crux of the first ground of appeal. The evidence therefore needs to be looked at in some detail. I have extracted the salient parts and placed them in the APPENDIX at the foot of these judgments, taking the witnesses in the order in which they gave evidence, followed by the judge’s commentary on the evidence of each witness.

*The judge’s decision*

18. The judge, at paragraph 181, referred to the positive context, including the family’s uneventful parenting history and their cooperation with authority. He then carried out a brief survey of their evidence at paragraphs 182-201, ending thus:

“200. Whilst the immediate and extended family have given their oral evidence calmly without any heightened emotion I was concerned, collectively, by their reliability as witnesses. I exclude the father from this observation as I know he was not present at the time that C suffered her injuries though this court would have hoped, and still hope, that he appreciates the severity of the injuries suffered by C. I give myself a Lucas direction in

so far as all the family members, including T but excluding the father, is concerned.

201. I am satisfied on a balance of probabilities that the mother and the intervenors were keen to show a united front when giving their oral evidence despite the fact that there were differing accounts as already stated. Why is that? The simple explanation is that they wish to protect the family member who was responsible for those injuries or protect themselves.”

19. The judge then stated his conclusion about the causation of C’s injuries in short order:

“202. So what conclusions can I draw from the lay evidence?

203. I start with the premise that individuals when describing an incident will not always see and record events as seen by others. In this case there are widely differing accounts given on various occasions for example as demonstrated by T and her grandmother. There are other accounts given by the family members that I have mentioned already which differ with what had been said or written earlier. Those differing accounts cast doubt on the veracity of some of the evidence I heard and placing weight on how C sustained her alleged fall.

204. When I come to consider the wider canvas evidence, I am drawn to conclude on a balance of probabilities that C suffered her injuries as a result of a single episode of shaking rather than a fall. Mr Newton suggested I consider the improbability of such an event taking place in front of a lounge full of family members and children. It would be inconceivable. I agree that such an event seems highly improbable but as stated already it is not the court’s task to determine how C’s injuries were sustained. The task is to determine whether the local authority has proved its case on threshold on a balance of probability. The local authority suggest that C was subjected to a single shaking episode which in all likelihood took place outside the lounge area. I am not in a position to confirm where C sustained her injuries, but I am satisfied on a balance of probability that it took place somewhere at the parents’ home between 9:47pm to just before the call to the ambulance. Anything beyond that is speculation.”

20. Next the judge turned to perpetration:

“205. So, who was responsible for the injuries that C sustained?

206. The local authority in their threshold document has provided a list of those who had the opportunity to cause the injuries suffered by C. If I cannot identify the actual perpetrator on the balance of probability, I should consider whether there is a real possibility that each individual on the list inflicted the

injury in question. Having considered the medical evidence and the lay evidence, I cannot identify the actual perpetrator.

207. Having considered each individual on the list I am unable to say that any one individual, so named, inflicted the injuries to C. I am very conscious that two of the extended family are members of a caring profession and have spent a great deal of their current working lives focusing on helping others. Similarly, the mother and maternal grandmother have raised children without any concerns from social services.

208. My findings do mean that each individual on the list remains a possible perpetrator.”

21. The judge then addressed the allegation of collusion:

“209. Having determined that C’s injuries were inflicted, the local authority invite this court to conclude that the named individuals colluded to invent an explanation for the injuries and present it to the authorities in an attempt to deceive them into believing that C’s injuries had been caused accidentally.

210. At first blush, such a finding would seem an obvious conclusion to draw from the findings I have made but on closer inspection the key issue to consider is, where is the evidence to support such a finding? I did not hear any evidence to suggest that one or more of the family members had met or exchanged messages to invent an explanation. Was, for example, T or the maternal grandmother involved in such remote or face to face discussions? This court may be highly suspicious but mere suspicion is not enough to make a finding such as this. In some ways the finding is analogous to a ‘failure to protect’ finding sometimes sought by the local authority. As in those cases, such a finding should not be a bolt on to the main finding/s already proved. There has to be evidence of such a failure to protect and it is no different in a case where collusion is being alleged. Whilst this court may be suspicious of what discussions may have taken place it is impossible to say when, how and who were involved in such discussions. I find this allegation not proved on a balance of probabilities.”

22. The judgment concludes in this way:

“211. I therefore find on the balance of probabilities that:

i. between 9:47PM- 10.25PM on 11 May 2022, C sustained multi focal subdural bleeding (the largest being over the right convexity, with collections on the left and in the posterior fossa), encephalopathy, a severe global hypoxic ischaemic brain injury, ligamentous damage to the cervical spine, a thrombosed bridging vein and multiple retinal haemorrhages extending from the



posterior pole into the peripheral retina and prominent perimacular folds in either eye.

ii. I cannot identify the perpetrator.

iii. I do not find evidence of collusion between those named on the list.

212. I acknowledge that these are serious findings for the mother, her daughter, her sisters and C's grandmother. Future assessments will have to determine whether C can be returned to the mother and father's care.

213. The findings that I have reached should not prevent any social worker from keeping an open mind as to the future return of not just C but her two siblings to the care of her parents. Much will depend on their response to my judgment and how they propose C and her siblings can be protected in future if they were returned to their care.

214. I note that in so far as the maternal aunts are concerned, they have looked after their children, where appropriate, without any concerns by any agency. That is a significant factor to be borne in mind. Some are in responsible roles. I appreciate this judgment may have implications for their employment. I can only hope that their historically, trouble free time in their employment and the fact that they have looked after and cared for their children without any prior concerns are given serious consideration and weight by the relevant authorities.

215. The maternal grandmother has looked after C since the 8 June 2022. Whilst in her care, C has not come to any harm. I sincerely hope she will be allowed to continue to look after C despite this court's finding. I appreciate that may be unusual in the light of my findings, but the grandmother had provided care to C for over 12 months and the risk of emotional harm in moving C from her care is a factor I consider to be very important."

23. At a hearing on 2 August 2023, Mr Newton sought clarifications and corrections and made an unusually detailed application for permission to appeal. Numerous proposed grounds of appeal were advanced, the majority concerning the medical findings. The judge gave an extended response when refusing the application. The following extracts from that ruling are of some relevance to this appeal:

"27 In terms of Ground 4, the judge erred in his consideration of the abnormal brain injury and in his judgment failed to consider the evidence which indicated the abnormal brain injury might have been caused by an accidental fall. I was at all times aware of the mother's case and the intervenors' case regarding an accidental fall, however, I rejected that."

“47 It would be useful at this stage just to remind ourselves of the legal document that [counsel for the Guardian] provided to us, and it is p.6 of the bundle of authorities. It is an extract from the House of Lords in *Re B* [2008] where Baroness Hale she says this:

“In the context of care proceedings, this point applies with particular force to the identification of the perpetrator. It may be unlikely that any person looking after a baby would take him by the wrist and swing him against the wall, causing multiple fractures and other injuries. But once the evidence is clear that that is indeed what has happened to the child, it ceases to be improbable. Someone looking after the child at the relevant time must have done it. The inherent improbability of the event has no relevance to deciding who that was.”

And this is the important point:

“The simple balance of probabilities test should be applied.”

48 So what does that mean for the intervenors? The court is not looking at the improbability of an event. That is not the legal test. The legal test is whether the local authority have managed to prove threshold on a balance of probabilities and to sit and speculate as to whether how improbable an event is, in my view not the appropriate course. So, I make reference to that dispute in p.19, (a) makes the point that I failed to take into account the improbability of a family member leaving the sitting room to take the baby, who was behaving in an annoying manner, elsewhere and had to calm them down. I do not speculate on that point, but what I can deal with is whether the local authority have proved their case on the balance of probabilities and nothing else.

49 In terms of Ground 15, the argument that was suggested here is that in determining a finding of inflicted injury did not necessarily involve a finding of collusion against all the relevant family members. I failed to take into account the necessary occurrence of collusion further increased the improbability of the account. Well, I am probably not going to take it as far as that. The local authority have to prove threshold. One of the aspects of threshold is that the intervenors had colluded. It is a very easy statement to make. In my judgment I recall making a similar comparison to failure to protect. Sometimes it is an add-on by the local authority and there are numerous cases which make it quite clear this should not be an add-on and in my view it is the same point about collusion. It has been raised, but it has not been proved. It has not been proved with evidence. In my view, that was not proved. It takes it no further than that. Collusion implies that there would be more than one of you involved in discussions. Whether that is telephone or whether by ordinary

occasion(?), the local authority have not been able to prove that, and that is it. I do not have to look at the improbability of other events and analyse, “Have the local authority managed to prove that?” They were not able to prove it, hence why I did not make a finding of collusion.

50 With regard to Ground 16, again, I am being asked to remind the court that it has rightly been pointed out on Ground 16 that I failed to find that C’s injuries were caused accidentally in a fall or, alternatively, the local authority have not proved it. I considered the mechanisms. I considered the lay evidence, which, in the main, has been relatively consistent in terms of all of the intervenors suggesting that C suffered a fall. I considered that. I looked at the wider canvas and came to the conclusions that I did.”

24. On 3 August 2023, the judge provided further responses in respect of matters that had also arisen in the context of the application for permission to appeal:

“4. At the conclusion of my deliberations, I dismissed the permission to appeal application. I ordered a transcript and therefore I do not intend to repeat all that I said during the course of the hearing.

5. I would, however, like to confirm that in so far as Paragraph 14 (a) of the ‘Clarification’ document is concerned I took the opportunity of listening to the digital recording and confirmed that the mother said that the child was tapping the stool and not clapping. The relevant paragraphs of my judgment are 184 and 185. Any impression given in my judgment suggesting or implying that the mother was inconsistent in so far as ‘clapping’ is concerned is not valid. I have considered this point of clarification and have concluded that it does not alter the findings I have made.

6. In respect of Paragraph 14 (d) (i) of the ‘Clarification’ document I listened to the digital recording and can confirm that the grandmother’s oral evidence was that she thought it was T who went to make milk. The relevant paragraph of my judgment was 191. I incorrectly stated that it was the maternal aunt, Aunt 2. I have considered this point of clarification and have concluded that it does not alter the findings I have made.

7. In respect of Paragraph 14(e) (i) of the Clarification document I accept that there was no reference to the evidence of the maternal aunt, Aunt 1 in the analysis of the family member’s evidence. I confirmed that I had a detailed note of her oral evidence and before yesterday’s hearing I considered her written evidence. The mere fact that I did not include her evidence in my final analysis does not alter the findings I have made.

8. The remaining points of clarification and the permission to appeal application are contained within the transcript.”

*The appeal*

25. Mr Newton argued that the medical evidence left open the possibility of accidental causation and that the judgment was so flawed in respect of the assessment of credibility and probability as to be invalid. The judge made mistakes and wrongly described the witnesses as giving “widely differing accounts” (paragraph 203). He was further wrong to find in the same paragraph that those differences cast doubt on their veracity, when (as the judge accepted) witnesses will not always see an event in the same way.
26. Mr Newton took us at length through the evidence of the family witnesses in order to make good his submission about the witness evidence. The essential points are these:
- As to the mother, (1) accepted error at paragraph 184 in relation to the mother describing C as clapping her hands; (2) error in paragraph 185 when saying that the mother had not told the police that C had fallen on the right side of her head: she had; (3) a fair reading of the mother’s police interview and the transcript of her oral evidence does not sustain the description at paragraph 185 of the former being vague in comparison to the latter.
  - As to father, the observation at paragraph 186 about the report of C jumping was unwarranted; neither parent was asked about it in evidence and anyhow everyone described C as having made a sudden move.
  - As to Aunt 2, the observation at paragraph 188 that it was unusual to use the word ‘whiplash’ when there had been no mention of mechanism in her statement some three months earlier was selective; in her first account to police she had described how C “fell back onto doll with lower back, slightly raised, so head fell backwards”.
  - As to Aunt 3, the comment at paragraph 189 about the account in the 999 call of C having fallen “just from sofa down to carpet” was not verbatim and she had elsewhere described C as standing on the floor and leaning on the sofa; further, she stated to the police that for her as a nurse the injury was odd as C fell from such a small height, showing that she was not trying to exaggerate the fall; the reason for the more detailed account on the later occasion was perhaps because she was asked more questions.
  - Aunt 1’s evidence was mentioned in passing but was not considered again.
  - As to the grandmother, (1) the ‘first inconsistency’ described at paragraph 191 was acknowledged to be an error, (2) the second supposed inconsistency was explicable from the fact that she had to rely on her son to prepare her witness statement, (3) as to the statement in a telephone interview in May 2023, recorded at paragraph 192, that C had stood on and fallen off a little stool, this was (as the judge accepted) possibly the result of a misinterpretation, and nobody asked the grandmother about it in her oral evidence.

- As to T, the comment at paragraph 197 that there was obviously a marked difference in her statement and her account to the police in respect of whether she saw the fall or the outcome should have been seen against the consistent account given by T of seeing C on her back, and account should have been taken of her youth and the stress of the occasion.
27. Mr Newton further submitted that the judge failed to take account of the high degree of improbability surrounding both an inflicted injury and a subsequent cover-up. He did not evaluate this aspect of the evidence with due regard to the good character of the witnesses, the particular circumstances existing in the home and the quality of the family's evidence.
28. Responding for the local authority, Mr Jonathan Bennett, who did not appear at trial, rightly reminded us of authority that emphasises the high degree of caution that must be shown by an appeal court when it is asked to disturb considered findings of fact: see *Re T (Fact-Finding: Second Appeal)* [2023] EWCA Civ 475 at [56-57], citing *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5 at [114] and *Volpi v Volpi* [2022] EWCA Civ 464 at [2]. That approach applies with no less force in the family jurisdiction.
29. Mr Bennett relied on the fact that the judge had correctly evaluated the complex medical evidence, which formed a crucial element of the case. He remarked that this formed an important basis against which the other evidence fell to be considered. While he accepted that the medical evidence was not diagnostic of inflicted injury, observations made by some of the medical experts did not fall far short. Any other explanation was not a real possibility. In defence of the judge's commentary on the family's evidence, Mr Bennett's skeleton argument grappled with a number of the evidential details, but in his oral submission he very fairly accepted that there was a core consistency to the family's account. However, he submitted that none of the judge's errors were substantial enough to vitiate his overall findings, and he was not obliged to refer to every piece of evidence. In relation to the assessment of probabilities, the judge took account of their good character and his reference to *Re B* was apposite. Within his conclusion that C's injuries were a consequence of a single episode of shaking lay an implicit rejection of the family's account of a fall; alternatively, and more probably, the judge was satisfied on the strength of the medical evidence that a low-level domestic fall as described would not have caused C's injuries. He did not have to go further than he did and the conclusions he reached about infliction and collusion were ones that were open to him.

### *My conclusions*

30. I start by acknowledging that this appeal and the proceedings before the judge are not symmetrical. As noted above, the bulk of the trial was taken up with medical issues that are not open to the appellant on this appeal. The judge had to deal with a considerable amount of complicated medical evidence and argument, pursued in great detail by Mr Newton both before and after the delivery of judgment. The limited basis upon which permission to appeal was granted allows the essential contours of the evidence to emerge more clearly without detracting from the judge's weighty and undisturbed medical findings.

31. This was an unusual case. Adopting a familiar metaphor, the canvas of evidence was small, densely filled, and the court could see it all. C's injuries were sustained in a confined space during an extremely short time window in such close proximity to eight other family members (including the cousins, aged 10 and 8) that they must all know more or less what happened to her.
32. As to that, there were just three scenarios. The first is that C fell as described and sustained these very serious injuries. The second is that C fell as described but was also shaken. The third is that C was shaken and did not fall at all.
33. The court was therefore called upon to evaluate a number of competing improbabilities. The first scenario involved C suffering injuries that were highly unlikely, individually and collectively, to have resulted from a banal domestic fall. The other two scenarios involved other kinds of improbability. In the second scenario, that of a child being shaken by an otherwise loving relative in the midst of a good-natured family gathering; in the last scenario, that of a sustained cover-up on the part of an entire family whose history contains none of the general risk factors that are associated with child mistreatment, while all of the protective factors are strongly present: cf. *Re BR (Proof of Facts)* [2015] EWFC 41 at para. 18. The court's evaluation had to take account of the fact that unlikely events occur all the time, although the probability of them arising in any individual case is extremely low: *ibid* at para. 7.
34. I do not agree with the judge's concept of speculation at paragraph 204. Of course he was right to say that the court's task was to determine whether the local authority had proved its case on threshold on the balance of probability. However, that involved grappling with and drawing conclusions from all of the evidence, medical and lay. The medical appearances were clear and the explanation for them was highly likely; but it was not certain, as the judge acknowledged by his finding at paragraph 178i. Against that, the court had the accounts of six people who were with C at the time she was injured. It is wrong to describe the medical evidence as the canvas against which the other evidence was to be considered. Medical and non-medical evidence are both vital contributors in their own ways to these decisions and neither of them has precedence over the other.
35. I consider that the submissions about the details of the judge's assessment of the family's evidence (paragraph 26 above) have force, though they might not on their own lead to a successful appeal. My concern about the judge's approach is a broader one. It was not, strictly speaking, the court's task to determine how C's injuries were sustained, but it was its task to thoroughly evaluate the cases presented by all the parties. Unfortunately that did not occur. Most obviously, the judgment does not tell the reader, or the family, whether the judge accepted that C fell over in the manner described. That was a fundamental issue when assessing the credibility of the witnesses. The judge's commentary on their evidence consists only of a number of relatively superficial and not always accurate observations about matters of detail, and it is not clear whether he considered their accounts to be widely differing (first judgment at paragraph 203) or relatively consistent (second judgment at paragraph 50). It was a necessary part of the judicial task, and involved no element of speculation, to reach a conclusion as to whether these witnesses were telling the truth or lying about a simple described event. It is not sufficient to leave the matter dangling by referring to "the alleged fall" (paragraph 203), and the second judgment, where the

judge records (paragraph 27) that he rejected the case regarding an accidental fall, equally leaves uncertainty about the basis for the rejection. In short, if the family's explanation for the injuries was disbelieved, it was the court's responsibility to explain in clear terms why that was. This was important, firstly because C's relatives were entitled as a matter of fairness to know what the judge had made of their sworn evidence, and secondly because the nature of the risks differed as between the second and third scenarios. In the third scenario, the court would be faced with an entire family that was prepared not only to dishonestly suppress the truth but also to plausibly invent a lie, something that would have implications for child protection and the level of risk.

36. When providing clarification or refusing permission to appeal (however excessive the parties' request) it is inadvisable for a court to enter into the degree of detail that occurred here. As it is, the judge's approach is further undermined by the emphasis he placed upon *Re B* at paragraphs 47-48 of the second judgment. As Baroness Hale made clear in the cited passage at paragraph 73, the inherent probabilities no longer apply when an assault is known to have occurred. In this case, an assault was not known to have occurred and the judge's disavowal of the need to assess the improbability of one happening in such a witnessed setting was a clear legal error.
37. The same error of approach can be seen in relation to the treatment of the allegation of collusion. On the facts of this case, a finding of collusion was an inevitable consequence of a finding of inflicted injury (indeed the judge appeared to come close to finding collusion at paragraph 201), and his explanation at paragraph 210 for not following through on his first impression is not sustainable. Here, there was no analogy between failure to protect and collusion, because the irresistible evidential consequence of a finding of inflicted injury was that the other family members were bound to know what had happened and who had done it. A finding of collusion would not be a 'bolt-on' but the result of the normal process of drawing inferences from evidence. The fact that the court could not know precisely how the family had conspired did not mean that it would be indulging in suspicion or speculation, and to find that the local authority had proved one part of its case but not the other was not coherent.
38. There are two unsatisfactory consequences. The first is that the judge did not take account of all relevant matters before reaching a conclusion about infliction. The local authority's case was that the child had been assaulted and that the family had colluded. It was the court's task to assess the evidential likelihood of the allegation as a whole: by separating the two elements, it deprived itself of the opportunity to take account of the whole picture, and to ponder the limited opportunity for the family members to have given a broadly consistent account of a fall immediately in the 999 call and then to police the following day, while at the same time colluding to suppress any reference to an assault. Secondly, by making one finding but not the other, the court pulled its punches. A finding of collusion (which involves sustained, deliberate lying by a number of people who could be expected to have C's best interests at heart) might be thought to be worse in some ways than a finding of infliction (which may be the result of a momentary loss of control). It is also difficult to understand how the judge's closing remarks, sympathetic to the two aunts who are in responsible professional positions, could reasonably stand alongside a finding that carried the necessary

implication that they had culpably lied to the court and to the child protection authorities.

39. Stepping back, I therefore conclude that the judge did not carry out the necessary evaluation of the evidence for and against the local authority's case or meaningfully synthesise an assessment of the probabilities. There may be cases where the court has good reason to be inherently sceptical about a witness's evidence, but this was not one of them. The digest of the family's account in the APPENDIX shows that this family's account deserved careful consideration and, if it was to be rejected, clear and cogent reasons. Apart from the judge's relatively peripheral comments about the evidence, no such reasons were given. This was particularly pointed in the case of Aunt 1, whose account clearly deserved attention.
40. At paragraph 200 the judge referred to *R v Lucas* [1981] QB 720, but he had no cause to give himself this direction as an awareness of other possible reasons for lying will self-evidently only come into play after the court has found that a witness has indeed lied. In the present case there were no admitted lies and the judge did not explicitly find that lies had been told or identify what they were. The most that he said was that he was "concerned" about the family members' reliability. In the following paragraph he said that the simple explanation for the family's "united front" was to protect the perpetrator or themselves. That might of course be so, but another explanation was that the family members were telling the truth, and it is unclear why the judge rejected that possibility.
41. For all of these reasons, the judge's reasoning does not sustain his conclusions. The demanding test for interfering with finding of facts has been met. I would allow the appeal.
42. The remaining question concerns consequential orders. The situation is unusual in that the underlying proceedings were concluded in December and the children are at home under a supervision order. In those circumstances, Mr Bennett told us that if the appeal was allowed the local authority would not seek a retrial but would instead apply to this court to withdraw the revived proceedings. The result would be that the cause of C's injuries would remain unexplained and that there would be no finding against family members. In the particular circumstances, that appears to me to be a sensible and realistic position for the local authority to take, but we will need to know the position of the family members and the Children's Guardian (to be communicated within 7 days of the handing down of our draft judgments, accompanied by a draft order) before we reach a conclusion about it.

### *Postscript*

43. Having received the judgments in draft, the parties filed an agreed draft order, and I would approve orders in these terms:
  - 1) The appeal is allowed.
  - 2) The findings of fact made by His Honour Judge Chaudhuri in a judgment of 26 June 2023, formally handed down on 19 July 2023, are set aside.



- 3) The supervision orders in respect of the children made on 19 December 2023 are discharged.
- 4) The 1<sup>st</sup> respondent local authority is granted permission to withdraw its revived application for public law orders, and the proceedings in respect of the children are concluded, on the following basis:
  - a) The local authority proposes to work with the family under a Child in Need plan for a period of time.
  - b) The appellant mother, and the respondent father agree to work with the local authority with the provision of Child in Need services for a reasonable period.
  - c) On that basis, the local authority does not seek to relitigate the fact-finding hearing.
  - d) The mother confirms that she does not wish for there to be a rehearing of the fact-finding hearing.
  - e) The mother's solicitors have obtained written confirmation from the father and guardian's solicitors and from each of the five interveners that they do not seek a rehearing of the fact-finding hearing.
  - f) In consequence of the above, the injuries sustained by child C remain unexplained.
- 5) There shall be no order as to costs, save detailed assessment of the publicly funded parties' costs.

**Lord Justice Dingemans:**

44. I agree.

**Lord Justice Snowden:**

45. I also agree.

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**APPENDIX**

**Extracts from the accounts given by family members**

46. The mother's account included:

(1) First account noted by a hospital consultant on 12 May 2022:

“Approximately 10:15PM while standing supported by maternal aunt C suddenly fell backwards landing with a rag doll under her back, striking her head on the carpeted floor. She cried immediately, then vomited and then became unresponsive. Her

mother described unusual eye movements and unusual hand movements.”

(2) First account to police at hospital on 12 May 2022:

“T made C a bottle of formula milk and Aunt 2 gave it to her. Mother stated that she had around 3oz of milk. Around 3-4 minutes later Aunt 2 put C on the floor in a standing position, so her feet were touching the ground and Aunt 2 had her hands under her arms holding her. Mother has stated that C jerked forward and then jerked backwards leading to Aunt 2 losing her grip. C has then fallen backwards, her back has hit a fabric doll which was on the floor and her head has hit the carpeted floor. Mother stated that she picked her up and C cried straight away, her eyes then went funny and she became unconscious. Aunt 3 called 999 straight away.”

(3) Interview under caution on 17 May 2022 (1 hour 40 minutes):

“So, we were just chatting, but just normal, general stuff. Nothing, like, specific. After that, ehm, my sister made the tea. So, we had the tea. We finished our teas. And she, she woke up then. So, when she woke up, then my sister picked her up and she looked really pink... And then she was a bit agitated, so I said to my daughter, “She’s eh - maybe she wants a little bit more milk. Now that she’s awake, she could want some milk. Make her some milk”. So, my daughter made the milk and my sister said, “Can I feed her?” and I said, “Yeah, you can feed her”. My sister really, like, loves them as well. She loves all of my kids. So, I said, “Yeah, you can feed her”. So, she fed her and then, again, what she did is that she drank the milk and then when she didn’t want the rest, she started pushing the bottle out and I said, “Oh, my gosh, we were just talking about this”. And then the next thing I know is that she - my sister is holding her. I think she wanted to get up ‘cause she’s big - she’s not big, but she was old enough that after she’s had a drink she wants to sit up and, you know... come down and out of your lap, if that makes sense. And then she got out of her lap and she’s standing there. She’s holding her. And then next thing I know that she’s - I don’t know whether she just - my daughter just moved forward, or what happened, and then she just slipped out of my sister’s hands.

Q Okay.

A And then there was a little - you know, like a - it’s not a soft toy, but it’s like a soft doll, if that makes sense? So it wasn’t hard at all. That was under her back and then her head hit the carpet and that’s it. That’s it. And then I picked her up straightaway and I said, “Oh, my God, what’s happening to her?” and my sister said, “Don’t panic. She’ll be fine”. And then as I was picking her up and then her eyes started rolling, and then I said, “Oh, my

God", I told my sisters, "She's -- her eyes are rolling", 'cause as we were - we just - I mean, I've only got a living room and it's like an alleyway and a kitchen. I just went to alleyway and I come back and I said, "Look at her", and my sister said, "Let me quickly call the ambulance". We called the ambulance. She was floppy. By the time the, by the time the ambulance come, she, she was unconscious. And then [upset], then they come and they said, "We need to take her to hospital". So, I said, "Okay", but still nothing that she got hurt this much. I didn't want to hold her. She's had such a big (inaudible). I took her into the ambulance and then that's where she's screamed once as though that's a good sign, and I got this relief that, "Oh, my God, she's crying", but then, then she stopped. And then we went straight into hospital. They checked her. They said, "We need to do a scan". They did the scan and then they said that she's had a bleed, but I thought the bleed was just caused because of the fall, but I was - to be honest, I can't believe that it happened, especially it's her own height that she -- where she fell from. It's not like somebody was hugging her, or she was in a high space, or the floor was hard. I'm in shock myself about how she's hurt this much, and I (inaudible) my baby. I would never hurt my baby [upset]."

...

"DC M: Only one thing, which is just to clarify - you probably have already said, but I just want to vision it - when she fell, can you just describe how she ended up being positioned on the floor.

A Her position, her, her right side fell down. As she was standing like this and went like this, this side was (inaudible) was back, then as she fell, then she went on her back, if that makes sense.

Q Okay. She went towards the right and then----

A Yeah, her head hit first.

Q Okay."

...

"Q... Now, the Local Authority's case is that on the evening of 11 May either you, your mother, your daughter, or one of your sisters did something to C deliberately, probably a shake, that caused C to have the injuries which she sustained.

A That's incorrect.

Q Did you do anything deliberately?

A No.

Q Did you shake her?

A No.

Q Did you see anyone else----

A No.

Q -- do anything like that?

A No.

Q If on that evening you had witnessed one of your family members shake C, or do something, what would you have done?

A I would have told the truth. I would have said what's happened. My children come first and (inaudible) hiding any circumstances (inaudible). Whoever I had to tell, they would have known."

(4) Statement to court of 27 July 2022:

"C's fall

50. I have been asked to slowly break down what I remember happened.

51. I was sitting on the sofa near the TV. I saw C fall and had full vision of what I saw.

52. Aunt 2 was sat on the sofa closest to the window facing the road. That means Aunt 2's back was to the road;

53. There was a stool in front of the sofa. It is a metal stool;

54. C's hands were on top of the stool;

55. C was facing her cot which is positioned between the two sofas

56. C moved forward while still having her hands on the stool;

57. C then did a drastic move causing Aunt 2 to lose grip. How I would describe it is that C suddenly decided to change direction.

58. She fell and her right head hit the floor. None of her shoulders or arms got in the way;

59. When she landed there was a doll behind her back. The doll did not support her in any sort of way.

60. It is neither a cuddly doll nor a hard doll. The Police have taken it. It wasn't hard.

61. The carpet that C fell on was soft but not shaggy.

62. When she fell I straight away picked her up. I picked her up with two hands under her armpits.

63. We all thought it was just a little fall, we didn't think it would have hurt this much, we were just trying to console her, we were just trying to rock and rocking her saying you're ok, you're fine. Aunt 2 said don't worry, everyone said no she's fine, she's fine, it's just a little fall but then suddenly her eyes started rolling. That is when we called the ambulance straight away.

64. I understand the ambulance call was at 10.24pm. I also understand it is recorded that I said to the doctor that the fall happened about 10.15pm. I don't think that time can be right. When she fell, I picked her up and she cried. When she was crying I was saying you're ok, don't worry, as I am walking her back and forward her eyes were going a bit funny and I said to my sister Aunt 1 look her eyes don't look normal and she said you're just panicking and then she realised it as well and it was at that stage we called an ambulance. This was a maximum of one minute no more than that. I can't be 10.15pm. This is because it was a matter of minutes She looked at her eyes and said yes call the ambulance. My sister Aunt 3 called an ambulance. As she was on the phone to them her eyes started rolling and her arms went floppy. The lady on the phone told us to put her on the floor and that was when she started not responding. It seemed like a couple of minutes. It was really frightening. At one point my sister Aunt 1 was holding C as they could see I was really upset and panicking.”

(5) Oral evidence on 14 June 2023:

“A So C was-- she decided to come down out of her lap. She stood on her feet and there was a stool there, so she started playing with the stool.

Q Yes.

A She was so happy.

Q Yes.

A She was tapping the stool. She was looking around, so proud of herself that she was standing there, and she was able to stand, and my sister had her hand around her.

Q Now, I know you have given detailed accounts to the police and in your witness statement of the fall. What is your recollection now? How clear is it in your mind now?

A I remember some parts clearly but some others I don't remember clearly, but I do remember it. It was those, like, days-

- the day you'll never forget. But still some of it is blurry and I can't remember some parts of it.

Q Okay. Well, would you just tell his Honour what you remember?

A Yeah, she was-- she had her milk, and then she stood on the floor. She was playing on the-- the stool being-- she was tapping her hands. She was so happy. She was smiling. And then she was looking around, and then she lost her balance, and she suddenly fell. It happened so quickly, and she-- her head-- the right side of her head hit the floor, and when she landed, then the doll was under her back."

47. The judge briefly summarised the mother's court statement at paragraph 67 of the judgment. Commenting on her oral evidence at paragraphs 184-185, he said this:

"184. When the mother gave evidence, she said that C was standing by the stool. Her sister had a hand around her. C stood on the floor. She was clapping hands and then suddenly fell, and her right side of the head hit the doll and on the floor.

185. The impression I formed of the mother when she gave evidence was someone who was assured of the events of the evening of 11 May 2022. However, her description of C clapping was not one that I had come across in her statement and I note on C42 the mother suggests that C had her hands on the stool just before her fall. In her police interview on G773 and on G791 there is no mention of C clapping or falling onto her right side of the head. The impression that I formed of this mother being assured when giving oral evidence does not reconcile with how vague by comparison she was when interviewed some 6 days after C's head injury."

48. The father's account of what he was told appeared in:

- (1) Interview under caution, using interpreter, on 17 May 2022:

"Q Okay. Has your wife told you in detail about what happened that night with the fall since in hospital?

A Yes, she has.

Q Can you tell me what she's told you.

A She was -- she said that----

PC H: Do you want to show us what you were just going to do?

A (In person): So, I wasn't there, but she -- my English is not good, sorry----

Q It's fine, no, no ----

A -- but I tried to----

Q -- it's fine.

A Now he's going to explain it to you.

DC M: Yeah.

A So, she was telling me - - but she was telling me our sister was holding her and she was standing on the floor, and suddenly she do something like the child to - bubbling(?) or something like that - and she fall back on her head."

(2) His statement to the court on 27 July 2022:

"19. At about 10:30pm I received a telephone call from T. She passed her phone to my wife who informed me that C had, had a fall and they had called an ambulance. My wife did not go into any detail on this call about what had happened. She was audibly distressed during the call. All she told me was that C had fallen and was unconscious and that they were waiting for an ambulance to arrive. Whilst I was on the call with my wife the ambulance arrived and so the call was terminated.

...

22. Whilst at the hospital my wife started to explain to me what had happened with C. I was told that C's maternal aunt (Aunt 2) was sitting on the sofa and she was holding/supporting C whose feet were on the floor. C was standing in front of the aunt and the aunt was holding C's hand. Like any 8 to 10-month-old, she was jumping up and down. As she jumped, she slipped from the aunt's hand and fell backwards. There was a doll on the floor, which was under C. It was not under her head that hit the doll; I believe it was her back or side. As she fell back, C's head straight hit the floor. The doll that C is described as fall backwards onto is not made from hard material and is a soft doll. My wife and I do not have this doll and cannot provide any pictures of it. This doll was taken by the police and remains in their possession as part of their ongoing investigation."

49. This evidence was referred to by the judge at paragraph 186:

"186. I then heard from C's father. He was not present when C suffered her injuries as he was at work. Interestingly, the account that he says he was given by his wife at hospital included C jumping up and down and as she jumped she slipped from her aunt's hand and fell backwards (C78). No one has suggested that C was jumping up and down when she fell. There is no suggestion that the father caused or contributed to the injuries

suffered by C and I formed the impression that he accepts that what happened to C was a simple accident.”

50. Aunt 2’s account included:

(1) Note of first account to police on 12 May 2022:

“C heard the sound and woke up, we were playing with her, passing her around, then crying – bottle – I fed her as others drinking tea, didn't finish her feed, wanted toys on a stool, moved it towards her and held her standing by the stool, holding her and talking then suddenly she fell, fell back onto doll with lower back, slightly raised, so head fell backwards... left hand holding top, holding her up and right hand on her bum, took RH off when talking brackets gesturing close brackets and then suddenly she moved and I lost my grip on her top.... (Q: see her fall?) Yes, went to grab her but too late. I picked her up and then her mum picked her from me as she was quite hysterical.”

(2) Witness statement of 17 January 2023

“6. We started to see the shopping which was purchased the day before. Once we had seen everything, everyone had tea and cakes, we were eating, and C woke up.

7. C was taken out of the baby cot and sat on the floor with my daughters playing, approx, a little while later, C’s bottle was made by her eldest sister T.

8. C was picked up by myself, and I fed her the bottle. Once C finished her bottle, I moved C from my lap and stood her against the stool which was in front of me.

9. My mother was sitting on the sofa alongside myself.

10. C was standing against the stool, my left-hand was holding C’s top from left side. C moved suddenly which made me lose my grip and C fell backwards, when C fell there was a doll on the floor, where C fell the doll was on her back.

11. C started crying, Mother picked her up and cuddled her, where mother said C isn't sounding right and her eyes are drowsy. Aunt 1 took C from mother and after seeing C, Aunt 1 asked Aunt 3 to call ambulance.”

(3) Note (marked not verbatim) of further account to police on 14 April 2023:

“(Q: why did C fall?) It was so fast so I can't remember exactly, but she had drank her bottle, she put her legs down onto the floor (clarifies C's feet were both touching the ground). She was by the stool and like slapping on the stool, it was about as high as her stomach, then suddenly like a split second, my hand was



there but I wasn't sure what happened, she fell back and went on to the doll and her head when to the floor. Aunt 2 explains that the doll acted "like a bridge sort of thing" which went to the base of her back. If the doll wasn't there maybe it wouldn't have been so bad and then she like went back — the doll wasn't big but then as she fell it had more of a like a whiplash if that makes sense and her head went back to the floor. When she fell, she fell away from me, but her feet were facing towards me. (Q: What part of her head hit the ground?) It was the side, I'm not sure what side but the side of the head."

(4) Oral evidence on 14 June 2023:

"Q And I wanted to ask you to think about the account that you and your sisters have given about that night, and tell the court whether something else happened...that you have not told us about?

A Nothing else happened. My statement what I wrote back whatever date, 17 January, the last year (inaudible) I gave then is accurate. She was standing on the floor against that stool, and I had my hands around her, and there was a sudden fall, and that's all that happened that night.

...

Q And that you have thought: "What could we say happened to cover this up?"

A We're not covering it up. She was standing against that stool and she-- there was a sudden movement and she hit her head on the floor.

Q And who is it you are all trying to protect, the Local Authority would say?

A Nobody.

Q Because I just want to say this, if it is that there is a misguided sense in the family of protecting someone----

A There isn't some misguidance. There is no protection to anybody.

Q If there is, the reason that it is misguided is because it does not work, protection of them, whoever is responsible. What it means is that any child they have care of in future cannot be properly protected. Do you see that?

A I hear what you are saying, but we're not-- that's not the case in this situation. This is an accident that happened. She fell suddenly, and that is the truth. We don't need to make it up, you

know. There is no need to make it up. No need to protect anybody. If there was a different truth, we would be saying that.”

51. The judge referred to Aunt 2’s evidence briefly at paragraphs 69 and 187-188. He noted that she denied that anyone had taken C out of the room. His only comment on her evidence was this:

“I thought it unusual that she used the word whiplash where there had been no mention of mechanism in her statement some three months earlier.”

52. Aunt 3’s account included:

- (1) Summary (marked not verbatim) of the 999 call:

“Call made, some initial inaudible sound in background, some sense panic is heard.

SHE HAD A FALL AND HURT HER HEAD...PLEASE COME QUICKLY

SHE'S NOT BREATHING... (address) she is under 1 yr old

What's the postcode T?

Some back and forth, she seems to state she is struggling to breath, there is some confusion

HOW FAR DID SHE FALL?

JUST FROM...NOT FAR AT ALL...JUST FROM SOFA DOWN TO THE CARPET (Approx. 1 min 42 )

WHAT CAUSED THE FALL?

JUST LOSSED BALANCE SHE DOESN'T WALK

...Call taker gives advice

SHE IS IN MY SISTERS LAP

Call taker gives advice

ITS LIKE SHE IS BITTING HER TONGUE (Maybe-a little inaudible)

Call taker gives advice

I CANT OPEN HER MOUTH ITS, LIKE SHE IS TIGHTENING HER MOUTH AND BITTING HER TONGUE

Chanting possibly heard in background, baby possibly heard. Coughing heard

SHE IS OPENING HER MOUTH...SHE IS BREATHING

Chanting in background

Checks breathing and says NOW when this is heard.

Baby's name is heard being repeatedly said

Approx. 04 mins 50secs some commotion in background, mostly inaudible. The word scared is heard. Call taker asks them to keep noise down.

Lots of conversation in another language heard

06min 57sec THEY'RE HERE (Paramedics) THEY'RE OUTSIDE"

- (2) Note of first account to police on 12 May 2022:

"C woke up, playing around, being held by everyone, cried for her feed and was fed. Then came off sister Aunt 2's lap. Playing, leaning against footstool about 40cm high? Aunt 2 was holding on to C and then she just fell. Fell back onto a rag doll... and head hit the carpet. Crying, then started going drowsy. Called ambulance."

- (3) Note of account to police on 2 November 2023, marked 'not verbatim':

"I know you spoke with officers before, what's your understanding of how she sustained injuries in May 2022?"

We went to see them and as they had been shopping, we went to see what they had bought. I got there about 2030hrs. I think I was first there. C was fast asleep, the others arrived and she got up, I played with her. I remember the footstool, she was leaning against it and my other sister was supporting her, holding her PJ top. C was leaning against the stool and she didn't have balance at that time, she wasn't walking or anything like that. She moved forward and lost her balance and she hit the floor. She had hit her head. She started crying, then her mum (my sister) got her up and rocked her. She then wasn't well and I called the ambulance.

I've listened to the 999 call, I just want to understand a few bits. I know you were asked;

HOW FAR DID SHE FALL? You said, JUST FROM. ..NOT FAR AT ALL.. JUST FROM SOFA DOWN TO THE CARPET ...

Yeah, I didn't know if I used word stool at the time.

How far did she fall from in terms of height?

It was from her own height.

Where were her feet?

Her feet were on the ground, she was leaning against the stool

What part of her head hit the floor?

Not sure, it was maybe the side.

With your sister holding her, how was she holding her?

She was holding either her PJ top or her hands were just on her side, Ca had her hands on the stool, I remember her hands were around her waist at one time, Aunt 2 was sat on sofa, but on the edge and leaning forward if that makes sense.

Was anything else happening when she fell?

Not that I remember

What was happening?

We were just talking and catching up.

Do you remember what about?

No

Did anything else cause her to fall?

No, she just lost balance

When you got there, where was C?

She was asleep downstairs in the Livingroom in a Moses basket type thing.

From when you got there, was C always there in the Livingroom?

Yeah, from what I can remember she was asleep.

What did you do with her that day in terms of interactions?

She was just happy, I have a video of her when she was there and asleep, I think I have some pictures on my phone also. She seemed well. I think I got her up at one point.

Did anyone take her out of the room?

No, not that I remember

Who was there when you arrived?

My sister (mother), C, her two young siblings; A and B, older sister T. The two youngest were asleep upstairs.

Who arrived later?

Aunt 1, Aunt 2; she was supporting her when she fell, my Mum, my others sisters children (names). Dad came later.

How did C seem?

Generally, well, very happy.

Any concerns or anything unusual prior?

No

Who was in the room when she was hurt?

Everyone that I said about, apart from A and B, they were upstairs.

Have you discussed the matter since with the family and they said anything different?

No nothing different. I am a nurse and when it all happened, I was very odd, she fell from such a small height. I was panicked.”

(4) Witness statement of 16 January 2023:

“5. I made my way in my own vehicle and was the first one to arrive to her house at approximately 9 o'clock. When I arrived at the house mother (named) and T (her daughter) were sat in the living room, my youngest niece C was also present in the same room and was fast asleep in her moses basket. I did not see A or B that evening as they both were fast asleep upstairs.

6. I sat on the sofa, which was located next to the moses basket, furthest away from the door. I remember looking into the basket and seeing C fast asleep, she had her navy blue pyjamas on and was holding on to her favourite pink blanket. One of her legs was resting on the side of the basket, which I found cute, so I instantly took my phone out and made a quick video and picture on my snapchat camera (which I have already shared with the police).

7. Soon after grandmother, Aunt 2, Aunt 1 and Aunt 2's daughters arrived.

8. Mother and T started showing us their shopping, A and B remained sleeping, however C soon woke up; maybe 20/30 minutes later. During this time we also had hot drinks however I

am unsure whether this was before C woke up or after. C also had a few ounces of milk which was made by her sister T and given by Aunt 2 in her lap.

9. After that C was playing with (the daughters) on the floor, with as all present in the same room. I do not remember anyone taking C in the kitchen or any other part of the house in my presence.

10. I remember Aunt 2 holding C whilst she has leaning against a foot stool, C's back was facing me as I was now sat on the sofa closest to the door. Aunt 2 was sat on the end of the sofa supporting C I am unsure of what part of C's body Aunt 2 was holding.

11. Then suddenly C had fallen on the floor with her head hitting the floor, there was also a soft ragdoll under her although this didn't support her head. She started crying, mother rushed over and picked her up and rocked her to console her. I remember mother pacing around the room worried, she mentioned C was falling asleep.

12. Aunt 1 asked to hold C as she thought maybe mother was panicking, as soon as she held her, I remember her asking me to call the ambulance as C was becoming unresponsive.

13. I immediately called the ambulance, whilst I was on the phone I remember it being extremely loud and chaotic in the room. My sisters were crying, my mother praying loudly as we all thought we had lost C. There were a few seconds where I thought maybe she has stopped breathing. The lady on the phone asked to lay C flat on the floor and count her breathing and I was able to confirm thankfully she was breathing. Minutes after the paramedics arrived to the house.

14. I also remember mother calling her husband at work letting him know C had hurt herself."

(5) Oral evidence on 14 June 2023:

"Q ...There must have been something else that happened that night that nobody is talking about?

A No, there isn't.

Q That somebody took C out of that room and came back in a distressed state with her?

A No. Nothing that I witnessed... C was in the room the whole time.

Q You see, if you are a nurse-- and you heard what the doctors said. We know doctors, I am sure you would say, are not infallible, but they were very clear, were they not, Professor L and Dr W, about the likelihood of these catastrophic brain injuries arising from a little fall that thousands of children have every day, and we know that C has no underlying problems. And we heard Professor L talk about these specific types of things, the perimacular folds that are associated with acceleration and deceleration, where the vitreous jelly moves against the retina at the point of contact. And the haemorrhages on the periphery of the retina. And these are not what we find in even quite severe falls. And this was tiny. This was just a tiny flop over that thousands of children do. So what else happened?

A Nothing happened, and it sounds bizarre but that's how it happened, and they also said: "Never say never, it's possible, not impossible".

Q Did somebody, just even briefly, take C out of that room? Was it T when she went to get the milk? Did she take her with her?

A No.

Q Did you see the fall or were you sort of just aware of the aftermath? You were all talking?

A I was in the same room, but I-- I wasn't directly looking at C. But I do have some recollection, if that makes sense. Yes, I did see the fall.

Q Did you actually see her go or did you kind of hear the-- be aware of her hitting the floor? Do you see what I mean?

A It was more (inaudible).

Q Yes.

A So, yeah. I can't be sure what angle she fell, and that's what I've written in my statement as well. But she definitely fell and hit her head. I know that for sure."

53. The judge referred to Aunt 3's statement briefly at paragraph 70 in these terms:

70. Aunt 3's statement can be found at C102. She also gave a similar account to that given by her two sisters. She said that she was in the lounge at the time of the fall but the fall was in her peripheral vision. She said that she saw nothing."

He then referred to her oral evidence at paragraphs 189-190

"189. ...Aunt 3 is a Nurse. She called emergency services on 11 May 2022. The transcript of that call says C had had a fall and

hurt her head. She had fallen 'just from sofa down to the carpet' as she 'lost balance she doesn't walk'. In closing submissions, [Counsel for T] explained that what was meant by this was the distance of the fall. Aunt 3 gave her evidence in a calm and collected manner. She explained that she saw very little and that whilst bizarre, nothing untoward had happened. From the periphery, she knew that C had fallen and had hit her head. Her statement dated 16 January 2023 provided a similar account.

190. In her telephone interview on 2 November 2022 at G758, she seemed to have provided a more detailed account. When asked what part of her head hit the floor, she said 'not sure, it was maybe the side'. She recalled that C had her hands on the stool but remembered that her hands were around her waist at one time. She then says that C lost her balance. When asked whether anyone had taken her out of the room. She replied 'no, not that I remember'. Listening to Aunt 3 give evidence I formed the view that she was seeking to suggest that she had little knowledge or recall of the incident on 11 May."

54. The grandmother's (translated) account included:

(1) Summary of initial account to police on 18 May 2022:

"A We were sitting there and she was sleeping when she wake up and she was standing, she was standing there and she just fell. She was normal and playing with everybody and afterwards she fall she started crying and face was strange so we called ambulance.

Q Who was there?

A Me, daughter's sisters one of them had two babies with them and her own children that's it

Q Sisters name?

A Aunt 1, Aunt 2, Aunt 3

Q You said you were taking turns holding her who was last person to hold her?

A Aunt 2, she was not in anybody hands though. Aunt 2 was near her had her hands close to her when she was at the table. Me and Aunt 2 sitting together, other aunties were on other sofa and so were cousins. She was standing there and tried to grab her as she fell. She fell on the toy just plastic and playing with it

Q Any injuries?



A No. When she fell she started crying and daughter said she said started closing her eyes said must call hospital and think its serious. Ambulance came in 5 or 10 minutes.”

- (2) Statement to court of 18 January 2023, taken by her son:

“After drinking the milk, she was up and happy. Aunt 2 stood her against the stool as I sat next to Aunt 2, we all were talking and all a sudden she fell over, I didn't quite see how she fell. C started crying, mother quickly picked her up and comforted it, within seconds mother said she does not look well. At this point Aunt 1 got up and cradled C, within a second or two of this, she shouted for someone call the ambulance. Aunt 3 called the ambulance; it all became very hectic and I began to pray and stood there. Aunt 3 followed the instructions from call and moments later the ambulance arrived and took C with them alongside mother and Aunt 1.”

- (3) Summary (marked not verbatim) of second account to police on 21 May 2023:

“Q What’s your understanding of how she sustained injuries in May 2022?

A At her daughter’s house, me and other daughter looking after C. She stood on a little stool then all of a sudden she fell off the stool and banged her head on the carpet on the floor. Then she cried for a little while then they called the ambulance then after a short while she was unconscious.”

- (4) Oral evidence through interpreter on 14 June 2023:

“Q ... You all say you were sitting in the living room?

A Yes, all of us were there.

Q With Aunt 2’s daughters?

A Yes.

Q And C was asleep to start with. Is that right?

A Yes, she was asleep.

Q And you ended up-- she ended up waking up?

A Yes, when she heard talking, she did.

Q You are quite noisy?

A (Inaudible).

Q And she needed feeding at that point?

A Yes.

Q So who fed her?

A I don't remember. At that time the boys and girls were making lots of noise. I'm thinking Aunt 2 may have.

Q Which boys and girls were making lots of noise?

A Boys and girls. I think all of us were talking. There was no boys.

Q Right. So you were all talking?

A Yes, we were talking amongst each other-- us.

Q Right. So were there several conversations going on at once between different people?

A We were talking amongst each other, and when we talk, then there is lots of noise because of the talking.

Q Yes. And somebody went to fetch milk, did they?

A Yes, someone went to fetch milk.

Q Do you know who went to fetch the milk?

A I'm thinking it was T.

Q You think so?

A Yes.

Q ... I know it is a year and more ago. Is your memory of that evening not very good?

A No. No, as in I don't remember exactly. It's been a while. It's been a whole year."

...

"Q So after you were all in the room talking, do you remember whether anybody left the room with C, even just for a few minutes?

A Nobody went.

...

Q The problem the court has... is that the doctors do not accept that the fall you have all described would have injured C as badly as she was injured.

A That's what we are all thinking that where she has fallen from, it shouldn't have been severe, but that's where she fell from.”

...

“A So she fell and I saw her, and then she started crying and then her position started deteriorating.

Q Yes. And can you remember which way she fell?

A No.”

...

“Q You said earlier that you saw C falling?

A Yes, I said that I saw her.

Q Yes, and you said she fell like this and hit the right side of her head.

A I didn't say it was the right side of her head. I said that she----

THE INTERPRETER: Again, she made a gesture.

A -- she fell like that, and I can't remember whether it was her right side or the left, but I saw her head colliding with the floor.”

55. The judge commented on the grandmother's evidence at paragraphs 71 and 191-193:

“71. ... The grandmother confirmed that her statement had been written by her son. She confirmed that C needed feeding but could not recall who had fed her though in her statement she confirmed that T had been asked to make the milk. In her oral evidence, the grandmother stated that she saw C fall and hit the side of her head. She could not be sure whether it was the right or left side. When asked... the grandmother confirmed seeing her head colliding on the floor. She was asked why she stated in her statement that she didn't quite see how C fell. She said that when she said that in her statement she may have been mistaken. She said that she was now sure of what she was saying and that it hadn't just entered her mind.”

“191. I also heard from the maternal grandmother. She prepared a statement on C107 which had been written by her son. She has been looking after C since her discharge from hospital on 8 June 2022. The grandmother had the benefit of an interpreter throughout the proceedings. The first inconsistency with her written statement and oral evidence was when she thought that Aunt 2 had gone to make C's milk. Her statement suggested T was given that task. In her oral evidence she stated she saw C fall to her side but couldn't recall whether it was the right or left side.

She recalled seeing C's head go down on the floor. In her written statement she said that she didn't quite see how C fell.

192. The grandmother gave a telephone interview on 21 May 2023. The interview was... translated as can be seen on G907 to G909. When asked of her understanding of how C sustained her injuries in May 2022 the grandmother replied as follows; 'she stood on a little stool then all of a sudden, she fell off the stool and banged her head on the carpet on the floor. Then she cried for a little while then they call the ambulance then after a short while she was unconscious'. Later on she said 'it happened like she fell, was accidental nothing more to it. Nothing concerned, loads of grandchildren kids fall and get up all the time'.

193. The impression I got from listening to the grandmother's oral evidence was that she was keen to emphasise that what had happened was an accident and nothing more. She could provide no account for the inconsistencies both in her statement and her oral evidence. The account of how C fell off a stool was not an account given by anyone else though I fully accept that it was possible that something was lost in the translation."

56. Aunt's 1's account included:

(1) Note of first account to police on 12 May 2022:

"2 children in bed, C sleeping, sister was showing us some stuff she bought. C Woke up, happy, playful. Had tea, sister and niece went to make tea. Once finished put dishes away. C playing on floor with sister's daughters - sitting on the floor - but not for long. Started getting upset - feed time - made a bottle - Aunt 2 fed her the bottle. There was a little stool to sit on. C was standing by the stool and Aunt 2 was holding her. Then just fell, heard a cry. Fell back in like a second. When she fell a rag doll was under her back. Started crying, hysterically, her mum leapt to comfort her - started saying her colour was changing, her eyes - took her from my sister and I could see her eyes drooping/drowsy and went floppy, told my sister to call the ambulance. Kept trying to talk to C, rubbing her chest, checking breathing - eyes drowsy - in and out of sleep - no eye contact. Gasping cries like when a baby is crying in their sleep. Went to hospital with my sister."

(2) Note of account to police on 2 November 2022, marked 'not verbatim':

"I have read what you told officers in May. Could you describe for me how C fell?

We were on the Sofa, I was to her right, she was near like this stool, like a low Asian stool, she fell, mum picked her up quickly from the floor started to console her, we were all in the same

room. I said give her to me, I took her, as I looked at her and I was saying "C", her eyes were opening and closing, I said yes and within minutes we had called the ambulance.

Just before she fell, where were C's feet?

On the floor. And she leant on the sitting stool in living room.

What was your sister doing?

Aunt 2 was holding her, like at an angle, the stool was on her left side, she had hold of her and she fell out of her hand.

What caused her fall?

It was just sudden, and she fell

Was anything else happening?

No

What part of C hit the floor?

She like fully fell on the floor but on her right hand side, she fell like on a rag doll that was there already, then hit head as she fell.

When that happened who was in the room?

Me, grandmother, Sister (mother) Aunt 2, Aunt 3, T and the 2 young girls (names)

Was anyone else there but not in room?

No

...

Did C ever leave the room from when you were there.

No"

(3) Statement to court of 17 January 2023:

"We first had a look at the shopping clothes. Afterwards, we had tea and biscuits. C woke up and was very happy to see us all. She played with Aunt 2's girls on the floor for a little while. Approximately from 9:45 pm to 10pm T made a bottle of milk for C. Aunt 2 put C in her lap and fed her the bottle. After feeding, C was playing with Aunt 2. Aunt 2 and (grandmother) were sitting on the sofa near the window. Facing towards the window on the right hand side sofa me and (mother) were sitting across us on the left hand side sofa sat Aunt 3 and T. Aunt 2's girls were in the room, 1 girl was sitting on the floor and another

girl on the sofa near T and Aunt 3. Which one was where I can't remember, but they were both in the same room.

C was standing against a small stool whilst Aunt 2 was holding on to her from her waist area. The stool was next to C's baby basket near the right hand side sofa that me and mother were sitting on. C was standing on her own feet against the stool when she fell. Aunt 2 was holding her, but she lost grip as C made a sudden move. C fell backwards mostly on her right side. There was a rag doll on the floor that was under her back after the fall. It was very quick and sudden. Mother got up straightaway and picked her up from the floor, calming her and comforting her in her arms as C was crying. Within 1-2 minutes mother said something like "oh her eyes are not fine". I said "no don't worry she's fine, give her to me". As I picked C from mother I saw that her eyes were opening and closing and she wasn't responding to her name. I said to Aunt 3 call the ambulance.

Aunt 3 called an ambulance straight away. Aunt 3 was talking to the lady on the phone. It was loud and chaotic, we all were shocked and frightened, everyone was praying. I was calling C's name, but she wasn't looking at me and was becoming drowsy and floppy. I had C in my arms. Aunt 3 said that the lady said to put C on the floor to see if she's breathing, and I put C on the floor. She was breathing, but at this point her eyes were closed. I was rubbing her tummy and calling her name and praying.

Within minutes the ambulance and paramedics arrived. Me and mother went to the hospital in the ambulance with C."

(4) Oral evidence on 14 June 2023:

A I'm sat on this sofa here.

...

Q Would that mean that C was on the other side of the stool from you when she was standing?

A So, she was like standing facing kind of towards myself but not exactly face-to-face. She's 2 facing this way and she's like--like there, for example, (inaudible) together.

Q What were you doing at the time? Were you talking to her?

A We were just chatting, normal, casual chats between ourselves.

Q As it were, as a group or small chats as between each other? Or both?

A The kids were playing amongst themselves so it was a conversation that was happening all ways, so, you know, it would have been a joint conversation I'd say, yeah. I can't exactly say who was saying what or who was talking to who and how.

...

Q So what is the first thing you see in relation to C?

A So, I didn't exactly see her fall down but she fell and the next thing is mother got up, quickly picked her up and she started consoling her, comforting her and then she was, oh God, you know, she's not looking-- oh God, something's happened to her eyes. So, I said to her, "No, you're just panicking. No. Give her to me." And at that point I got up and took her from her.

Q Just to be clear, you did not see the fall. What you heard was---

A No, but I did see it like, you know, when you're, like, there and-- because the room, as you know, is not massive and she wasn't in my hidden sight, so she was kind of there, but I wouldn't say I was focused like this on C.

Q In your peripheral vision.

A Yeah. If that's what it's called, then yeah.

...

Q The local authority says that this fall just does not account for these injuries; it just does not add up.

A That is what happened that day.

Q So----

A That is what happened. That's doctor's opinion, I appreciate that and respect that, but I can only say what happened that day, okay, and this is what we witnessed. This is what I saw.

Q The local authority says it does not know what happened and that it is unlikely that anybody did anything to C in the sight of everybody else, which makes perhaps the most likely scenario that somebody, even for a few minutes, took C out of that room, whether it was T when she took her with her to make a bottle, was C being noisy and that was just to get her out of the way for a few minutes, T or somebody else.

A No. That didn't happen.

Q Just think very carefully about that because----

A I am. I'm very careful with what I'm saying. I'm saying in my sentence I understand the severity of this all and I'm saying-- and I've picked the oath and that is my religion, and it's maybe not so important to everyone but for me that's everything and I'm bearing witness that... what I say here today is the whole truth and the only truth. C fell. She did not leave that room. Nobody took her out the room. There is nobody-- nobody responsible for that fall.

Q The local authority would say that if the medical evidence is right, then you are all covering for somebody.

A No. No.

Q That you have all decided to say there was a fall to try and stop somebody being blamed.

A No. No.

Q And you do understand, do you not, that it is not about anybody wanting to find that out for punishment. It is not about that. It is about the risk that that person poses to children now and in the future. That is why the court has to be clear, if it can be.

A I understand that, but there's no such thing. So, I'm telling you that she fell that day. Nobody took her out that room and nothing happened. So, that is the whole truth."

57. The judge's only reference to the evidence of Aunt 1 is at paragraph 72:

"72. I also heard from Aunt 1. Her written statement can be found at C104. She confirmed seeing C fall in her peripheral vision. She was adamant C had not left the room."

He did not mention her evidence again.

58. T's account included:

(1) First account to police on 12 May 2022:

"Aunties & grandma came. We saw all the clothes, mum went to make tea while I put the stuff away. C woke up as we were loud. I made some milk for her and my aunt fed her. Then C was standing next to a stool, then fell backwards, I don't know how it happened. Mom crying, mama said look at her hands, called ambulance. Dad was told and came home, he went to check on the kids upstairs and then went to the hospital...

When fell over, how was she?



Standing, banging her hands on the stool, don't know how Aunt 2 was holding her, on phone, but saw her fall backwards and her head went backwards. Fell on something, not sure what. Could tell something wasn't right from how she was crying.”

(2) Interview under caution on 20 May 2022 (1 hour):

Q Tell us how C got her injuries?

A She just hurt herself.

Q Okay. And how did she hurt herself?

A She was being held and then she hurt herself from there.

Q Okay. So, tell me a bit more about that. Who was holding - were you there?

A Yeah.

Q You were there. Okay. So that incident, what happened.

A having a conversation. She fell. I heard her cry and that's what happened.

...

A She's being held by my auntie Aunt 2.

Q Yeah.

A And she just hurt herself.

Q So, how did she hurt herself?

A I'm not sure. I wasn't watching.

Q Okay.

A I just heard her cry.

...

Q Okay. And was it a normal cry?

A She was crying hysterically.

Q Have you ever heard her cry like that before?

A No.

Q Okay. Tell me exactly what happened thereafter. Who did what?

A Eh, someone grabbed her. I don't remember who.

Q Right.

A But they gave her to my mum and said, - "How about" – like, "We think she might need you".

Q Right.

A and, and then she had her arms like, like this. I don't know, like, like ----

Q C had her hands like this?

A Yeah.

Q So, like clawed----

A Yeah.

Q -- clawed, yeah.

...

Q Was she holding anything at the time before she, she had her injury?

A She was standing next to a stool.

...

A And she was crying hysterically, so my mum said, "Something's not right. Ring the ambulance", and then straightaway the ambulance was called.

Q Okay. Do you know who called the ambulance?

A My mum's sister.

Q Which?

A Aunt 3.

...

Q ... So, you said you had been having a conversation and then you heard have you seen? What have you seen? What (inaudible)?

A She was laying her back on -- on her back on the floor.

Q Okay. So she's laying on the floor. What's the floor made of? What material is it?

A It's got carpet.

Q Carpet. So, apart from the carpet, is she laying on anything else?

A There was a doll underneath her, but that was underneath her back.

Q Okay. And what's the -- can you describe the doll.

A It was -- it's not hard. It's, like, soft, bluey.

...

Q So, baby - you see babies on the floor and she's crying and she's picked - she's put in mum's arms. How quickly was the call to the ambulance?-

A Straightaway.

A Eh, one of my aunties is on the phone to the ambulance. Eh, the other one was following instructions on what the ambulance has told her.

Q Right.

A And the rest of us was just panicking about what had just happened.

Q Okay. And where were you when they were all waiting? Had you moved out of the room, or was you still in the room?

A I was walking in and out of the room 'cause I was getting anxious."

(3) Statement to the court on 20 February 2023:

"7. At around 9pm, again I cannot remember exactly the timing, my mum's 3 sisters came to the house together with my 2 little cousins and my grandma. They had come to see the clothes that we had bought the day before. At this point we were all in the lounge and C was asleep in her basket which is also in the lounge. We were all chatting and looking at the clothes. C woke up, probably because we were being too noisy. I went to the kitchen to make her milk while she played on the floor. C was fine, she was playing, she was happy. My aunt Aunt 2 fed her the milk that I had made, and C was drinking her milk normally, I cannot remember how much milk she drank or whether she finished the bottle.

8. After that C was standing next to a stool, I think that she had her hands on the stool and she was being supported by my aunt

Aunt 2 who was holding her with her hands around C's body. I was sitting on the sofa which is nearest to the front door next to my cousins and my aunt Aunt 3. I was on my phone at this point and involved in a conversation with someone, I cannot remember who. I cannot remember how I was having the conversation, but I would assume it was probably Snapchat because that is normally how I communicate.

9. I did not see what happened, but I heard C cry. It was a loud cry, not like her usual cry. I saw C on the floor on her back with a blue doll under her back. My mum picked her up and was trying to comfort her. Mum said words like "something is not right". By this point I had stood up and I was able to see that C's hands were clenched like claws and her eyes were rolling. It was really scary. My aunt Aunt 3 called an ambulance, everyone was panicking, we were all praying. At one point we thought that C was not breathing. The person on the phone with my aunt said to put C on the floor. The ambulance arrived, I am not sure on the timings, it probably arrived quite quickly but it felt like forever at the time. When mum, C and Aunt 1 went in the ambulance, we all stayed in the house and were praying. I had rung my dad from my phone and my mum spoke to him before she went in the ambulance. He went to meet my mum at the hospital. My grandma and my cousin Z stayed overnight with us."

(4) Oral evidence on 14 June 2023.

"Q You have told the police that you did not see C fall.

A No.

Q You were quite clear about that; you were quite clear in your statement and you were quite clear in your police interview, "I did not see her fall." What you were aware of then, you know nothing until you hear her cry.

A Mmm mmm.

Q You do not describe hearing a thud, do you?

A No, I don't remember hearing a thud.

Q No. What you heard was a cry.

A Mmm mmm.

Q And then you see her being picked up from the floor.

A Yeah.

Q Is that the limit of what you saw.

A Yeah.

Q You were playing, I think, on your phone.

A Yeah.

Q You have got two small cousins playing on the floor and you are really just glued to your phone. Were you messaging friends on the internet? What were you doing?

A I don't remember now.

...

Q Okay. I do not know how, in those circumstances, you can talk about where C was and how Aunt 2 was holding her because I suggest you could not-- you would not have clocked that either.

A I wasn't (inaudible). I was looking-- I had seen around. I was still on my phone. I could hear what they were talking about but I wasn't like paying attention to what was happening but I knew what-- I was aware what was happening.

Q But ... where were you in relation to Aunt 2?

A On the sofa, the right sofa on the front door.

Q What could you see of Aunt 2 from where you were sitting?

A I could see her hold her. Where exactly I don't remember now. I couldn't see my sister's face. If she was standing next to the stool, that's all I remember.

Q That is all you could see and you have some memory of Aunt 2's hand----

A Yeah. To say exactly now I don't remember but I remember she was holding her.

Q And then there was all this confusion. At some point during that evening, you went out to make milk.

A Yes.

Q Were you a bit annoyed about that? Everybody was chatting away and doing stuff, you had been playing on your phone. Why did you have to go and heat the milk?

A No, I wasn't annoyed. I could watch my phone and do, you know.

Q Did you take C with you to the kitchen?

A No.

Q You see, the local authority – and you have heard this said to the rest of the family – says that if it did not happen the way your family says, then you have made this up, this incident has been made up by all of you to cover for somebody and the local authority says it is not at all likely that anybody shook-- because we are talking about a shaking injury, the doctors have skirted around it a bit, they now talk about acceleration, deceleration, anteriorly and posteriorly, but that is what they mean.

A Okay.

Q Back and forwards. Head going-- baby's head going backwards and forwards and that is a typical mechanism for causing these injuries to the brain and to the eye. It is very difficult to imagine your family sitting there while somebody did that in front of them. So, I suggest somebody left that room with C for a very short period of time and it only needs to be seconds. It takes seconds to cause this kind of catastrophic injury, often life-changing injuries. And somebody did and everybody in the family has decided that that person should be protected. Is it you that they are protecting?

A No. They're not protecting anyone.

Q Because they would, would they not? Your family would protect each other.

A They're not protecting anyone. That's what happened. That's the truth.

Q But would you say if it was not?

A That's the truth. That's what's happened. If that wasn't the truth, I would have said the truth. This the truth, this is what's happened. She fell and that's it.

Q Thank you very much."

"A I do remember how she was holding her because I remember looking, I just don't remember why I didn't say anything. I was frustrated. It had just happened. My sister was in hospital. Everything was overwhelming at the time."

"Q [referring to police note] So, on 362, that is wrong when you say, "I saw her fall backwards and her head went backwards." I mean, it suggests that you saw her fall and you saw the impact. Do you understand what I mean by that?

A Yeah, yeah, yeah, I understand.

Q Are you sure? So is that right or wrong?

A It's not correct because I don't remember seeing her-- I know she fell backwards because she was on her back, so I think she said she fell back.

Q How do you know she fell or just did not push herself down? You are on the phone.

A Yeah.

Q That is what you are saying, so what did you see?

A I saw her on the floor.

Q That was all you saw?

A Yeah. I remember her being on the floor.

Q But you never saw her fall backwards.

A No, but I said that because she was on the floor, backwards, when I saw her. So I said-- I assumed she fell backwards."

59. The judge summarised T's account at paragraph 73 and commented on it at paragraphs 194-198.

"73. T also gave evidence. She is 18 years of age and had just completed a Health and Social Care course where she had achieved very good grades. She confirmed that she never got fed up when looking after her siblings. She liked it and was happy to help. She denied being resentful of her siblings even though she was the eldest child. She was hurt by the information that was provided from [her previous] School. She denied answering back but accepted refusing to hand over her phone to a teacher. She denied being obnoxious and was not scared of her parents. She said that she did not know how C fell and knew nothing until C cried. She said that at the time she was occupied on her mobile phone."

"194. ... In her statement dated 20 February 2023 starting at C108 and notably on C110 she recalled C standing next to a stool and believes that she was being supported by her aunt, Aunt 2 who was holding her around her body. T was on her phone and talking to someone she could not recall. She then said that she did not see what happened but heard C cry.

195. On 12 May 2022 TDC B spoke to T sometime after 19:07 – see G361. T when asked to explain what had happened said on G362 'C was standing next to a stool, then fell backwards, I don't know how it happened, crying, mum said look at her hands, called ambulance'. She said 'saw her fall backwards and her

head went backwards. Fell on something not sure what. Could tell something wasn't right from how she was crying.'

196. T was interviewed by the police on 20 May 2022. On G859 she was asked 'So, how did she hurt herself?' T replied: 'I'm not sure. I wasn't watching.'

197. It is stating the obvious that there is a marked difference with what T said to TDC B on 12 May 2022 and what she said in her statement. There is no mention of C falling backwards in her statement nor in her formal police interview on G853.

198. T gave her evidence calmly. There were no emotional outbursts and she answered difficult questions relating to her recorded behaviour at her previous school. Nevertheless, I was left troubled by the obvious differences in her statement and police interviews.

199. I should also add that I have read a great deal of text messages passed between T and her parents. I found nothing in those messages which assisted me in determining who was responsible for the injuries sustained by C. Similarly, her reported behaviour at her previous school did not assist me in reaching my conclusions."

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