Neutral Citation No: [2019] NIFam 3	*Ref:* McR10894
*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:* 26/2/2019

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

_____

16/109652

Between:

A HEALTH AND SOCIAL CARE TRUST

Applicant;

-and-

M
and
D

Respondents.

_____

HER HONOUR JUDGE McREYNOLDS

BACKGROUND

[1] The names of the parties in this case have been anonymised in order to protect the child who is the subject of the proceedings. Nothing must be published or reported which directly or indirectly leads to the identity of the child being revealed.

[2] The Applicant Trust seeks a Full Care Order in respect of the child, who was removed from his parents when he was six weeks old. He is now two years and five months old.

[3] The Respondents (referred to above as M for 'Mum' and D for 'Dad') are the biological parents of the child and his father is named on his birth certificate. They lived together in a property of which the father had been the tenant prior to their cohabitation and during their relationship the brother of the child's mother also

shared the house and its outgoings. He and the toddler's mother continue to occupy that property, albeit the child's parents separated in early 2018. The couple were together for eighteen months before their son was born.

[4] When the baby was five weeks old on 24 October 2016 the Respondent father had been in charge of the baby downstairs whilst the Respondent mother slept upstairs. In the morning the father advised the mother that the baby had a 'floppy episode' during the night. She telephoned her GP who advised they take the baby directly to the local hospital. The baby was detained until evening and released with advice that the volume of feeds should be decreased and their frequency increased.

[5] On 2 November 2016 the couple arrived at a major city hospital at 3.48 pm reporting that the baby had been vomiting and floppy and had been briefly unresponsive about an hour before their arrival at hospital. The baby's temperature was causing concern and in the early hours of the next morning seizures had become a major issue so a CT scan was directed. This disclosed both bi-lateral subdural haemorrhages and a right sided intraventricular haemorrhage. Review by the ophthalmology team revealed bi-lateral retinal haemorrhages. The child was taken by ambulance to a Specialist Paediatric Intensive Care Unit on 6 November 2016. On neither hospital admission was there any bruising observed on the baby's body. However, on 7 November 2016 healing fractures were noted, which in combination with the brain injuries sparked concerns the child had potentially been subjected to abusive traumatic injury. The baby had sustained the following:-

i. Fractures to the right 5th, and 6th ribs and to the left 8th rib;
ii. A metaphyseal fracture to the distal right tibia;
iii. Bi-lateral subdural haemorrhages;
iv. A subarachnoid haemorrhage;
v. Intraventricular haemorrhage;
vi. Contusion in the left anterior temporal lobe;
vii. Multiple bi-lateral haemorrhages to the eyes.

[6] On 8 November 2016 both parents were interviewed by the PSNI. That investigation continues. A number of other individuals were interviewed by police as potentially having had the opportunity to perpetrate abuse but by summer 2018 the investigation into potential perpetrators was focused exclusively on the parents. The only other individuals to babysit during the short time the baby had been with his biological parents were his paternal grandmother, paternal aunt and his maternal uncle, the lodger. The paternal grandmother had the baby overnight on 5 and 10 October 2016 and the child had stayed with his paternal aunt on 15 October 2016. All three of these dates predated the timescales for the injuries to have possibly occurred and it is conceded by all that the times when the baby was with his uncle were extremely limited. It is conceded that the 'pool of potential perpetrators' does not extend beyond the biological parents.

[7] Interim Care Orders were granted and continuously renewed. The baby was discharged from hospital into foster care and has made a remarkable recovery. No decision has been made in respect of any potential criminal charges and, given the child's age, further delay is inappropriate. There appears to have been limited Care Planning to date and time is clearly of the essence.

THRESHOLD ISSUES

[8] The Applicant Trust seeks a Full Care Order. It has proposed draft threshold criteria for purposes of factual determination. It submits that the statutory threshold criteria set out in Article 50(2) of the Children (Northern Ireland) Order 1995 are satisfied and that at the date of intervention the child had suffered significant harm and was likely to suffer significant harm and that harm or likelihood of harm was attributable to the care being given to him not being what it would be reasonable to expect a parent to give. It suggests this is evidenced through the following:

> *"1. The baby sustained the following injuries:*
>
> *viii. Fractures to the right 5th, and 6th ribs and to the left 8th rib;*
> *ix. A metaphyseal fracture to the distal right tibia;*
> *x. Bi-lateral subdural haemorrhages;*
> *xi. A subarachnoid haemorrhage;*
> *xii. Intraventricular haemorrhage;*
> *xiii. Contusion in the left anterior temporal lobe;*
> *xiv. Multiple bi-lateral haemorrhages to the eyes.*
>
> *2. These injuries were all non-accidental and were inflicted on the baby by an adult carer.*
>
> *3. The injuries were caused by the baby:*
>
> *i. being grabbed around the rib cage with sufficient force to fracture his ribs; and*
>
> *ii. being shaken with sufficient force to cause the bleeding to his brain and his eyes.; and*
>
> *iii. being grabbed by the leg causing the fracture to his distal right tibia."*

The Draft Threshold Document continues:-

> *"1. The baby suffered significant pain and distress as a result of these injuries and this would have been obvious to the perpetrator and any other person present when the injuries were inflicted.*

> *2. The baby sustained these injuries in at least two traumatic events, firstly in or around 25 October 2016 and secondly in or around 2 November 2016.*
>
> *3. The baby was in the care of his parents, 'Mum and Dad' when the injuries were sustained. Either Mum or Dad caused the injuries to the baby.*
>
> *4. The parent who did not inflict the injuries on the baby failed to protect him from harm, has failed to show insight into the significance of his injuries and prioritised their relationship with the other parent over the baby's needs.*
>
> *5. The Dad misused cannabis and he smoked cannabis when he was responsible for the baby's care."*

[9] The Respondent mother filed a document setting out concessions on the issue of threshold criteria. She conceded paragraphs 1-5 on the Trust proposed draft. In addition, she made a final concession at paragraph 6 of her draft, namely:

> *"The mother accepts that she was unable to recognize the risks presented by the father and thus failed to protect the child."*

She did not concede paragraphs 6-8. Both parents filed written statements and the mother offered oral evidence and made herself available for cross-examination. The Respondent father, through Counsel, suggested that the Respondent mother could have been the perpetrator, but declined the opportunity to offer oral evidence or be cross examined and made no threshold concessions.

[10] All parties, including the Respondent father, agreed or accepted the following:-

(a) The settled list of injuries;
(b) Accepted the injuries were non- accidental;
(c) Accepted the injuries were inflicted by an adult carer;
(d) Accepted the expert view in relation to the mechanism for causation of the injuries;
(e) Accepted the baby would have suffered considerable pain and distress which would have been obvious to the perpetrator.

[11] The Respondent mother agreed paragraph 4 of the Trust draft, namely that the pain and distress suffered by the baby as a result of the injuries would have been obvious not only to the perpetrator but to "any person present when the injuries were inflicted". It is her case, however, that on the occasions in question for the two

traumatic events referred to in paragraph 5 of the Trust Threshold document, reflected in the same paragraph of her concession *"firstly in or around 25 October 2016 and secondly in or around 2 November 2016"* she was not physically present. She makes the case that she habitually slept upstairs (and did so on those nights). She says that on those nights (as it appears occurred frequently) the baby was left downstairs where his father did what was described as 'the night shift'.

THE ISSUES

[12] The questions for the court therefore are whether it can be satisfied to the appropriate evidential standard that either parent perpetrated the injuries and/or that either parent failed to protect the baby and, if so, to what extent fell short of sufficiently protective parenting.

[13] In addition to the statements of the parties, I have twelve large folders of documentary evidence including medical reports, police statements, police interview transcripts, social work reports, contact records and incidental documentation. I have heard the challenged oral evidence of the Respondent mother and submissions from Counsel to whom I am obliged for the clarity with which they have presented this case.

[14] In the recent decision in the case of *Re: M and R* [2018] NI Fam 14 O'Hara J set out at paragraph 4 the approach commended by the authorities to such a fact finding exercise:-

> *"Central to the authorities is the direction that in order for an adult to be in the pool of possible perpetrators it is necessary to prove more than that that person had an opportunity to inflict the injuries. If that was the correct approach, anybody who cared for the child, even briefly, would be included in the pool. Instead the court tries to identify the actual perpetrator but if that is not possible it includes in the pool anyone of whom it can be said that there is a likelihood or real possibility that he or she was either the perpetrator or a perpetrator. Whether that can be said in any case depends on an examination of the circumstances of the family at the relevant time."*

It is against that legal backcloth, through all the evidential sources before me that I must examine the circumstances of the family at the relevant time (late October into early November of 2016).

THE EVIDENCE

[15] As the fact finding is focused on the questions set out at Paragraph 12 above and all medical evidence is agreed, both in respect of injuries and mechanism I do not intend to summarise the totality of the medical evidence but rather that which

provides most insight into the knowledge or awareness which a perpetrator and/or witness would have that the baby had suffered serious injury. Account must be taken of the objective evidence that in several hours in the local hospital on 25 October 2016 no health professional observed any sign of Non Accidental Injury and there were never any bruises on this baby. The mother says that on the nights immediately preceding each hospital visit the father was performing what she described as 'the night shift'. This is not denied.

[16] In a police interview the father suggested that the mother handled the child roughly when winding him and had once hit his head accidentally off a door frame and a wall. In her statement of 20 February 2017 the mother conceded that on an occasion the baby's head made contact with a wall whilst she was holding him and he sustained a bump. She also described how whoever was in control of his pram lost grip once and it had struck a stall, sliding the baby forwards. The parties further described an emergency stop when the baby was strapped in his car seat. None of these potential explanations was considered viable by any of the medical experts. The family had a dog which was a cross bred Staffordshire Bull Terrier/Boxer and there is reference in the police interviews to a cat owned by the paternal uncle. Both parents deny the dog was left alone with the baby at any time.

[17] The interviews also deal with the account which the father gave of an unorthodox method he used for 'winding' the baby, which he learnt from his boss. The paternal grandmother also referred to this at interview. It involved placing the baby on the carer's knee (facing the adult), holding it under its arms and rotating the baby's torso in one direction and then the other. The paternal grandmother told police that both parents used the technique but the mother says she used traditional rubbing and back tapping. The father suggested to police that the mother may have asserted too much force in this task. She denied anything beyond a 'tap' in her oral evidence and refuted the suggestion of the father that her action had resembled a 'High Five' gesture.

[18] In respect of the brain injury Mr Stoodley Consultant Neuroradiologist in his report of 17 May 2017 describes his area of expertise as being in the interpretation of imaging, investigations of the brain and spinal cord and confirms he has a specific interest in neuro-imaging of children. In paragraph 3 he sets out the following:-

> "*The perpetrator would be likely to realise that the changing behaviour of the child had occurred as a result of their actions (but would obviously not necessary [sic] think that the changing behaviour had occurred as a result of a brain injury) but because of the non-specific nature of the change in behaviour a carer who had not witnessed the causative event whilst they might recognise that there had been a change in behaviour they would not necessarily ascribe that change to a traumatic event...*"

[19] Mr Cosgrove, Consultant Orthopaedic Surgeon's report of 28 September 2017 addresses the fracture of the tibia. On Page 5, Paragraph 4 of his report he sets out the following:-

> *"If such an injury had occurred it would have immediately caused distress and discomfort and the child would cry out; if the area was not inferred [sic] with again the child may settle down very quickly and would only be uncomfortable on handling... there would be very little in the way of bruising or swelling visible. If a carer had not been present when the injury occurred it would not be readily apparent in the short period afterwards as indeed it was not apparent until revealed by the x-ray examination."*

The parents had been encouraged to perform very gentle exercises on the baby's feet to promote straight feet but the possibility of inappropriate conduct of these exercises resulting in injury is ruled out in the medical evidence. Similarly Dr Byrne, Consultant Paediatric Radiologist commenting on the tibia corner fracture rules out accidental injury as a cause in an otherwise healthy baby.

[20] Dr Rollins, Consultant Paediatrician, reported on 27 September 2017. In respect of the tibia and rib fractures he believes dating at least 7 days prior to 2 November admission to the first major city hospital is appropriate, therefore close to the date for admission to the local hospital, around 26 October 2016. In respect of the fractures he says:-

> *"The causation of all these fractures would have been trauma caused by trauma with significant force. All fractures are painful whether in children with normal bones or in those with bone disorders. Fracture related pain is likely to recur when the effective site is disturbed in any way and will probably be more intense and persist longer when the affected area is not splinted by surrounding structures...*
>
> *... in my opinion all these injuries can be explained by traumatic means as a result of excessive force and consistent with non-accidental injury."*

Mr Rollins continues:-

> *"in relation to the rib fractures I would expect this infant to have shown distress when his chest was moved such as changing or lifting and this would last up to several days after the fractures occurred. I would expect any carer would be aware that he had suffered significant injury. If a carer was not present when the injury occurred then his*

distress might manifest as being more unsettled or grizzly. In relation to the metaphysio fracture of the right lower tibia again this would have caused significant distress at the time of injury with severe pain presenting for several minutes. He would have been distressed until the limb was at least splinted. He would have been in low grade discomfort for some time following. Pain would have persisted until the area of surrounding tissue trauma and inflammation settled. Again if this area was moved the carers would be aware of evidence of distress. Pain and distress from this area would eased over a few days but particularly be exacerbated again by any movement."

The mother at no stage appeared to observe anything unusual in the baby's presentation. The father reported only the two 'floppy' episodes and a refusal of feeding.

[21] This couple separated in early 2018. Each has regularly attended contact which remains at a high level. Their early statements provide a very positive view of each other and of what O'Hara J describes as the 'family circumstances' at the time. Police interviews of the paternal grandmother and maternal uncle are supportive of this portrayal of family life but the responses of these individuals elsewhere at interview are disingenuous. The initial police interviews of the parents are also positive in their portrayal of their relationship.

[22] Among the most objective and cogent documents before me are the analyses of the telephone use of the Respondent father during the critical period. The mother's telephone appears to have been broken. Police telephone analysis unfortunately takes a long time and meantime the parents explored a number of potential medical explanations with eminent medical experts who were jointly instructed whilst the analysis was ongoing. None of these produced an alternative explanation for the injuries sustained by this child and the parents now make the concessions outlined above.

[23] In the intervening period Social Services supervised the very frequent parental contact. The only cause for concern was the presentation of the father at contact on 14 July 2017. The parents initially maintained that there were no issues of substance misuse, albeit conceded some history of recreational cannabis use which it was initially suggested had ceased around the time of pregnancy and/or birth. The position of both parents now is that the mother, with one exception (originally suggested as potentially two exceptions) has not used cannabis since the birth. On 14 July 2017 the demeanour and appearance of the father at contact clearly caused the Social Worker to suspect that he was under the influence of a non-prescription substance. The mother makes the case that when the content of the telephone analysis was brought to her attention in 2018 during police interviews (as the medical evidence crystallized) she came to accept that the father had inflicted the injuries on the child whilst under the influence of cannabis. In oral evidence,

however, she maintained that her assertion on 14 July 2017 (when they were still together as a couple) repeated in police interview in April 2018, that he was under the influence of only prescribed Cocodamol that day was truthful. She confirmed this remains her belief, even with the benefit of hindsight. This causes very real concern for future planning. The mother suggests that she was naïve and excessively trusting of the father. Her perception in respect of this Cocodamol issue, however, appears unaltered by the very revealing content of the telephone analysis.

[24] The Respondent father has had previous involvement with police in the context of complaints of a violent nature having been made against him. He has no criminal convictions. Police documentation suggests he accepted a caution in respect of a Common Assault. That would normally involve an admission of culpability but he now suggests this is wrongly recorded. His mother once filed a police statement in respect of a relatively serious alleged assault by the Respondent father on her erstwhile partner. The complaint was withdrawn and his mother described this episode at interview in terms which are at odds with her police statement. On 3 September 2018 the father missed contact and it was announced he had an upset stomach. He subsequently referred at contact to a problematic Chinese takeaway. In her final statement the mother, reassuringly, advised that she was aware that on that occasion he was being questioned by police regarding an allegation of assault against his housemate.

[25] The telephone analysis from the relevant period is replete with reference to cannabis use. At initial police interview the father denied that there were visitors to the house at night time. When re-interviewed following telephone analysis he conceded that nocturnal visitors came to the family home. In his final statement of 27 September 2018, filed after his telephone analysis was available, the father gave an account of his night care of the baby on 24/25 October 2016 from paragraphs 12-16 of that statement, detailing the successful 4 or 5 am feed of the baby and the problem arising around 11 am or Noon. In fact around lunchtime on 24 October 2016 (the day prior to the hospital admission) he had an exchange of messages over two platforms with a telephone marked as 'P2' on the analysis. Clearly the father was indebted and arranged to pay £30, on the basis this person would probably be round later and receive payment (communicated at 12.44.54). That night, at 00.25.08 the father communicated with telephone P4 "U still for callin round wen ur finished" to which P4 responded at 01.11.51 " Yeah lad" and the father at 01.33.45 responded " Happy days". At 01.46.51 P4 sent a message "Door dude". This nocturnal visit is not mentioned in the otherwise detailed account set out at paragraphs 12-16 of the statement of 27 September 2018. Discussion between the father and P4, like much of the father's general conversation, is clearly drug based. For example, as the father conceded at police interview, a message between the two hospital admissions on 30 October 2016 at 20.55.52 from the father to P4 states "He has 2 25s man but needs coin". The father admitted to police at interview this is a reference to two £25 deals.

[26] This absence of candour in respect of nocturnal visitors (particularly on the night before the first hospital admission) is clearly obstructive to any enquiry into

how the baby came to be injured. It is also clear that (although he says he discussed the plan with the mother at hospital) the father, when he became aware the property was to be searched as part of the enquiry, had a friend go there and remove all drug related paraphernalia. The maternal uncle/housemate was also aware of this, as he conceded latterly at police interview.

[27] I am satisfied both the maternal uncle and paternal grandmother were less than frank with police. The uncle, for example, initially maintained that neither parent smoked cannabis after the birth, until it was put to him the telephone analysis clearly showed he was smoking cannabis with the father after the birth. I have already referred to the maternal grandmother's assertion to police that the report of an assault by the father on her erstwhile partner was "something and nothing" is very much at odds with her contemporaneous police statement which speaks amply to the aggressive tendencies of her son. She asserts that when she cleaned the house before the arrival of the police she was simply lifting embarrassing underwear 'smalls' off the floor. The Respondent mother gave evidence that she is now satisfied the 'clean up' was more profound as her washing machine had been activated. The child's mother's versions of cannabis use within the household following the birth as offered early in the enquiry and subsequent to telephone analysis were developmental. Her continued position in respect of interpretation of what the social worker saw on 14 July 2017 is untenable.

[28] This disingenuous behaviour on the part of all concerned clearly goes not only to issues of credibility but also to priorities, reliability and ability to protect.

[29] The toddler's mother has now been diagnosed with Ehlers Danlos Syndrome. Within this general diagnosis there are several types of condition. It is not clear whether either this or her past use of herbal cannabis have contributed to her unusual sleep requirement or indeed whether this sleep requirement still prevails. At page 9 of the police interview commencing at 19.51 on 12 April 2018 she told police that she could not tell the difference between the father being high and not being high because he was "clearly" high all the time. She told police that she was "asleep most of the time when pregnant sleeping from 20.00 hours to 10.00 most days and dozed most of the day" (47 in margin). The tendency to sleep fourteen hours(in addition to daytime dozing) might explain the paucity of the mother's knowledge of the father's nocturnal activity but it is of itself a concerning statistic for anyone aspiring to provide good enough protective parenting. I note that, however, since the Court intervention in this case the mother has managed working nights as a shelf stacker in combination with conscientious attendance at daytime contact four mornings each week. The father refers to her lethargy as 'laziness'. He presents through the papers as a very active insomniac and it may be that his readiness to offer care to the baby after late shifts in a takeaway 'enabled' this level of inactivity on the part of the mother. The maternal grandmother is ill and unable to offer practical assistance. The paternal grandmother, whilst fiercely protective of her son, is clearly a very capable and active person who offered considerable assistance of which the mother availed very willingly. If past performance is an indicator of

future conduct she would, however , always 'cover up' for her son and would be unlikely to deny him contact with his child if she had care or control of the child at any time. I make these observations because I am not seized of this case and the future for this toddler will be decided by another Judge.

[30] The mother in this case presents as very naïve, albeit she advised police that it was she who prepared cannabis smoking paraphernalia in the early stages of the relationship. I am satisfied, however, that she was unaware of the full extent of the father's cannabis use or of the amount of nocturnal time he spent accessing free pornography and online dating sites. The content of the texts support her assertion at interview that the father was never violent towards her. He was very kind and tender towards her in text messages which were not intended for this level of scrutiny. Equally, although he uses bad language in texts with his mother and calls police 'pigs' when discussing their intention to go to the home, they too have a very close and functional relationship which is reflected in the messages. Within the texts there is no evidence of domestic violence, domineering or bullying in the father's relationships with either woman.

[31] At Page 7 of 9 of the police interview of 12 April commencing at 22.16 hours the father said he had smoked cannabis from age eleven until the baby was hospitalized. At 03:11 on 2 November 2016 (the morning of the baby's second hospital admission) the father's telephone accessed a study entitled "S*moking cannabis causes complete remission of Crohn's Disease in 45% of Patients".* At 21.32 on 2 November, following the baby's second hospital admission, he and P2 were discussing looking at cannabis plants. This gives some insight into the father's attitude to cannabis up until that date. Clearly he was a cannabis enthusiast. He offered no explanation for desisting from use of the drug when the child was hospitalized. Given that he insists there is no causal connection between the baby being injured and cannabis, there is no explanation for his suddenly becoming averse to its use.

[32] There is no psychiatric or psychological assessment of either parent available to the court. The text messages provide some insight into the impulsivity of the father and his readiness to create an inappropriate fuss, for example, at hospital. I have his statements and police interviews. I have statements, police interviews and have received oral evidence from the mother. The mother is very slight of stature and presents as someone who is not very animated. She expressed strong views on very little save for her aversion to debt.

[33] In applying the test of threshold to the evidence it is important that a fact finding court exercises caution. The court has received unchallenged medical evidence in respect of the mechanism by which experts conclude these injuries occurred. Even unchallenged expert evidence in this area, however, has led courts into error, with far reaching consequences. The range and vintage of injuries in this case must be scrutinized with care, notwithstanding the level of expertise engaged. I take account, in particular, of the absence of bruising and the conclusion of the first

hospital admission. Similarly, caution is required in approaching the circumstantial nature of evidence in a case involving a pool of two potential perpetrators. Allegations of this type are difficult to refute in the absence of direct evidence but child abuse seldom occurs in the presence of competent witnesses. The court must also take account of the fact that parents may behave disingenuously or even lie out of panic or to conceal behaviour which is inappropriate or embarrassing without this meaning that their position on the core issue is mendacious. I remind myself of the correctly cautious position the court should adopt to the child's mother offering oral evidence and subjecting herself to examination and to the father's entitlement to adopt his statements. In approaching the accounts of the father's previous negative police attention in the context of allegations of violence the court has to exercise particular care. These are allegations involving adult males. The father has no criminal convictions and I must take account of the limitations on this evidence in respect of its potential for demonstrating a tendency to aggression.

STANDARD OF PROOF

[34] The court must be satisfied that the threshold criteria, the matters relied on, are proven to the requisite standard. The applicable date is the date of intervention. In respect of the applicable burden of proof where allegations of this gravity are made, the correct approach was established a very considerable time ago.

In **Re H & R (Child Abuse: Standard of Proof) (1996) AC 563; 2 WLR 8; 1 FLR 80 HL**

The House of Lords laid down the following guidelines:-

(a) A court can only act on evidence in the case;

(b) Whoever makes the allegation of abuse undertakes the burden of proving it;

(c) The standard of proof (discussed at page **96 B-E**) is the balance of probability
but-

"the more serious the allegation, the more **cogent** is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it";

(d) The court should only act on those facts which are so proved (**99 G-H)**; but of course the court may rely on all proved facts (however trivial in themselves) in coming to an overall conclusion.

FACTS FOUND

[35] Mindful of the approach required, I have therefore embarked on a qualitative and quantitative analysis of the totality of evidence before the court and drawn common sense inferences from those factual conclusions to which that evidence has led.

[36] I am satisfied to the appropriate standard that the injuries to this baby were caused by his father. I am satisfied further that the baby's mother was aware that the baby's father used cannabis and had a sleep pattern which rendered him incapable of providing good enough night time care as frequently as this was delegated to him.

[37] I come then to address the question whether threshold is met. I am satisfied to the appropriate standard as follows:

> *"The baby sustained the following injuries:*
>
> *Fractures to the right 5th, and 6th ribs and to the left 8th rib;*
> *A metaphyseal fracture to the distal right tibia;*
> *Bi-lateral subdural haemorrhages;*
> *A subarachnoid haemorrhage;*
> *Intraventricular haemorrhage;*
> *Contusion in the left anterior temporal lobe;*
> *Multiple bi-lateral haemorrhages to the eyes.*
>
> *These injuries were all non-accidental and were inflicted on the baby by an adult carer, namely his father.*
>
> *The injuries were caused by the baby:*
>
> *being grabbed around the rib cage with sufficient force to fracture his ribs; and*
>
> *being shaken with sufficient force to cause the bleeding to his brain and his eyes.; and*
>
> *being grabbed by the leg causing the fracture to his distal right tibia."*
>
> *The baby suffered significant pain and distress as a result of these injuries and this would have been obvious to the perpetrator and any other person present when the injuries were inflicted.*

The baby sustained these injuries in at least two traumatic events, firstly in or around 25 October 2016 and secondly in or around 2 November 2016.

The baby was in the care of his father when the injuries were sustained. Dad caused the injuries to the baby.

The parent who did not inflict the injuries on the baby failed to protect him from harm, and Mum prioritised her requirement for sleep over the baby's needs.

The Dad misused cannabis and he smoked cannabis when he was responsible for the baby's care."

[38] Effectively, I am satisfied to the appropriate standard on foot of the draft threshold prepared on behalf of the Applicant Trust, save that I am satisfied on the balance of probabilities that the mother was **not** physically present when the baby was grabbed and shaken. I am **not** satisfied that the mother has failed to show insight into the significance of his injuries, **nor** am I satisfied that the mother prioritized her relationship with the father over the baby's needs. I am, however, satisfied that it was unreasonable for her to leave the baby in his father's care so frequently for such prolonged periods with knowledge of her partner's cannabis habit and with even the limited knowledge which she had of his nocturnal habits and foreseeable fatigue.

THE FUTURE

[39] The threshold criteria having been established, the court will have to consider whether a Full Care Order should be made at all and, if so, what kind of Order. The requirements for fact finding and telephone analysis have clearly delayed meaningful Care Planning in this case. This child is at a crucial age and developmental stage. I commend a very early listing before the Family Judge to further timetable and receive a care plan.

[40] Meantime, the interim care order should be administratively renewed.