

IMPORTANT NOTICE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment no person other than the advocates or the solicitors instructing them and other persons named in this version of the judgment may be identified by name or location. The anonymity of the elder child, referred to a "C" must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court and may be punished by a fine or imprisonment of up to two years.

Case No: CF16C00895

IN THE FAMILY COURT

Cardiff Civil Justice Centre

Date: 16th December 2016

Before:

Mr Justice Moor

Between:

**The County Council of the City and County of
Cardiff**

Applicant

- and -

Matthew Scully-Hicks

First Respondent

-and-

Craig Scully-Hicks

Second Respondent

-and-

**C Scully-Hicks (by his Children's Guardian,
Lynette Clarke)**

Third Respondent

-and-

The Vale of Glamorgan Council

Intervenor

Mr James Tillyard QC and Mr Owen Thomas for the **Applicant**
Ms Jane Crowley QC and Mr Colin Douglas for the **First Respondent**
Ms Ruth Henke QC and Ms Catrin John for the **Second Respondent**
Mr Ian Williams for the **Third Respondent**
Mr Christopher Felstead for the **Intervenor**

JUDGMENT

MR JUSTICE MOOR:-

1. I have been conducting a fact-finding hearing in care proceedings relating to a young child, C Scully-Hicks (hereafter “C”). The fact-finding hearing, however, is not directly related to C but rather to the tragic death of C’s young sister, Elsie Scully-Hicks on 29th May 2016.
2. I accept immediately that the facts of this case raise serious issues that will be of genuine public concern. Initially, I made a Reporting Restriction Order pending the completion of the criminal trial for murder of Matthew Scully-Hicks. I could not permit the criminal trial to be derailed if my judgment had come into the public domain too early. I make it quite clear, however, that the Reporting Restriction Order would only last until the conclusion of the criminal trial. I indicated that, at that point, I would give permission for this judgment to be reported in full although there would have to be some anonymisation, if only to protect C.

The history of the case

3. The parents of both C and Elsie are Matthew and Craig Scully-Hicks. Matthew was born on 7th January 1986 and is therefore aged 30. Craig was born in 1981 and so is 35 years of age. They met in 2006 in Swindon and commenced a relationship in January 2008. They began to cohabit in June 2008. Craig comes from the Cardiff area. They decided to relocate to South Wales in late 2010. Craig moved first in December 2010 and was joined by Matthew in March 2011. Initially, they lived in Wellwright Road, Fairwater, Cardiff. They became engaged in May 2011 and married in August 2012 in Portugal. They very much wanted to have a family and became approved as adopters.
4. C was placed with Matthew and Craig by the Vale of Glamorgan Council in the same year that C was born. It was agreed between Matthew and Craig that Matthew would give up work as an employer services consultant and become C’s full-time carer, although he continued as a part-time fitness instructor. Craig continued to work full-time in responsible employment that required him to work away from home on a regular basis. It is clear, however, that he too played a significant part in caring for C. Absolutely no problems were identified with the placement such that an adoption order was made in favour of Matthew and Craig.

5. Elsie Scully-Hicks was born on 17th November 2014 as Shayla O'Brien. Her birth father was never identified. Her birth mother is a drug addict who was certainly in prison at one point during the adoption proceedings. Care and placement orders were made, again in favour of the Vale of Glamorgan. On 10th September 2015, she was placed with Matthew and Craig and given the name Elsie by them.
6. On 5th November 2015, Elsie sustained an injury to her right leg. Craig was at work. Matthew said she was quiet but did not seem to be in pain. Medical advice was sought from the GP on 9th November 2015 as she did not seem to be able to weight bear. Dr Marina Arulanandam says she was told that Elsie had fallen off a baby walker. She was given an appointment at the hospital and was X-rayed on 12th November 2015. The report from the hospital also says that she was pushing a walker and twisted her leg as she was leaning backwards. A minimally displaced fracture was found to her distal right tibia, just above her ankle. She was placed in a polymer cast and advised that she should remain non-weight bearing for the next three weeks. It is clear that it was considered that the injury was entirely consistent with the description of the fall given by Matthew. Moreover, it healed well. Matthew says, however, that the description of the fall from a baby walker is incorrect. He says she was supporting herself on a child's work table in the kitchen and turned to see what he was doing. She twisted and fell backwards onto the wooden floor. I will return to what was found when the X-ray was re-examined following her death.
7. Following an incident on 16th December 2015, Elsie developed a bruise to the left side of her forehead over her left eye. Craig was again at work. It appears that a text message was sent to Laura Neal, a social worker at the Vale of Glamorgan the same day telling her of the injury, although she did not reply to the text message until the following morning. Later that morning, there was an adoption review at Wellright Road. It was delayed from 10 am to 11 am as C was in a Christmas Concert that morning and both Matthew and Craig understandably wanted to attend. The adoption review was attended by Cheryl Longley and Laura Neal, social workers and Eryl Bowers, the Independent Reviewing Officer, all from the Vale of Glamorgan. Initially, all three did not recall seeing the bruise on that occasion. Indeed, Cheryl said she believed she saw the bruise on 19th January 2016 although she has since said it must have been 17th December 2015. She did, however, say that she was told the Health Visitor had seen the bruise but it is clear that it was not until 21st December 2015 that the Health Visitor attended. Equally, all three Vale employees said they could not recall Craig being present at the adoption review, although his case is that he was there for around 45 minutes until he had to go to collect C.
8. On 21st December 2015, the Health Visitor, Jodie Golten attended at the home. She saw the bruise on Elsie's forehead and over her left eye. She says she was given no explanation and advised medical attention for Elsie but Matthew told her he had already done so. This is heavily in dispute. It is also alleged that, on 26th May 2016, Matthew said Elsie had fallen forward onto a plastic toy in the kitchen. He denies this. In his statement dated 13th July 2016, he says that Elsie was playing with a toy kitchen and a magnetised door of the play kitchen

swung open causing her to lose balance and bang her head on the edge of the kitchen worktop. There are two aspects to this. First, how was this injury caused? Second, why was it not brought to the attention of the adoption court?

9. On 10th March 2016, Matthew says that Elsie fell through a stairgate which had not been properly secured and down a full-flight of stairs. He says he was upstairs at the time dealing with the washing. Elsie didn't cry but lay very still with her eyes open. She started to cry by the time he rang 999. She vomited twice by the time the paramedic arrived. One vomit included some blood. It was suspected she had a head injury. She was taken to hospital and observed for four hours before being discharged. No CT scan was taken as she was not sufficiently unwell. It is said that, thereafter, she was not herself and vomited on a number of occasions although this appears to have lessened as the days past.
10. On 16th April 2016, the family moved from Wellright Road to an address in Llandaff, Cardiff. Ten days later, on 26th April 2016, Elsie developed a "unilateral convergent squint". Craig says her left eye appeared to be turned inwards towards her nose and it became worse. It was noted by an Aunt on 22nd May 2016. This was not brought to the attention of the adoption court either. The adoption order was made on 12th May 2016.
11. On 25th May 2016, Craig was again at work. Matthew spent the day with both children and his twenty-seven year old niece, Kerry Richards. She left at 5.20pm. Nothing remarkable occurred. Elsie fed normally and played quite happily. She had sausage and vegetables for her tea which she finished at 5.45pm. Matthew walked her into the front room holding her hand. She sat watching TV with C. Matthew changed her nappy at around 6pm and put her into her baby-grow. She was normal and not unsettled. He left her lying on the floor whilst he took her dirty nappy for disposal. When he returned, he says she was unresponsive. Her eyes were open but she was staring blankly and not breathing. He called 999. It was difficult to get through to the ambulance service so he says he started CPR himself which was later continued by professionals when they arrived. Elsie was suffering from cardiac arrest. There was no evidence of cardiac output for seventeen minutes, a very long period of time. Elsie was taken to the Children's Hospital for Wales, Heath Park, Cardiff and, in due course, to its Intensive Care Unit.
12. She was clearly desperately unwell. On 29th May 2016, she died after life support was withdrawn. Initially, C returned to Matthew and Craig. There is no doubt that C has a warm and affectionate relationship with both of them. The medical evidence, however, began to be assembled. The pathologist, Dr Stephen Leadbeatter's first report is dated 7th June 2016. He found a faded bruise 0.4 cm in diameter; 4cm above and 1 cm to the left of the left eye. Dr Nia John, a consultant paediatrician, reported on 15th June 2016. She said that a scan on admission to hospital revealed that Elsie had extensive bilateral subdural haemorrhages with evidence of acute and chronic bleeding. There was also severe hypoxic ischemic brain damage. She considered this was indicative of recent injury (less than ten days old) and consistent with a shaking type injury. The X-ray of the injury sustained on 5th November 2015 was re-

examined. A second fracture was detected, namely a metaphyseal fracture of the distal femur. She said it was unusual but not impossible to fracture two bones in the same minor fall.

13. On 15th June 2016, the Local Authority, the County Council of the City and County of Cardiff, which is the Local Authority responsible for the area where Matthew and Craig live, asked them to agree to C being voluntarily accommodated pursuant to section 76 of the Social Services and Well-Being Act (Wales) 2014. The parents declined. Subsequently, Matthew left the home for 24 hours and C remained there with Craig, supervised by Tricia and Nigel Hicks (the parents of Matthew). The Local Authority was not in agreement with this position and applied for a care order on 16th June 2016. The case was allocated to me the same day by Carson DJ given the very serious issues involved but the Local Authority's application for a care order was heard by HHJ Edwards on 17th June 2016. Notwithstanding the opposition of the parents, she made an interim care order with a plan for removal as a "holding position". C was removed and went to foster carers. Subsequently, the parents asked for C to be placed with either Matthew's parents or Craig's sister and her husband. I refused the application on 22nd June 2016, although they were subsequently approved by the fostering panel as kinship carers.
14. Craig's statement is dated the 12th July 2016. He says that he was working away from home two to three nights per week during the relevant period. He was not present on any of the occasions when Elsie had accidents. He said he had been told that she had developmental delay and she was very active. He did say her routine was different to C's. He did not recall Elsie being in pain on the evening of 5th November 2015 when he was present for her bath but he did recall her not being weight bearing on 7th November 2015. He was told by Matt about the bruise she sustained on 16th December 2015. By the time he arrived at the hospital on 10th March 2016, Elsie looked fine. She was sitting on Matt's lap although she was clingy, sore and achy over the next few days. 15th April 2016 was the last time she was sick. The sickness stopped around the time her eye started to turn inward but she seemed much happier and back to her normal bubbly self. She suffered from a nose bleed on 30th April 2016. The turn in her eye became more prominent thereafter. He was contacted by Matt by telephone on 25th May 2016. Matthew was crying on the telephone. He added that he never heard Matt shout at Elsie or C. Matt never appeared angry with the children. He had heard Matt raise his voice to tell them off but, in general, he is quiet and mild-mannered. Matt never swore at them and was very patient and calm. He had noticed a couple of marks to Elsie's ears on 30th January 2016.
15. Matthew's statement is dated 13th July 2016. I have already recounted what he says about the various incidents and, in particular, the 25th May 2016. He postulates that Elsie may have had Ehlers-Danlos syndrome or second impact syndrome. In relation to the latter, he was suggesting a possible re-bleed after the fall down the stairs, wondering if it happened after she overstrained during her bowel movement. He said she was a happy little baby who was always smiling.

16. A number of statements were filed by the Vale of Glamorgan's adoption team. I have already dealt with their evidence in part. Cheryl Longley was the allocated social worker for Elsie from 7th September 2015. She knew Elsie as Shayla. She said that Elsie was happy with the Scully-Hicks' and interacted well with them. She seemed happy and content on 11th November 2015. She was told that Shayla had slipped in the kitchen and twisted leg on 5th November 2015. I have already mentioned that her statement says she saw the bruise on the forehead on 19th January 2016. She said she was told that Elsie fell in the hallway onto a hard tiled surface and bumped her head. She was told that Matt had spoken to the Health Visitor. She added that she was told that, after the fall down the stairs on 10th March 2016, Elsie appeared fine albeit a bit "bumped and bruised" but the hospital had no concerns as the injuries were consistent with such a fall. She filed a second statement on 1st December 2016. She said she "always recalled seeing a bruise" and thought it was on 19th January 2016 as Matt informed her then of a fall in the hallway with Elsie bumping her head on the floor. She said that, in fact, she must have seen a bruise on 17th December 2015 but she still has no recollection of having done so then.
17. Eryl Bowers was the Independent Reviewing Officer. Her statement is dated 17th November 2016. She attended the adoption placement review on 17th December 2015 and another review on 22nd April 2016. She confirmed that the birth mother of Elsie had hepatitis B and C so there was concern that Elsie might do so as well. Elsie had the cast on the back of her right ankle for a few weeks after she sustained the small crack following the kitchen incident. On 22nd April 2016, Elsie was taken upstairs for a sleep as she was a little tetchy and miserable. She was told Elsie was struggling with teething.
18. Laura Neal was the allocated social worker for the adopters from February 2015. Her job was to assess them as adopters. She had no concerns about them. Introductions between them and Elsie began on 3rd September 2015 and she was placed on 10th September 2015. Ms Neal said the minutes of the adoption review meeting on 17th December say that Craig did not attend but she could not be certain as they moved the time of the meeting to enable him to attend C's Christmas concert before the meeting. She could not recall noting any bruising at the meeting. The turn in Elsie's eye was pointed out to her on 29th April 2016. She said they should take Elsie to the GP but Elsie was happy and alert. She later filed a second statement dated 1st December 2016 confirming that she did receive a text message from Matthew in December 2015 which she replied to early on 17th December 2015. She confirmed that she still had no recollection of seeing the bruise on 17th December. Indeed, she said she had very little recollection of the meeting that day.
19. I had indicated that I was concerned about a number of matters. First, I wanted to know whether or not Elsie's birth mother had been informed of her death. Second, I felt it only right to warn the Vale of Glamorgan that there was at least a possibility that it would be criticised in my judgment. As a result, the Vale applied to intervene on 21st November 2016 and I granted it such status on 22nd November 2016. A statement dated 1st December 2016 was filed by Rachel Evans indicating that the birth mother had not, as yet, been informed. It was considered that such information could only be shared with the permission of

the adopters. It must, however, be the case that I could have granted permission to the Vale to do so. The Vale indicated that it was unaware of the birth mother's whereabouts save that she had been released from prison. I therefore made orders against the Department of Work and Pensions to obtain her address. Rightly, it was felt that it would not be right to tell the birth mother in the week before Christmas. I adjourned any further consideration of the issue to the end of the fact finding hearing but indicated that an application should be made for a reporting restrictions order.

20. Two statements were filed dated 18th November 2016 from Susan Bevan and James Bevan. They were neighbours of the Scully-Hicks' in Wellwright Road, living in the other half of the semi-detached property occupied by the Scully-Hicks before they moved to Llandaff. Both the Bevans describe their next-door neighbours as "the one who went to work" and "the one who stayed at home". As the latter certainly appears to be Matthew, I will use his name when describing what both of them say in their statements. Susan Bevan is the mother of James Bevan. She said that she would hear events happening next door during the day when Craig was at work. She would often hear Elsie crying at around 8am. Matthew would rant; "shut up; shut up; shut the fuck up". She said he appeared intolerant and his comments appeared to be aimed at Elsie. She said Elsie seemed not to cry when other people were there. She once heard a gasp or a scream. She did not believe Matthew was bonding with Elsie although she was not concerned for Elsie's safety.
21. Her son, James, said in his statement that he returned to live at the family home on 23rd December 2015. He would hear tantrums next door and once heard Matthew saying "aaaargh" and a door being slammed. He heard a baby girl crying on a regular basis. The baby once screamed and he heard "shut up you little fucking brat" and "shut up you silly little cunt". A music player was then turned up next door "ridiculously loudly". He then heard a crash of a plate and a clear slam then that was it. He heard such happenings on a regular basis and at least once per week.
22. On the 17th November 2016, a letter was written on behalf of Craig Scully-Hicks informing the other parties that he and Matthew had separated although they have continued to have joint contact to C on a supervised basis, three times per week for 1.5 hours per session. The separation was confirmed to me by leading counsel at the IRH on 22nd November 2016.
23. Matthew filed a second statement on 26th November 2016. He gave an address in Llandaff. He said it was clear that all three professionals from the Vale saw Elsie on 17th December 2015 and, therefore, they would have noticed the bruise. He confirmed that he had made Laura Neal aware of the bruise on 16th December 2015 by text message and that Craig was present for the first 45 minutes of the review before Craig went to pick up C from nursery. There was no fall in the hallway or bumping of Elsie's head on 19th January 2016 and he did not take Elsie to the GP following the December bruise. He exhibits the text message which refers to a "lovely whopping bruise".

24. I first learned of Craig's position in his counsel's Case Summary for the final hearing on Friday 2nd December 2016. The document said that Craig accepts that Matthew killed Elsie and that the injuries she sustained that day were at the hands of Matthew. These included a bruise to the outer angle of her left eye; a fracture to her skull; bilateral subdural haematomas; hypoxic ischaemic injury; bilateral retinal haemorrhages with bleeding in the optic nerve head and the optic nerve sheath; a fracture of her left femur; and probably fractures of the ribs. He further believed that Matthew had fractured Elsie's right leg in at least one place on 5th November 2015. The other injuries Elsie sustained were "at least, suspicious". Craig denies any failure to protect and says that the man (Matthew) that injured Elsie bears no resemblance to the man he married. He had no reason to suspect Matthew. They have separated and there will be no reunification or reconciliation.

The Medical evidence

25. I have directed a significant number of expert reports from specialists in the relevant medical fields engaged by the issues in this case. I have also received the post-mortem report of Dr Stephen Leadbeatter dated 3rd October 2016. He concluded that Elsie had suffered recent and previous bleeding below the dura mater each side of the brain as well as bilateral retinal haemorrhages with perimacular folds. There had been a recent fracture of her right lambdoid skull, which is a consequence of an impact to the head. There were microfractures of the inner aspect of the posterior end of each of the left third and right fourth and fifth ribs. He cannot exclude the possibility that there was a subdural haemorrhage from the fall down stairs with a possible re-bleeding but examples of this happening are not associated with acute clinical changes, nor significant neurological decline. Moreover, the fractures were recent. The cause of Elsie's death was hypoxic/ischaemic encephalopathy following cardiac arrest in a child with acute chronic subdural haemorrhage and a blunt head injury including fracture of the right lambdoid suture.
26. I directed reports from five separate experts. The first to report was Dr Karl Johnson, a paediatric radiologist whose report is dated 27th September 2016. He re-examined the X-ray taken on 12th November 2015 and found two fractures, namely one of the distal right tibial metadiaphysis (just above the ankle joint) and a second of the distal right femoral metadiaphysis (thigh bone). Both were no older than 11 days at the time of the X-ray and such fractures have a strong connection with non-accidental injury. They would require a significant amount of force and would cause pain and distress. Whilst he could not exclude the description given of the events of 5th November 2015 as a possible cause of either one of these injuries, he was of the view that such a fall would typically result in a single isolated injury. The description given would not result in two separate fractures so one fracture is therefore unexplained.
27. The second report was from Peter Richards, paediatric neuro-surgeon and is dated 1st November 2016. He concluded that the head injury occurred at the point of Elsie's acute collapse and that death was from hypoxic/ischaemic encephalopathy following cardiac arrest with acute chronic subdural

haemorrhage. There was evidence of blunt head injury including a fracture of the right lamboid suture. There was fresh subdural bleeding over both cerebral hemispheres and hypoxic/ischaemic changes as well as retinal haemorrhages. These would not be expected to occur spontaneously. Such changes require a traumatic event such as an acceleration/deceleration injury. A re-bleed of an earlier injury would not explain the acute collapse. Moreover, if there was a fractured skull, it would only be explicable by trauma involving impact. It was implausible that Elsie could have been injured prior to her normal feed at 5.45 pm. The point of collapse was the point of injury.

28. Dr Stephen Rose, a consultant paediatrician, reported on 16th November 2016. The description of the fall on 5th November 2015 is not consistent with the two fractures sustained. It was highly unlikely the fall described could have caused either fracture. The evidence indicates that Elsie made a full recovery from the fall down the stairs on 10th March 2016. It is highly unlikely that the squint on 26th April 2016 was as a result of raised intracranial pressure as such pressure would have been demonstrated by other signs. On 25th May 2016, Elsie was shaken violently causing flexion and extension of her head to the point which resulted in the bilateral retinal haemorrhages and the subdural haemorrhages. She would have been rendered unconscious due to the interruption of blood flow to the brain. He speculated that there was blunt trauma to her head as the final event such as if she was thrown to the floor or against a wall. Micro-fractures to the ribs would have been caused by significant compression forces which are uncommon during resuscitation. Moreover, when they occur, they tend to be anterior not posterior. No metabolic cause had been found to explain the injuries. It was highly unlikely the squint related to the fall down the stairs as she was otherwise entirely normal. Jumping on a trampoline had no relevance to the injuries sustained.
29. Dr Richard Bonshek, a consultant ophthalmic pathologist, reported on 20th November 2016. There were bilateral retinal, optic nerve head and optic nerve sheath haemorrhages which could be explained by severe head injury which occurred when Elsie suffered an acute collapse three to four days prior to her death. No accidental cause for such trauma has been identified. In addition, there was a bilateral optic nerve sheath haemosiderin deposition which might indicate a component of older bleeding. This was all highly consistent with non-accidental injury in the absence of severe accidental trauma. In addition to the recent extensive haemorrhage, some of the haemosiderin present might represent an earlier episode of bleeding which might be consistent with it occurring at the time of the fall down the stairs.
30. Finally, Professor Freemont, an osteoarticular pathologist reported on 21st November 2016. There was no evidence of underlying bone disease. The left tibia showed the presence of periosteal haemorrhage and an associated minor periosteal reaction which appeared to be between three to five days old at the time of death. There were tiny cortical metaphyseal fractures to the left femur, again estimated at between three to five days old at death. There were corner fractures of the costovertebral metaphysis of the posterior elements of the left third, right fourth and right fifth ribs, also estimated at three to five days old at the time of death. Finally, there was the presence of a complex fracture through

the lamboid region of the skull which had propagated through bone and along a fissure. Again, he would age this as between three to five days old. All this was very strongly indicative of non-accidental injury as Elsie had sustained metaphyseal injuries to five different bones at three different sites (the left femur; three posterior ribs and the skull).

The Law

31. I now turn to deal with the law I must apply. To establish the threshold criteria, I need to be satisfied that C is suffering or is likely to suffer significant harm and that the harm or likelihood of harm is attributable to the care given to the child, or likely to be given if the order is not made, not being what it would be reasonable to expect a parent to give [Children Act 1989, section 31(2)]. If I am so satisfied, it does not automatically lead to a care order. I will then have to go on to consider C's welfare.

The burden and standard of proof

32. The burden of proof is on the Local Authority. It is for the Local Authority to satisfy me, on the balance of probabilities, that it has made out its case in relation to disputed facts. The parents have to prove nothing. I must be very careful to ensure that I do not reverse the burden of proof. It was rightly said by Mostyn J that *"there is no pseudo burden or obligation cast on the respondents to come up with alternative explanations."*
33. The standard of proof is the civil standard, namely the balance of probabilities. This applies to both the determination of whether Elsie's injuries were caused non-accidentally but also as to the identity of the perpetrator (see Re B (Care Proceedings: Standard of Proof) [2008] UKHL 35; [2008] 2 FLR 141 and Re S-B (Children) [2010] 1 FLR 1161).
34. The seriousness of the allegation makes no difference to the standard of proof to be applied in determining the truth of the allegation. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies (Re B (Children)(FC) [2008] UKHL 35; [2008] 2 FLR 141)
35. If the evidence in respect of a particular finding sought by a party is equivocal then the court cannot make a finding on the balance of probabilities as the party seeking the finding has not discharged either the burden or standard of proof (Re B (Threshold Criteria: Fabricated Illness) [2002] EWHC 20; [2004] 2 FLR 200). In Re B (Children)(FC), Lord Hoffman said:-

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

one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened.”

36. Both Baroness Hale and Lord Hoffman made it clear in Re B that, when seeking to determine the perpetrator of proven non-accidental harm, the test remains the simple balance of probabilities. Baroness Hale said at Paragraph 70:-

“I would go further and announce loud and clear that the standard of proof in finding the facts necessary to establish the threshold criteria under section 31(2) or the welfare considerations in section 1 of the 1989 Act is the simple balance of probabilities, neither more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies.”

37. In Re S-B (Children)(Care Proceedings: Standard of Proof) [2009] UKSC 17. [2010] 1 AC 678, she insisted that Re B did not represent a departure from earlier authorities in the House of Lords, stating at Paragraph 13:-

“None of the parties in this case has invited the Supreme Court to depart from those observations, nor have they supported the comment that Re B “was a sweeping departure from other authorities in the House of Lords in relation to child abuse, most obviously the case of Re H”. All are agreed that Re B reaffirmed the principles adopted in Re H while rejecting the nostrum “the more serious the allegation, the more cogent the evidence needed to prove it” which had become commonplace but was a misinterpretation of what Lord Nicholls had in fact said.”

38. In Paragraph 2 of Re B, Lord Hoffman explained that sometimes the decision will be made by reference to the failure to discharge the burden of proof. In Paragraph 32, Baroness Hale made the same point thus:-

“In our legal system, if a judge finds it more likely than not that something did take place, then it is treated as having taken place. If he finds it more likely than not that it did not take place, then it is treated as not having taken place. He is not allowed to sit on the fence. He has to find for one side or the other. Sometimes the burden of proof will come to his rescue: the party with the burden of showing that something took place will not have satisfied him that it did. But generally speaking a judge is able to make up his mind where the truth lies without needing to rely on the burden of proof.”

39. I have also been referred to the case of AP v Vale of Glamorgan Council & Ors [2007] EWCA Civ 1265 as to the correct way to proceed when it is alleged, as here, that section 31 is established on the basis of future risk to a child rather

than of past harm. I have taken particular note of Paragraph 51 of the judgment of Wilson LJ.

40. Ms Crowley additionally referred me to the case of R(D) v Life Sentence Review Commission [2008] UKHL 33. I accept Ms Crowley's submission that my task is therefore:-

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

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

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

Lies

42. There are issues in the case as to the extent to which Matthew may have lied to this court and/or to professionals investigating injuries to Elsie. First, I must decide whether or not he did deliberately tell lies. If I find that he did, I have to ask myself why he lied. The mere fact that a witness tells a lie is not in itself evidence that the person concerned is the perpetrator. A witness may lie for many reasons. They may possibly be "innocent" ones in the sense that they do not denote responsibility for the injuries to Elsie. For example, they may be lies to bolster a true case; or to protect someone else; or to conceal some other disreputable conduct unrelated to the injuries caused to Elsie; or out of panic, distress or confusion.

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

The position of the Police

44. The Police are entitled to a copy of my judgment. The law is clear in this regard. Section 98(1) of the Children Act 1989 provides that, in these proceedings, no person shall be excused from giving evidence on any matter or from answering any question put to them in the course of giving their evidence, on the ground

that doing so might incriminate them of an offence. It follows that both parents had no alternative other than to give evidence although I make it quite clear that both did so entirely voluntarily. Section 98(2) applies to that evidence. Any statement or admission made in these proceedings shall not be admissible in evidence against the person making it in proceedings for an offence other than perjury. It follows that, although the Police may be able to make use of my judgment in pursuing their ongoing enquiries, they cannot rely on any statement or admission made to me, in any criminal proceedings that they may subsequently bring.

Expert evidence

45. I have heard expert evidence from a number of doctors with different specialisations. It is for me to weigh the expert evidence alongside the lay and other observational evidence. Ward LJ said in Re B (Care: Expert Witnesses) [1996] 1 FLR 667 at 670:-

“The expert advises but the judge decides. The judge decides on the evidence. If there is nothing before the court, no facts or no circumstances shown to the court which throw doubt on the expert evidence, then, if that is all with which the court is left, the court must accept it. There is, however, no rule that the judge suspends judicial belief simply because the evidence is given by an expert.”

46. Butler-Sloss LJ added at p674:-

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

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

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

48. The expert evidence does not sit in a vacuum nor is it to be interpreted in isolation from the other evidence. Even if an expert says that there are a number of possible explanations for some occurrence, it is still open to the court to find on the evidence as a whole which is the probable explanation (see, for example, Re B (Non-accidental injury) [2002] EWCA Civ 752; [2002] 2 FLR 1133).
49. The frontiers of medical science are always expanding. In R v Harris & Others [2005] EWCA Crim 1980, Professor Luthert was quoted with approval at Paragraph 135 that “*there are areas of ignorance. It is very easy to try and fill those areas of ignorance with what we know but I think that is very important to accept that we do not necessarily have a sufficient understanding to explain every case.*” It follows that it is always open to a judge to rule that the cause of an injury remains unknown. Such a finding does not represent either forensic or professional failure. As Hedley J said in Re R (Care Proceedings Causation) [2011] EWHC 1715 (Fam), it simply recognises that we still have much to learn and that it is dangerous and wrong to infer non-accidental injury from the absence of any other understood mechanism.

The “triad”

50. Finally, Ms Crowley drew to my attention the jurisprudence on the presence of the triad of injuries (subdural haematoma; hypoxic ischemic brain injury and retinal haemorrhages) as a pointer towards a diagnosis of non-accidental head injury. I remind myself, however, that the controversy in this area, advanced by a very small number of experts, relates to cases where there are no other injuries other than the triad. On any view, that is not the case here. I accept, of course, the reasoning in R v Harris that, whilst the triad is a strong pointer towards non-accidental injury, it is not possible on its own to find that the triad must automatically and necessarily lead to such a diagnosis. All the circumstances, including the clinical picture, must be taken into account. As Gage LJ said, such cases are fact specific and will be determined on their individual facts.

My conclusions as to the medical evidence

51. I propose to deal first with my findings in relation to the expert medical evidence. I heard oral evidence from all five medical experts appointed to prepare expert evidence in relation to this case. In making my findings, I will also factor into my assessment the factual evidence given to be by Dr Nia John, Dr Michelle Jardine and Dr Stephen Leadbeatter, whilst remembering that they were not giving expert evidence in the case.
52. Two doctors dealt with the injuries to Elsie’s leg in November 2015. Dr Karl Johnson, a consultant paediatric radiologist reviewed the X-rays taken at the time. He was quite clear that there had been two fractures not one. The first was just above the ankle and the second was just above the knee but only one had been recognised at the time. As I have not heard from those responsible for

reviewing the X-rays at the hospital, I intend to make no findings as to whether or not it was reasonable that the second fracture was not discovered in November 2015. It will be a matter for an Extended and Concise Child Practice Review. The failure to spot the second fracture did, however, have significant consequences at the time as Matthew's explanation was accepted without question. As there was no evidence of bone healing, Dr Johnson said that the injuries were no older than eleven days at the time of the x-ray.

53. He could not quantify the force required but it was significant. He was of the view that an accidental fall by a toddler, as described by Matthew, would typically result in a single fracture but not two fractures. Indeed, often it would not result in any fractures. If Elsie had turned over on her ankle, the fracture would have been slightly lower down whereas this fracture was above the ankle joint. Ms Crowley suggested that the twisting fall might have caused the ankle fracture with Elsie falling on her knee to explain the second fracture. Dr Johnson did not accept that this was possible, repeating that any such fall would at worst result in one fracture due to the different mechanisms required to cause two.
54. Dr Stephen Rose, a consultant paediatrician, was also clear that the mechanism described by Matthew was not consistent with two fractures of the same leg. He said it would be "extraordinary" if two fractures occurred from the same minor turn and fall. He told me such falls happen every day to toddlers who are very unstable. These fractures are not associated with such a fall, whereas they are associated with trauma and can be caused by shaking as the legs flay wildly around in the course of such an incident. I accept the evidence in this regard of both Dr Johnson and Dr Rose.
55. I now turn to the expert evidence regarding Elsie's collapse and subsequent death in May 2016. It has to be said that, despite the very best efforts of Ms Crowley on behalf of Matthew Scully-Hicks, the expert evidence provided a very strong body of opinion that Elsie had suffered trauma immediately before her collapse on 25th May 2016. The five experts remained firm as to their written conclusions during their oral evidence, notwithstanding a very thorough and comprehensive challenge being put by Ms Crowley on Matthew's behalf. I also remind myself that all five are eminent in their respective fields and extremely experienced in analysing the sort of evidence in this case. They really had no doubt at all as to their conclusions.
56. It is right to say that Dr Johnson was not able to detect the skull fractures, rib fractures or fracture to the left femur on the X-rays, even after he had seen Professor Freemont's report. He could see a black area on the skull but he had assumed this related to sutures that are present in the skull of a young child to enable the skull to grow. It is right to say that he did say that a rib injury could occur following prolonged CPR but that this was not common.
57. Professor Freemont, an osteoarticular pathologist, was due to give evidence via a video-link from Manchester Crown Court to the Cardiff Civil Justice Centre. As so often with court to court links, it was impossible to establish a connection. This happens so regularly with court to court links that I have got to the point

that I do not look forward to cases involving such connections. In the end, the Professor gave evidence by telephone and I am satisfied that this did not affect the quality of his evidence or the weight to which I can give it. In cross-examination by Mr Tillyard for the Local Authority, he was of the view that there had been trauma to the left tibia that was insufficient to cause a fracture. He postulated that it was a blow of some sort. Having said that, when asked about this by Ms Crowley, he told me that the insertion of a line into Elsie in the Intensive Care Unit in that area could well explain the tissue damage. I have no evidence that there was a line inserted in that area at some point but, equally, I have no evidence that there was not.

58. He was clear that there was a fracture to the bottom of the left femur, adjacent to the knee joint. The fracture was into the growth plate and into the bone at the interface between the bone and the cartilage. A twisting mechanism could cause such damage at or around the knee. It was close to the tibia and, subject to the point about the line, he could envisage a mechanism by which both injuries occurred at the same time. Turning to the ribs, he told the court that each of the main vertebrae has a little wing sticking out at the back and, as a result, the rib is hidden away from direct impact by this little wing of bone. He said that the fracture would not have been caused by a direct blow but by a levering force delivered to the rib just outside the wing. He considered the classic way of causing such fractures is by pressure from fingers exerting point pressure such as when gripping around the chest with the child looking at the person who has done the gripping. The grip would have to be very hard. If a child is being shaken, it is necessary to grip hard to ensure the child does not come away from your grasp. He was clear that these injuries could not be caused in CPR as this does not exert that kind of leverage. Finally, he was clear that there was a skull fracture slightly behind the right ear on a horizontal line going towards the back. As it crossed a suture, it required the application of direct force. It was a banging type injury. As the skull of an eighteen-month old child is quite thick, it would have needed a blow to the head or an impact with something very hard. He said it would be like a blow from a hammer or hitting a solid structure with the same force and was very strongly indicative of non-accidental injury. Indeed, overall, Elsie had a number of different fractures where the indication of non-accidental injury is high. In his view, taken altogether, they could only be explained by non-accidental injury. He did not consider the physiotherapy to clear secretions and mucus could have caused the fractures. Although fractures could be caused by physiotherapy, it would usually only be to the front and side of the chest. He had never seen any evidence that physiotherapy can cause fractures right the way at the back of the ribs. Moreover, physiotherapy was closer to the time of death than his dating of the fractures at three to five days old at the time of death. There was no evidence of brittle bones. All he saw was a lot of normal bones. He saw no evidence at all of a reduction in bone sufficient to make this child fracture more easily.

59. Dr Stephen Rose was asked whether the fall down the stairs on 10th March 2016 could have caused Elsie's collapse on 25th May. He was clear that she had made a full recovery by 25th May. Indeed, he said that she was reported as behaving entirely normally that day. Apart from the squint, there was no concern as to her developmental progress or anything else. When asked by Ms Crowley about

the episodes of vomiting prior to the squint emerging, he said there may have been a small subdural bleed and swelling at the time of the fall but the swelling would resolve over time. It would settle down in a few days. The brain would not continue to expand. Although vomiting and a squint are signs of raised intracranial pressure, it could not be an explanation in this case as she was behaving normally between vomiting episodes whereas increasing intracranial pressure does not wax and wane. It just gets worse and worse in an alarming way and causes other problems such as headaches. Moreover, it doesn't suddenly resolve.

60. He was asked by Mr Tillyard about the bruise to the forehead on 16th December and whether or not the explanation of the door coming open would be consistent with the injury. He was of the view that Elsie would fall backwards not forwards and the bruise would be linear if the head hit the edge of the kitchen. Having said that, I accept Ms Crowley's point that this aspect has not been fully investigated and it is very difficult for me to say how Elsie would have fallen, if, for example, the door had swung open and then shut again. He was asked by Mr Tillyard if the fact that Elsie had no blood pressure on 25th May 2016 due to cardiac arrest might be the explanation for there being no bleeding at the site of the skull fracture. He thought it might be a factor but, again, I was not satisfied that he had given this sufficient thought for me to rely on his response.
61. Finally, Dr Rose was asked by Ms Crowley about other possible causes for Elsie's collapse. He told me that metabolic investigations had been undertaken and were all normal as were the coagulation tests. In relation to brittle bones, if Elsie was susceptible, she would have broken something when she fell downstairs. He rejected both jumping on a trampoline with an adult and being placed in a car seat which then moved when the chair it was sitting on was moved as having anything to do with the injuries Elsie sustained. In both cases, it was highly unlikely but, in any event, she was well up to the time of her collapse.
62. The fourth expert to give evidence was Mr Peter Richards, consultant paediatric neurosurgeon. He told me that Elsie died from a head injury at the time of her collapse. He had not seen any evidence of external hydrocephalus as it can only be picked up on a head scan when a child is well but there was nothing here to suggest it. Moreover, it would enlarge the head to the 90th centile so the increase in head circumference between February and March from the 50th to the 75th centile was of no consequence. He told me that a sudden change from complete normality to profound collapse is very rare without a clear explanation. It is very rare to get a cardiac arrest in children but, even if there was, it would not explain the multi-compartment subdural haemorrhage, the retinal haemorrhage or the skull fracture. He was asked if this could be a re-bleed from an earlier injury. He said the volume of membranes of old subdural blood seen was very small and there was fresh blood in one compartment that had no previous blood. Although re-bleeds do occur, they do not lead to collapse without something else. Equally, a re-bleed would also not cause retinal haemorrhages nor the skull fracture. Ms Crowley asked why the bleeding could not move to another compartment of the brain not previously affected. He explained that there are the equivalent of curtains between the compartments that usually prevent such

transfer but, if it did occur, he would expect the watery old stuff to flow more easily than the fresh gooey stuff and there was no watery old stuff in this particular compartment. He could not see how resuscitation could have caused the skull fracture. It would only happen if someone slammed the child down in panic and there was no evidence that had occurred at all. His conclusion was that the fall on the 10th March had nothing to do with the collapse on 25th May. Finally, Ms Crowley asked him about a report that Elsie had experienced excess bleeding when an attempt was made to put a line into her at the hospital. In fact, this was subsequently dealt with by Dr Michelle Jardine but his evidence was that nobody had identified a major clotting abnormality and that severe head injury can cause transient clotting disorders.

63. The final expert witness was Dr Richard Bonshek, consultant ophthalmic pathologist. He told me the bleeding he found to the eye was most likely caused by severe head injury. From the information provided, he could not find anything that would cause that degree of bleeding in those locations other than trauma. He dated the bleeding to three to four days or so before death. It was unlikely to be caused by CPR, given the extent, pattern and combination of the bleeding. When asked by Ms Crowley, he said he was not aware of anything involving ventilation causing retinal haemorrhages. Research at Great Ormond Street Hospital showed retinal bleeding either as a result of severe trauma or some other explained cause. Severe clotting defects could cause retinal haemorrhages, so it was important to exclude that but it would be unusual to have such massive bleeding of this nature as the first manifestation of such a condition. In any event, this was irrelevant as he was satisfied Elsie had no such clotting disorder. He was asked about other conditions, such as patholoedema or Terson syndrome. He responded that Elsie only had mild patholoedema and she did not have Terson syndrome. The only other explanation, he said, was severe trauma caused, in this age group, by non-accidental injury. The swelling in the brain did not cause retinal haemorrhages. It could have caused some of the bleeding around the eyes but not the retinal folds which were crater shaped bleeds.

The factual medical witnesses

64. It is entirely right to say that two of the factual medical witnesses, Dr Nia John and Dr Stephen Leadbeatter, were more circumspect in their evidence than the expert witnesses. This circumspection did not apply to Dr Michelle Jardine. I am clear that it was right for Dr John and Dr Leadbeatter to be cautious. They were often asked about matters that were not their specific area of expertise. They were both reluctant to rule out some possible explanations of injury. I am clear that this reluctance should not prevent me in coming to clear conclusions. First, the expert witnesses did not have this reluctance. Second, it was clear that even Dr John and Dr Leadbeatter thought these potential explanations to be, at best, unlikely, if not very unlikely. I remind myself that I have to make findings of fact on the balance of probabilities. Third, by and large, the areas on which they were circumspect were not their direct areas of expertise, unlike the expert witnesses. Fourth, they did not contradict the expert evidence.

65. Dr Nia John is a consultant community paediatrician with Cardiff and Vale University Health Board, working at the Children's Hospital for Wales. She told me that it was necessary to identify different diagnoses and not jump to any conclusion. I accept that. I also accept that she was concerned as to the possibility that there had been an earlier bleed from the March fall consistent with an evolving head injury but her evidence to me was clear that ten weeks was a long time for a build-up of intracranial pressure and she told me she deferred to the experts as it was outside her area of expertise to give a definitive diagnosis. She confirmed that all the clotting results were normal and, although she was taken to various abnormal test results from the time in hospital by Ms Crowley, both Mr Williams for the Guardian and Mr Tillyard were able to get her to confirm subsequently that the initial results on admission to hospital were normal. The deterioration clearly was a consequence of Elsie being profoundly unwell. She told me that Elsie was a fit healthy little girl with no indication of a metabolic condition. There were some mild concerns as to developmental delay. She did indicate that she considered that there were further enquiries that had not been followed through as she would have wished but I am satisfied that this was because of Elsie's death and the issues have now been dealt with satisfactorily by the experts. The most important of these for her was further blood testing by a consultant paediatric haematologist but I am satisfied that Elsie had no blood clotting disorder.
66. She confirmed that Dr Sara Harrison had re-examined the November X-ray and found two broken bones. She told me that Dr Harrison had said it would be unusual to break two different bones in a fall like the fall described by Matthew. She added that a twisting injury is typical in a toddler fracture but the distal femoral metaphyseal is more difficult to explain by that mechanism. She said that, if they had known at the time, they would have instituted a safeguarding procedure.
67. I have already indicated that Dr Leadbeatter was cautious in his approach. For example, he could not rule out the insertion of a line in hospital causing the damage to the tibia but he did say that the fracture of the femur would require twisting. He had seen one case of a posterior rib fracture where there had been resuscitation but nothing to imply any inflicted injury or other explanation for death. Having said that, this does not deal with the evidence of Dr Rose as to how difficult it would be. He did say that vigorous physiotherapy might have a potential to cause rib fractures but Dr Jardine later said that the physiotherapy was done to the front and the side.
68. Ms Crowley submits to me that there is a conflict between Mr Richards and Dr Leadbeatter as to earlier bleeding but I do not accept that. Mr Richards found evidence of earlier bleeding, albeit in small amounts. I accept that Dr Leadbeatter told me that there was re-bleeding but it does not help Ms Crowley as he went on to say that such a re-bleed does not present itself in a catastrophic collapse. Where he had found evidence in two children of re-bleeding in the same area, it was attributed to re-injury not spontaneous re-bleeding. Although a re-bleed could result in cardiac arrest, an explanation had to be found for the re-bleed and, in particular, the skull fracture. It is right to say that he did say that it could be caused by a lesser degree of force than otherwise, which could

be within the range of normal handling. This is, however, not the evidence of the other experts and it does not explain all the other injuries, the most important in this context being the fractured skull.

69. He was asked about the lack of axonal injury and he did say that axonal injury was not seen in many cases which are considered to be caused by injury. He also said firmly that nothing takes him to the idea that Elsie may have suffered a stroke. He was asked about other tests that could have been performed but his fair response was to say that, although there were other tests, there has to be a clinical suspicion of such a diagnosis before extending to such areas. Moreover, he said that he thought the tests done so far were sufficient as the tests done had not found any abnormality. I accept that evidence, particularly as none of the other experts have suggested any further tests. Although he had not seen swelling or visible bruising at the site of the fractured skull, there had to have been impact. It was, however, very difficult to say where the impact would have been as the fracture can occur away from the site of the impact. He did see bleeding in the soft tissue of the anterior neck structures. He saw no evidence of a blood clotting disorder.
70. Overall, I have come to the clear conclusion that, despite his caution, Dr Leadbeatter's evidence does not undermine that of the five instructed experts in this case and, if anything, supports the contention that there was non-accidental injury at the time of Elsie's collapse.
71. I did finally hear from Dr Michelle Jardine, a consultant in the paediatric intensive care unit who had been responsible for Elsie's care from shortly after her admission. She was clear that Elsie had suffered a prolonged period of cardiac arrest, amounting to at least seventeen minutes, which meant that she was unlikely to survive. She was brought to court primarily to deal with her comment that she had found Elsie to bleed extensively when at least one of the lines was put into her in the hospital. She was clear that following Elsie's long cardiac arrest, the blood can become thicker and the patient can bruise easily. The blood clotting tests were undertaken and they were normal. It was therefore not appropriate to make a judgment based on what she had said at the time she was inserting the line. I take the view that this is the end of this aspect. She was also asked about the need for physiotherapy and aggressive ventilation. She told me that the physiotherapy was necessary to clear the fluid on Elsie's chest. She described it as "gentle" massage at the front and side which could look distressing but was performed by very experienced nurses. I reject any suggestion that this could have caused rib fractures to the posterior ribs. She accepted it was difficult to ventilate Elsie but Elsie did not go onto the very heavy oscillator. It was hard work but the only deleterious consequences would be to her lungs, if it continued for days or weeks. There would certainly not be damage to the brain. It is therefore impossible to see how this could have caused the injuries in Elsie.
72. I am therefore clear that I should accept the evidence of the five instructed experts that Elsie suffered from severe trauma that led to her fatal collapse on the afternoon of the 25th May 2016. Her injuries included subdural haematomas; retinal haemorrhages; hypoxic ischaemic brain damage; a

fractured skull; fractured posterior ribs and a fractured femur. I am prepared to accept, on the balance of probabilities, that the damage to her tibia could have been caused by the insertion of a line but all the other injuries occurred before she entered hospital. I specifically reject the suggestion that the rib fractures were caused by either CPR or physiotherapy. I reject the contention that the collapse related in any way to the fall down the stairs in March 2016. I am satisfied that she had recovered fully by May 2016 and was perfectly normal in her presentation on 25th May until her fatal collapse. I am clear that there is no possible innocent explanation for her skull fracture or the fracture of her left femur or the fractures to her ribs or the so-called triad of injuries to her head.

The other witnesses

73. It is right to say that both Matthew and Craig Scully-Hicks passed the rigorous selection process to be approved as adopters with flying colours. I have seen numerous references from family and friends as to Matthew's fine character. These include references from his parents; an instructor at the gym where he used to train; one of his teachers at school; parents of two of his school friends, one of whom is a foster mother of thirty-two years standing; two other neighbours in Wellwright Road; a Woman Police Constable and the Manager of a gym where he worked. All say that he was a man of the utmost respectability and good character who showed kindness, love, patience and care to anyone in whom he came into contact, including children. I have seen an album of photographs showing very happy children with their careful and doting parents, enjoying activities and life in general, with happy and sunny dispositions.
74. I also heard oral evidence from three such witnesses, namely Lisa Hill, Craig's sister; Helen O'Gorman, Craig's best friend, who also knew Matthew before Matthew and Craig met; and Kerry Richards, Matthew's niece. All three were equally complimentary about Matthew. For example, Lisa Hill told me he was a "brilliant Uncle" to her three sons, now aged 5, 4 and 2. She had no reservations about him and Craig starting their own family. He wanted to give up work to look after the children, as his mother had done for him. She regularly went out with him and the children whether it was to a toddler playgroup midweek or outings at the weekend. He was besotted by the children and C and Elsie adored him. She had no anxieties about Elsie who was a joy. Matt treated them equally and loved them both. Elsie showed no reservations at all about Matt. Indeed, Ms Hill spent some time with the family on 25th May. They went to the toddler playgroup together. Elsie was happy and in good spirits, playing normally.
75. Helen O'Gorman confirmed this evidence. She said that Matt is generous, kind, funny and a lovely person. He was wonderful with Lisa's children. Both Matt and Craig equally wanted children. It was the final piece of the jigsaw for them. She was so close to both men that she even had a key to their house. She detected no stresses or complications with the children and she was there a lot. Elsie was very well settled. She was a happy nosey beautiful little girl and C is a wonderful little child. There was nothing that concerned her at all.

76. Kerry Richards told me that Matthew had moved in with her after Craig and he separated on 17th November. This was a poignant day as it would have been Elsie's second birthday. She was present on 25th May and the day was typical. She loved them. They were her family. They were amazing kids and Matthew was an amazing parent, so caring and considerate. He always put the children first. They idolised him and looked up to him. Their eyes lit up when he walked in. Indeed, Elsie would look for him if he left the room. He is the most patient man she had ever met in her life. The children never once "pushed his buttons" and they were his everything. There was nothing striking at all on Wednesday 25th May. It was a normal day. C was like any sibling to Elsie. C would give her a kiss. They loved each other.
77. It is right to say that all three witnesses had real difficulty when Mr Tillyard asked them about the reasons for the separation between Craig and Matthew. I am satisfied that all three knew exactly why they had separated but the witnesses found it almost impossible to tell me and they were equally incredulous as to the suggestion that Matthew could have harmed Elsie. Whilst this detracted from their objectivity, it does not lessen their observation evidence as to Matthew and the children which I accept was given genuinely and reflected what they saw. It is the puzzle of this case.
78. I also heard from three Vale of Glamorgan employees, Laura Neal, the social worker for Craig and Matthew; Cheryl Longley, Elsie/Shayla's social worker and Eryl Bowers, the Independent Reviewing Officer. All three primarily gave evidence in relation to the bruise sustained by Elsie in December 2015 but they confirmed the evidence given by the character witnesses. Laura Neal told me that both Matthew and Craig were open minded and sensible in their approach to parenting. It was a very positive assessment. C had some developmental delay but they had followed up on that delay. She had no reservations in recommending them as adopters for Elsie. The foster carer who had looked after Elsie before placement was very positive as to how they were parenting both Elsie and C. In answer to a question by Ms Henke for Craig, she said that there was nothing to suggest Elsie would be injured. Ms Longley told me that they met her high expectations and she was not disappointed. Eryl Bowers said they were meeting Elsie's needs and a very positive situation was reported. Her observations were consistent with the reports. I will, of course, have to deal in due course with the three serious injuries sustained by Elsie prior to 25th May 2016. At this point, I am merely noting the position as it presented itself outwardly to all those who came into contact with the family.
79. I did, however, hear of another side. I accept that this side did not surface until after the death of Elsie when the Police took witness statements from neighbours. Susan Bevan of Wellwright Road, Fairwater confirmed her statement given to the Police on 28th June 2016. She said that she was not close to the Scully-Hicks but relations were perfectly friendly with the exchange of Christmas cards. She said that it is possible to hear sounds between the two houses but you can only hear specific words in the room at the back, now occupied by her son, James that adjoins what was the kitchen of the Scully-Hicks. Initially, she only heard the normal sounds of having a child, such as

occasional crying and general comments such as “don’t do that” which did not cause her concern but that was until Elsie came along. Elsie cried a lot. When she was in the back room, she heard swearing that she didn’t particularly like. She accepted that “shut up” is not swearing. It was a baby cry not a little child cry. It is right to say that she thought that C had been fostered and had left although she then later saw C. She told me she only knew what she heard. She did say that it was only an assumption as she could not see through walls but she had said what she believed she had heard. She once heard what sounded like an adult gasp. She wondered if someone needed help or urgent attention. She then heard normal talking, so she relaxed. She did not hear blows or thumps or the sound of a child being hit. The responses she heard to C had been all very caring. She did accept that nothing she heard caused her to be concerned for the safety of either child. In answer to Ms Henke, she said it all appeared normal when Craig was there. She confirmed in answer to Mr Williams, for the Guardian, that everything she said in her witness statement was true.

80. Although I accept she was a slightly hesitant witness, I found her son, James Bevan to be far more positive. He told me he heard an “aargh” that was not delivered in a happy way. Although he accepted that he could have misinterpreted it, he considered he heard a baby girl crying whereas the older child never seemed to make any noise but he did not know if the older child was in. He accepted he was a bit “nosey” but it was intruding on his day. The events that peaked his interest were the ones in his statement. He was sufficiently concerned to mention it to his mother. He told me he heard the child screaming although he didn’t hear any smacking. He heard “shut up you little fucking brat”. It was pretty clear and he was rather taken aback by it. On another occasion, he heard “shut up you silly little cunt”. The music was then turned up loudly for a couple of minutes before being turned off, whereupon he heard the baby crying again followed by “shut up” a couple more times. Although he did not know when, words like that “stick in your mind”. He once heard what he believed potentially was a plate hitting the floor and a door being slammed. He accepted it could have been the child causing the plate to crash.
81. Ms Crowley submits to me that there are several unsatisfactory aspects to this evidence but I do not accept that. She contrasted the evidence of both Matthew and Craig that they could not discern words said next door when voices were raised there. I accept that but I am equally clear that the raised voices from the Bevan’s home involved another occupant of their home and did not emanate from James’s room which was the one room from where it was possible to hear the detail of what was happening in the kitchen next-door. I accept that Mrs Bevan was not aware of Elsie’s arrival in September and thought that C had left around Christmas time. Ms Crowley also draws my attention to alleged inconsistencies in their descriptions of what was heard and that James could not differentiate between the two children’s voices but I reject that. He was clear that he was hearing a baby crying and I am satisfied he was correct. I simply cannot see why either witness would make any of this up. They heard crying and they heard an aggressive and intemperate response, including thoroughly inappropriate language from the adult carer. I accept they did not hear violence although the turning up of the music is suspicious at the very least. I accept they did not consider it sufficient to report it but they heard it and they were

telling me the truth. James was sufficiently concerned to tell his mother although he bowed to her experience as a nurse as to what should be done about it. Ms Crowley submits that this is so out of character with what we know in relation to Matthew that I should reject it but I consider this actually goes to the very heart of the matter as to whether Matthew had two different personas, namely one for the outside world and another when he found himself stressed and out of his depth in caring for a difficult baby/toddler. I accept the evidence of both the Bevans. They are not lying and they are not mistaken.

82. I heard from a number of other witnesses on behalf of the Local Authority. Laura Neal, Cheryl Longley and Eryl Bowers from the Vale of Glamorgan all dealt with the bruise to Elsie's forehead that I am satisfied occurred on 16th December 2015. There cannot really be any doubt about it as Matthew texted Laura Neal that day to tell her about it and she replied early on the morning of 17th December 2015. There was an adoption review on 17th December 2015. Eryl Bowers kept the minutes. I am satisfied that the record keeping of all three witnesses was not good. They clearly have virtually no independent recollection of the meeting yet the minutes are not accurate. I am satisfied that Craig was present for part of the meeting before he went to collect C but he is not recorded as being present in the minutes. There is absolutely no reference to the bruise in the minutes. This surprises me as all three social workers must have seen it. It was a "real shiner". There is no reference to the explanation for it and it was not brought to the attention of the adoption court.
83. It follows that it is very difficult to know exactly what was said by Matthew. Jodie Golten, the Health Visitor gave evidence about this. She had visited on 21st December 2015. She saw the bruise and she noted it. Her record keeping is far better. The note is divided into sections. The first section is "S" which is what she has been told. It reads that "Dad reported that Shayla had fallen as she is now trying to walk and she is into everything. Dad reported he sought medical advice after this accident. Dad reported that her plaster cast was off and she had been discharged from the hospital". The second section is "O" for "Observation" and records that she observed a large bruise to Elsie's forehead and left eye. It was put to her by Ms Crowley that the reference to seeking medical treatment referred to the previous fracture in November. Ms Golten did not accept that and I accept her evidence. There is previous reference in the notes to that injury and the fact that a plaster cast had been applied so the Health Visitor would have known already that medical advice had been sought in relation to that. This reference was to the fall causing the bruise. She did not record it wrongly. She was therefore misled.
84. I have reached the conclusion that I cannot rely on the evidence of Cheryl Longley as to this as she is "all over the place" in relation to this aspect. She first said that she saw the bruise on 19th January but that cannot be right given the text message. She then said that she now recalls it was 17th December. An entry by Jayne Carr, another social worker says that Cheryl had advised her that that parents had taken Elsie to the GP. I did not hear from Jayne Carr but Ms Longley had originally said that Matthew had told her on 19th January that he had discussed this with the health visitor. She then said this took place on 17th December but that cannot be right as the Health Visitor did not visit until the

21st December. She told me that she did recall a conversation about the parents taking Elsie to the GP but I cannot rely on this.

85. I also heard evidence as to the mechanism for the injury (or as we now know, injuries) caused to Elsie's leg on 5th November 2015. There is no doubt that Matthew has told this court, Dr John and the Police that the injury was caused after Elsie fell while playing at an activity table. I have even seen a photograph of her at the activity table. Two witnesses told me that they had been told at the time by Matthew that Elsie had fallen whilst on a baby walker. First, I heard from the GP, Marina Arulanandam. I am satisfied that she had a good relationship with Matthew and has absolutely no reason not to be frank with me. She records in her notes that, at a consultation on 9th November 2015, Elsie "fell off a baby walker". I accept it says one week ago, which was inaccurate but the note as to the baby walker is clear. Elsie was referred to the hospital and Mr Andrew Miller wrote a letter dated 12th November 2015 in which he said that she was "pushing a walker" but I did not hear from him and so cannot rely on that evidence. Eryl Bowers also recorded that she had a discussion with both parents and was told that Elsie had "*taken a fall and had landed awkwardly whilst using her baby walker*". She told me she had recorded what she heard and I accept that. I therefore have evidence from two witnesses and I accept that they were told that it was a baby walker. If it had been one witness, I might have put it down to an error but two is too much of a coincidence. I accept that the story has changed from a baby walker to an activity table.

The evidence of the parents

86. Finally, I heard from both parents. There is a striking contrast between them. Craig has been immensely distressed throughout this case and particularly when he was giving evidence to me. Matthew has displayed virtually no emotion whatsoever. I accept that different people react in a different way. I further accept that a failure to demonstrate emotion is not an indication of guilt. I do find it surprising, however, that he did not show any emotion during his oral evidence to me, apart from one brief occasion, in a case that is fraught with emotion.
87. Matthew gave his evidence first. I accept entirely that, in his evidence in chief to Ms Crowley, he was impressive and presented, as I am satisfied he has presented throughout to friends and family, as a pillar of the community and a loving father. He told me he has a lot of good memories of his mother being there for him as a child. He wanted to provide the same for his children. He was willing and happy to give up work to do so. It met his expectations. He was able to see the children develop and take their first words and steps. He said he was able to help them achieve. He said there was absolutely no truth in the allegation that he had inflicted serious harm on Elsie although he was very aware of why that was being said. He said that, rather than that, it could potentially be a series of unfortunate events but he understood that the likely clinical picture was one of inflicted injury but he had not inflicted any injuries. He said he did not struggle coping with two children and that, if that had been the case, Elsie and he would not have had the obvious bond they had. He did

not resent Craig being away at all. It ensured the family had everything it needed. They had noticed that C was not meeting milestones and had a very short concentration span. C was not able to complete activities. C is a very busy child for whom they had fought hard, working closely with C's nursery. Elsie was a lovely little girl who lit up a room and commanded attention wherever she went. She waved at everyone and would come and find Matthew if he left the room. He loved her very much. He did not accept the evidence of the Bevans. He has never sworn at the children. Indeed, he generally doesn't tend to swear very much and the words quoted are not anything he would seek to use. He and Craig heard various arguments from the Bevans' home, with loud music at parties such that once they retaliated with loud music of their own the next morning. They were once woken up by hearing shouting through the wall but they were never able to tell what was being said. The evidence of the Bevans had to be a mistake as he does not accept he ever swore at his children. Finally, Ms Crowley asked him about the separation. He said that Craig has asked him if there was anything Matthew needed to tell him and he said there was nothing. Craig has been given a picture from the medical evidence that there is a high possibility that Matthew had done this and, unfortunately, he has accepted that. It was Matthew's word against their word. He was devastated. He has lost his daughter. C is in care and his husband doesn't believe him. He had lost everything in the space of six months.

88. He was not nearly so impressive under sustained but perfectly proper cross-examination from Mr Tillyard. It was put to him that it all sounded very idealistic and that life was nothing like that. He said his view was realistic not idealistic and that it was a perfect life. Everybody was telling him what a good Dad he was. He said that life with the children had not been without its challenges. He accepted he had been with other people quite a lot of the time. He agreed that Elsie had had four serious injuries since being placed with them and that Craig had been away on each occasion but that was a coincidence. Mr Tillyard then moved to 25th May. It was put to Matthew that he told the ambulance men that he heard a scream. He denied that he said that. As the ambulance men were not called, I have come to the clear conclusion that I cannot make a finding as to that aspect. I can, however, consider the 999 call as there is an accurate transcript. He said he was "just changing my daughter for bed and she went all floppy and limp and now she's not; she's not doing anything; she is lying on the floor." He denied that was different to his current account but I am satisfied it is different. It is clear that he was telling the operator that it happened while Elsie was being changed by him rather than while he was out of the room. He did not know how she got the bruising to the scalp/forehead or the skull fracture. He could not recall an event but he was not watching her 24 hours per day. He said she would not always cry if she fell over and bumped herself. He cannot, however, sustain a suggestion that this happened when he wasn't looking as it is clear that Elsie was fit and well when he changed her and she could not have had such an accident while he was taking the nappy away as she remained lying on the floor on his case. Moreover, I am satisfied she would have cried profusely if she had fractured her skull. He accepted that he did not have an explanation as to a traumatic event that enabled him to explain Elsie's injuries but he is a very intelligent man. He seized on the various possibilities put by his leading counsel to the doctors but I regret to say

that I am quite clear that he was lying to me as to what happened on 25th May 2016. I will return to this when I make my findings of fact.

89. He was asked about the previous injuries. He denied that he told the GP and Eryl Bowers that Elsie was using a baby-walker when she twisted and fell on 5th November 2015 and later said that he did not remember using that term to the professionals. I do not accept his evidence. It is one of the difficulties when you lie about such events. It is easy to forget what version you originally gave months before. I do accept that it is difficult to remember detail but that has not been his case. He accepted that he was not aware of the second fracture at the time but stuck to his explanation saying he could not explain it further. In relation to the bruise on 16th December 2015, he said that Elsie was pulling herself up on the toy kitchen table and her chin was next to the top surface. She was almost to the point of fully standing. He accepted that to do so she would be pulling outward force on the door, which, of course, would explain why it might fly open. It was put to him that she would then fall away from the kitchen but he said he didn't know as he wasn't an expert in physics and, regardless of what was being put, she fell towards the kitchen. It was put to him that, if she hit her head on the edge of the kitchen, it would be a horizontal not a vertical bruise. He said that was not how the bruise came up. He denied it was a plausible lie and said that Craig believed he was telling the truth at the time. He said the Health Visitor told him to get it checked out but he did not do so as it was already five days later and she seemed ok. He denied saying he had already done so. Like the Bevans, the Health Visitor had got it wrong. I do not accept his evidence in this regard either.
90. He was then asked about the fall down the stairs. He said that he did not secure the stair gate when he first went down the stairs to get the washing as the basket was at the bottom of the stairs. He had been described by witnesses, including Craig, as "Mr Safety" or "Safety boy". I accept Mr Tillyard's submission that leaving the gate open even briefly would not be "Mr Safety" in action given that Elsie was upstairs, even if she was in her bedroom initially. When he returned upstairs, he pulled the gate behind him. He accepted he didn't hear a clicking sound, denying that the gate clicked on closing but it clearly did click when it was brought into court by the Police. Indeed, he accepted it had failed to close on a couple of earlier occasions. He said he saw Elsie leaning against the gate and it swinging open. It was set up in such a way that it would swing out over the first large step and would go towards the wall. My note says that he first told me that he didn't see Elsie fall but he then said he saw her fall forwards. I do not wish to be unfair to him as I may have got my note wrong. He put the washing down taking his eye away from her such that he did not see her fall onto the top step. By the time he got to the gate, she had tumbled down the stairs. Mr Tillyard put to him that, if he had dropped the washing and immediately gone to catch her without taking his eye off her he would have been likely to get there in time but he did not accept that. He accepted he didn't see what happened but said he went as quickly as he could and feels he acted appropriately. He said Craig asked him what had happened and he explained what he had told the court. Craig was more concerned that Elsie was ok. He accepted he wasn't taking proper care.

91. Craig gave his evidence after Matthew. I have already indicated that he was extremely distressed throughout. He is now staying with his friend Helen O’Gorman as he told me he did not want to be alone in his home. He is lonely and frightened. The separation happened around the time of what would have been Elsie’s birthday. It was his decision to part. He did so as the medical evidence was telling him that Matt had hurt his daughter. He received Mr Richards’ report and then that of Mr Rose which led to lots of discussions with Matt. He was asking Matt what he had done and why was the report telling him something different. Matt continued to deny that he had done anything but the reports were categoric. He didn’t know what to think. Over the following days, there were endless heated arguments. He accepts that Matt hurt Elsie and she is dead because of it. He became even more distressed at this point. He said it is a permanent separation. He had taken his vows in 2012 very seriously but has removed his wedding ring. He accepted Elsie’s skull fracture was caused by an impact and he accepted the medical evidence. He also accepted the rib fractures and the fracture of the left femur were not accidental. He did say, however, that nothing makes him think he should have picked up on it at the time. No concerns were ever raised with him by professionals. The children idolised Matt and he idolised Matt. He became very distressed again. He said he didn’t know this “monster”. The explanations for the earlier injuries were plausible. He was unable to say the explanations could not have caused the injuries. He did not question them at the time. He accepted that he was more concerned about Elsie’s health than the detail of the explanations. He told me he will continue to “beat himself up about it”.
92. He was then cross-examined by Mr Tillyard and he confirmed that he believed Matthew had killed Elsie. Matt must have fractured her skull as he had no idea who else could have done it. There was nobody else there so it must have been him. Matt had lied to him ever since. He frankly accepted that he wanted not to believe it and he was numb and devastated. He told me he didn’t feel anger towards Matt and he could not explain why. He said it only occurred to him during the trial that it might have made a difference to Elsie at the hospital had Matthew told the truth. In fact, given the terrible injuries that Elsie sustained, I find that it would not have done so but that is no excuse for a perpetrator as the perpetrator would not have known that at the time. He said his sister is confused because he said he didn’t recognise the monster that did these things to Elsie and she has not read the medical reports. He told me it was his job to protect Elsie and he would want ongoing involvement with children’s services. He accepted that he had described Matthew as “Safety Boy”. C had once fallen down the stairs in 2014 when Craig was there so he recognised that such a thing was possible. In relation to the November 2015 incident, he told me he did accept that something happened that Matt is not telling us about. He said he did wonder why Elsie was having so many accidents when C was not having them but the professionals had accepted the explanations. He said that he tried to make sure the stair gate was shut and he assumed Matt did so as well. He accepted that Matt should not have left it open, even briefly, when Matt went downstairs. He accepted that all this was awful as Elsie had been entrusted to their care.

My overall conclusions

93. I have come to some very clear conclusions about the events of 25th May 2016. I have already indicated that I accept the expert medical evidence. Elsie had been entirely normal all day. She had eaten a meal of sausage and vegetables for her tea which she finished at 5.45pm. Sometime around 6pm, she suffered extremely serious injuries that resulted in her death. I find that she had almost certainly been playing up. I find that she had been crying and was very difficult to settle. Matthew lost his temper with her as he had done before when nobody else was present. He picked her up and shook her very hard. Her head will have gone backwards and forwards at great pace causing cardiac arrest, subdural haematomas, hypoxic ischaemic brain damage, extensive multi-layered retinal haemorrhages and bilateral retinal folds. He gripped her so hard that he fractured several of her posterior ribs. He shook her so hard that she broke her left femur. He then threw her to the floor such that her head impacted with something hard causing bruising to her forehead and a fractured skull. There was nothing that could be done to save her. These injuries resulted in her death.
94. I do not have any doubt about this. I am satisfied it was what occurred. There is no other explanation for her injuries. She had fully recovered from the March incident. Children do not suddenly collapse of their own volition with fractured skulls, broken ribs, a broken femur and serious brain injury.
95. I recognise that this behaviour would have truly shocked all those who gave me character evidence on Matthew Scully-Hicks' behalf. It was not the man they knew. It was not the man the social workers saw. It was not the man Craig Scully-Hicks knew. I have come to only one conclusion. Matthew Scully-Hicks is a Jekyll and Hyde character. In private, he was quite unable to control himself when Elsie played up. He was able to cope without difficulty when there were others around. The evidence of the Bevans shines a clear spotlight on the situation. When Craig was there, they heard nothing. When others were there, they heard nothing but when Matthew was there on his own, the little girl played up. His reaction was not responsible. He shouted at her such that the Bevans could hear. He called her names. He swore at her in unacceptable language, including some truly shocking words. They heard this and they have not made it up. He also assaulted her. We know this from 25th May 2016. On the balance of probabilities, I find that this explains why he turned up the music on one such occasion. He could not risk the neighbours hearing Elsie's distress. After she calmed down, the radio could be turned off.
96. So I now turn to my findings as to the earlier injuries. It is clear that Elsie suffered two broken bones on 5th November 2015. The description given of her twisting and falling could, just, explain one injury. It cannot explain two. I accept the medical evidence in this regard. The reason for two broken bones was that it was not a fall. It was another assault. Again, I find that it was shaking with her legs flailing around such that two bones were broken. There may well have been bleeding on her brain. We will never know. The assault did not, however, cause the catastrophic injuries that the assault on 25th May 2016 caused. I hope that this did not embolden Matthew Scully-Hicks. After all, he knew it had caused a broken ankle. Assuming this was the first assault, he

should have admitted it and told professionals he was not coping with two children. He could not bring himself to do so and it eventually resulted in Elsie's death.

97. I turn next to 10th March 2016. I have already found that it did not play any part in Elsie's death in May 2016 but it would not have availed Matthew Scully-Hicks if it had. I am not satisfied by his explanation. I was told he was Mr Safety by his own supporters. He would not allow the stair gate to remain open. I am not satisfied by his account. I am satisfied, on the balance of probabilities, that this was a third shaking injury. This one did cause injury to the head. I am satisfied there was subdural bleeding. Elsie was almost certainly briefly unconscious. She vomited, including some blood. The shaking did not cause the same catastrophic injuries as occurred on 25th May 2016 but, every time she was shaken, it may have increased the likelihood that the next injury would be more serious. I do not know if the Bevans heard this incident but it was the sort of incident they did hear only they did not realise it led to shaking.
98. Finally, I must deal with the bruise on 16th December 2015. I have had trouble with this injury. I do not accept Matthew Scully-Hicks' account but I have decided that I can only find this incident unexplained. A bruise is not an injury associated with shaking per se. I have already found that it would be wrong for me to assume that Elsie would fall backwards from the play kitchen if the door swung open without further testing. The door might have swung open and then closed again. I have limited expert evidence as to this. I have formed the clear view that it would be mere speculation for me to find that there had been some form of assault that had led to Elsie being seriously bruised. It is trite law that a judge cannot make findings of fact based on speculation or suspicion.

Alleged failure to protect

99. I must now turn to consider the issue of whether or not Craig Scully-Hicks failed to protect Elsie. The Local Authority (Cardiff) invites me to so find. The Guardian does not. I have to consider this in the light of the fact that I have already found that, to the outside world, Matthew Scully-Hicks presented as a model citizen and parent. He completely convinced the Vale of Glamorgan that he was a suitable parent for C. The court was equally convinced and made an adoption order. Moreover, he did nothing in relation to C to challenge that assessment. He convinced the Vale a second time that he was a suitable parent to adopt Elsie and she was placed with him and Craig. No criticism could possibly be made of anybody up to that point.
100. Thereafter, there were three serious incidents prior to the assault on 25th May 2016 which led to Elsie's death. I remind myself that my findings in relation to these previous incidents have been made with the knowledge of Elsie's traumatic collapse and subsequent death on 25th May 2016 and with the benefit of expert evidence as to that and as to the second fracture on 5th November 2015. On the first such incident on 5th November 2015, only one fracture was spotted and the doctors told the social workers that, on that basis, the explanation given to them was consistent with this being an accidental injury, regardless of

whether the fall was from a baby-walker or a play table. I consider that, at that point, it was reasonable for the explanation to be accepted.

101. Two further serious injuries occurred thereafter. The first was the bruise. I have been troubled by the fact that this was not noted in the minutes of the adoption review meeting. It was not brought to the attention of the court that made the adoption order on 12th May 2016. There seems to have been a straightforward acceptance that it was an accident, possibly as a result of it being immediately reported to the Vale in the text message. There was no investigation as to whether or not Matthew Scully-Hicks had indeed taken medical advice as he told Eryl Bowers and the Health Visitor. I accept that this is all with the benefit of hindsight. Moreover, I have been unable to find that this was non-accidental injury. I am absolutely clear that, if the professionals were not concerned, it would be unreasonable for me to expect a parent who was not present at the time to be concerned.
102. The final injury was the fall down the stairs. The number of serious incidents was climbing rapidly at this point but the doctors at the hospital accepted the explanation and so did the social workers. Notwithstanding all these incidents, there remained an unequivocal recommendation to the court that there should be an adoption order. It never crossed the mind of any professional that there was anything untoward. Whether reasonable or not, Craig knew this and he was entitled, in my view, to accept that this was correct.
103. The only caveat to that would be if Matthew had displayed behaviour at home that would have put Craig on notice that something was not right. One of the conundrums of this case is that, on the surface, Matthew and Elsie were bonding. She showed no fear of him. She was happy to go to him. I am not a psychiatrist. I have not heard expert evidence and I do not know why Elsie reacted in this way. It was suggested by Ms Crowley that this is evidence that the assaults did not take place whereas I am clear that they did. But all the other friends and family only saw this side of Matthew and Elsie. I am clear that they were not all lying to me. Was it different for Craig when they went home? I am satisfied it was not for two reasons. First, I have the evidence of the Bevans that none of this happened when Craig, or anyone else for that matter, was present. Second, I have heard Craig give evidence and be cross-examined with great care by Mr Tillyard. I am quite clear that he was telling me the truth. He did not have any idea as to what was going on. It has deeply shocked and stunned him. If that is not the case, he is a better actor than Lord Olivier but I am clear he was not acting in any way. He is a devastated man who has found it almost impossible to accept what he now knows is true but he most certainly did not know it early on the morning of 25th May 2016. I also make it clear that the truthful and honest way in which he gave his evidence contrasted for me with the evidence of Matthew in which I had less and less confidence as Mr Tillyard proceeded to expose all the flaws and inconsistencies in what he was saying. Mr Tillyard failed to establish any flaws or inconsistencies in the evidence given by Craig. I have therefore come to the clear conclusion that I should exonerate Craig of any failure to protect Elsie. There is nothing he could or should have done but I fear he may find that difficult to accept.

104. There is no question that the threshold in section 31 of the Children Act 1989 is crossed. It cannot be otherwise given the death at the hands of one parent of one of two children within their care, notwithstanding my exoneration of Craig from failure to protect. I make it clear that I have not dealt with what has happened since 25th May 2016. Mr Tillyard asked Craig some questions as to whether he should have terminated the relationship with Matthew earlier but it was not the subject of this fact-finding hearing and I accept that there is much that Ms Henke would wish to say on the subject. I make no findings in that regard at this stage.

Conclusion

105. This case is as serious a case as I have dealt with. Elsie had to be taken away from her birth mother as she was suffering significant harm at the hands of her birth mother, due primarily to her birth mother's drug addiction. She was placed with Matthew Scully-Hicks and thirteen days after an adoption order was made, Elsie died at his hands.

106. I make it absolutely clear that the fact that this was a gay adoption is quite irrelevant. Very regrettably, as a High Court Judge dealing with only the most serious matters, I have come across a significant number of non-accidental injury cases involving all sorts of different people. I am absolutely satisfied that sexuality has absolutely no role whatsoever in determining which of a very small minority act in a way that very serious injury and/or death is done to children.

107. I am equally satisfied that Matthew Scully-Hicks presented to the world as eminently suitable to adopt. A glowing report was prepared for the court and I take the view that the court was bound to make the adoption order on 12th May 2016 given the information placed before it.

108. I am also clear that Elsie's birth mother and family are entitled to know what has happened and my conclusions. They cannot be misled. I recognise that it may be difficult to give them the full details prior to the expiration of time for any possible appeal from my decision, namely 21 days.

109. I further recognise that the issues in this case and my findings will give rise to significant public interest. I indicated at the beginning of my judgment that it is not my intention in any way to stifle any such debate or to prevent access to my findings in the long term, subject to the need to protect C. Equally, however, I am absolutely clear that my findings cannot be allowed into the public domain prior to any criminal trial that may take place in this case. All those involved must recognise that. When Elsie's mother is informed, it is important that she and her family recognise that as well. Any attempt to put my findings into the public domain prematurely could well compromise any criminal trial fatally and, if that was to occur, potentially deny justice to Elsie one way or the other. It is for that reason that I am clear that there must be a reporting restriction order although I will consider the detail of it in due course. I cannot stress how important this aspect is. I make it absolutely clear that it would be a contempt

of court to break this order, including if any individual was to do so. Any such contempt can be punished by imprisonment for up to two years. I will have absolutely no hesitation in taking very firm action if any breach is proved before me.

110. Equally, the South Wales Police and the CPS must accept that publication cannot be restrained indefinitely so they must come to a charging decision one way or the other with speed. I remind myself that they have already had nearly seven months to consider this case. If they do decide to prosecute, my reporting restriction order will have to continue until the conclusion of the criminal trial to prevent any possible contamination of the jury were my findings of fact to emerge. The jury must take the decision not me. The judge conducting the trial will be responsible for regulating the publicity arising out of the trial itself. Nothing I have said should be taken in any way as attempting to influence that. I assume that there will be very significant publicity indeed, which is something that Craig Scully-Hicks and his family must be aware of so that they can prepare themselves for it if there is indeed a trial.

111. I am very grateful to all the advocates involved in this case for the great care they have taken with it and the enormous help they have given to me. I make it absolutely clear that nothing more could have been said or done on behalf of Matthew Scully-Hicks, who has had excellent legal representation throughout.

Postscript

112. Since the delivery of this judgment, Matthew Scully-Hicks has been found guilty of the murder of Elsie and sentenced by Mrs Justice Nicola Davies to life imprisonment with a minimum term of 18 years.

113. During the criminal trial, it emerged that various text messages had been sent by Matthew Scully-Hicks in which he described Elsie in terms such as “Satan in a baby-grow”. These text messages were not brought to the attention of the Family Court in December 2016 and therefore do not feature in this judgment.