

IN THE FAMILY COURT
SITTING IN MIDDLESBROUGH

Date: 20th June 2024

Before :

HHJ.G.MATTHEWS KC

Between :

Father
- and -
Mother

Applicant

Respondent

(Sarah Phillimore, Counsel instructed by Fergus Poncia, Solicitor) for the **Applicant**
(Dr.Charlotte Proudman, Counsel instructed by Morgan Wiseman Solicitors) for the **First**
Respondent
(Julie Richardson, Counsel instructed by Hewitts) for the **2ND Respondent child though his**
Children's Guardian, Helen Hale

Hearing dates: 19th to 23rd February 2024

JUDGMENT

1. I am concerned in these proceedings with one child, who I shall refer to as A, who will be 5 years old this June. He is the only child of the Applicant Father, who is Irish by birth. However, he is not the first child of the Mother, as she was previously married and has 4 children, all of whom are now adults.
2. This judgment sets out my findings following a 5-day fact-finding hearing [19th February 2024 to 23rd February 2024] in respect of Mother's allegations of domestic abuse, including serious sexual assault, which she has made against the Father. The hearing before myself was a re-trial after Mother successfully appealed the findings of

District Judge Lindsay in a judgment dated 10th March 2023, made after a fact-finding hearing which took place between 15th to 17th February and 22nd to 23rd February 2023.

3. DJ.Lindsay did not make the findings sought by the Mother in respect of sexual assaults, although she did make findings in relation to the Father's behaviour which amounted to domestic abuse in other respects. The Mother appealed the District Judge's judgment and on the 8th August 2023, I allowed the appeal and directed a re-trial, as requested by the Mother. However, I directed at that point that all of the court's findings should be re-tried. A short ex tempore judgment was given on that day and a written judgment disseminated later. That written judgment is required reading for anyone considering an appeal against this current decision.
4. The Father referred himself to a privately funded Domestic Abuse Perpetrator Course on the 31st March 2023, which he commenced on 3rd April 2024 and he subsequently made some concessions in relation to the District Judge's findings in relation to his conduct. I shall set these out later in this judgment. However, these matters were only conceded by him, after I had given a ruling in relation to Mother's appeal. These admitted matters were not subject of this re-trial, which related to allegations of incidents of serious sexual abuse by Father against Mother and her allegation of Father having perpetrated an overall pattern of coercive and controlling behaviour against her.
5. This re-trial should have taken place at the end of October 2023 but as a result of non-compliance with case management directions by those representing the Mother, it was agreed between the parties that the 5-day trial would have to be adjourned and re-listed at the first date convenient to those representing the parties, rather than for court

availability, being the date in February 2024. This was despite my best efforts to keep the trial on track for the October date.

6. The hearing of evidence concluded late on the final day, 23rd February 2024 at 6pm when the parties accepted that the time allotted had been exhausted and they subsequently agreed to file written submissions by 4pm on the 8th March 2024. Submissions on behalf of the Father were filed well in advance of that deadline. An extension for the filing of written submissions for the Mother was requested on the 8th March 2024, on the basis that the draft document required the approval of the Mother. However, subsequently a further extension was requested on the basis that Counsel who had represented the Mother consistently since the appeal notice was filed and at this trial, would not be preparing the document as the Mother was unable to put her in funds to do so.
7. The written closing submissions were eventually produced late on 15th March 2024. I apologise to the parties for the very lengthy period which has been taken to write this judgment. This is attributable to many other weighty court commitments, outstanding judgments, a considerable administrative burden as Designated Family Judge and planned leave. However, over and above all of those factors has been the sheer complexity and difficulty of the case itself.
8. This hearing and the preparation of this judgment has highlighted the following:
 - i) The importance of resolving issues such as those which have been the subject of this fact-finding hearing, as close in time as possible to the events in question; this hearing took place more than four years after some of the key events. The delay in resolving the issues has likely compromised the quality of

the evidence itself, and the delay has inevitably taken a toll on the litigants who have not been able emotionally to get on with their lives;

- ii) The burden upon the courts of such complex and bitterly contested matters such as these involving thousands of pages of evidence;
- iii) The immense pressure upon both litigants in such lengthy and detailed fact-finding processes, particularly when the matter is subject of a re-trial;
- iv) The urgent need for accredited Domestic Abuse Perpetrator programmes, the quality and efficacy of whose work is undoubted to be re-instated, in order to enable the court to refer parents who have been found to have perpetrated domestic abuse and who accept their behaviour, to engage in work, targeted to reduce the risk to the victim and subject child/ren;
- v) The benefit of considering the evidence relevant to each different form of alleged domestic abuse in “clusters”: thus, it was useful to cluster the evidence which went to the issue of sexual abuse, separately the emotional abuse and so on. However, the evidence relevant to the different forms of abuse overlapped in places. It is vital that the court surveys a wide canvass and builds a picture of the relationship between the parties which is under scrutiny and determine what, if any patterns emerge;
- vi) The wisdom of following the Court of Appeal’s guidance to consider the cumulative effect of individual incidents within each of the clusters of abuse-type and of each type of abuse on the other, which offer the clearest indication of the experience of abuse;
- vii) The need for flexible arrangements to ensure that participation directions (*rule 3AA FPR 2010*) truly meet the needs of the parties and the case;

- viii) The need for advocates to focus on the issues which it is necessary to determine to deal with the case, and for oral evidence and/or oral submissions to be cut down only to that which it is necessary for the court to hear;
- ix) The evidence of the principal parties is always likely to be far more valuable than the evidence of supporting witnesses; at the case management stage, judges should rigorously test with the parties and/or their advocates (and review for themselves) what (if any) real value is likely to be brought to the enquiry by the evidence of third parties;
- x) The importance of judicial continuity in domestic abuse cases; I had had no involvement with this case until, as Designated Family Judge, I dealt with the Mother's Appeal. Thereafter, I considered it vital to maintain all case management leading up to and including the re-trial;
- xi) That toxic disputes between parents over children can be aggravated by legal representatives who show little respect for one another.

The Background

9. The dispute between the parents has been so protracted and of such high conflict that it is essential in my view to set out the background chronology to the relationship and to these proceedings in order to be able to contextualise the findings which the court is asked to make and to understand how fraught relationships have become since the first court application was issued. The Mother asks for the court to make a number of findings arising out of the Father's handling of the proceedings and these issues can only be fully appreciated if the chronology is clear. There is a chronology in the bundle at A46 but typically, this is not an agreed document. I will deal in more detail later in this judgment with the actual events during the course of the relationship. The

brief factual substratum to the allegations which the court has to determine is set out below.

The Parental Relationship

10. The Father is 49 years of age and the Mother is now 44 years. Their relationship was of relatively short duration from July/August 2018 to around the late Spring of 2020, although the exact end date is not clear, having met via a dating site. They did not marry and did not cohabit for any lengthy periods. It was a turbulent affair with separations and a rather messy and unclear ending. Mother became pregnant very early in the relationship during a holiday together in Bermuda between the 27th September and the 6th October 2018.
11. The parties did not cohabit consistently before the birth of A. Mother stayed with Father at his home in [LOCATION] for a short period but then moved to rent a property at [LOCATION] in the middle of December 2018. She re-located to live with her father and step-mother in [LOCATION] in April 2019 prior to the birth of A in [LOCATION] in early June. Father remained living in [LOCATION] and travelled abroad in the course of his work as a biologist.
12. Mother's health was fragile during the pregnancy and after A's birth as she developed gestational diabetes during the pregnancy and then renal stones/colic toward the end of August 2019. Between the 13th to the 18th June 2019 she and A were admitted to hospital as Mother was suffering from mastitis and A from jaundice. A was re-admitted on the 21st to 24th June 2019 again in respect of jaundice and required phototherapy. His birth was registered by the Mother alone later in June 2019, unbeknownst to the Father, something which became a significant bone of contention between the parents.

13. Mother remained based in the [AREA] with A and the parties visited each other thereafter. Mother alleges that Father raped her during a visit made by him to the [AREA] on the 11th July 2019 with A present in the bedroom. However, there was no breaking off of the relationship at this point and the parties continued to see each other. Mother alleges that she suffered a further rape on the 18th September with associated physical assault upon her in September at Father's home. This has been referred to during the trial as the "shower incident". The relationship also continued, after this incident.
14. On the 25th September 2019, Mother had to be admitted to hospital for an urgent operation and A remained in hospital with her. The parents had a disagreement whilst she was in hospital as Father was unhappy that he was not noted down as next of kin and he returned to [LOCATION] The parties later resolved their differences and in early October Mother decided to move down to [LOCATION] with A to cohabit with Father. Mother told a friend by message on the 4th October 2019 that, "*rightly or wrongly we are going to give it a go*". However, this didn't last long as the parties had a further disagreement and Mother left Father's home and secured a rented property in the [AREA] with A.
15. Mother suffered with renal colic again in October and had to be prescribed morphine. The second part of her surgery took place on the 6th November 2019 at [REDACTED] hospital and the stent that had been implanted in the September surgery was eventually removed on the 14th November.
16. There were further visits south and both Mother and A stayed with Father in [LOCATION] in November and for a week over Christmas 2019. In the intervening period two important things occurred: Father suffered a significant back injury in a road traffic accident whilst travelling to re-register A's birth details, which therefore

were not changed and Mother completed on the purchase of a property in [LOCATION] on the 6th December 2019.

17. Mother alleges that Father perpetrated a further sexual assault against her on the 26th December 2019, in his home, which on this occasion was an anal rape. Their relationship continued after this incident and eventually seemed to come to an end in around early February 2020 but not seemingly as a result of the sexual assaults. Father appeared not to have forgiven Mother for not registering him as A's father and for obtaining a passport for A without his knowledge. Mother says that Father showed no interest in visiting A in January 2020. Mother's health continued to cause her significant problems and on the 27th February 2020 she was diagnosed with Chronic Fatigue Syndrome.
18. The fact-finding hearing in the court below considered only specific allegations of sexual assault and coercive and controlling behaviour brought by Mother. Father sought to establish parental alienation by Mother through a pattern of failing to promote contact. In September 2023, Mother filed her final statement which enlarged her allegations of sexual assault during their relationship to cite "sex by coercion" and regular sexual violence, never seeking her consent for his actions.

The Litigation between the Parents

19. A has always lived with his Mother, with only brief periods of living together at Father's home in [LOCATION] which were so brief that they resemble holiday periods rather than any true domesticity. Father issued proceedings on the 22nd February 2020, very swiftly after their relationship came end. Mother says that he alleged parental alienation and emotional and physical abuse of A. However, contact did take place, even occurring within the Mother's home for many months from April to October 2020, but this arrangement broke down as Mother said that Father was

being intimidating and aggressive. Father now accepts that his behaviour was inappropriate in a number of respects.

20. In response to Father's application for a Child Arrangements Order to spend time with A made on the 22nd February 2020, a section 7 report dated 5th November 2020 by a Family Court Advisor [D1] was made prepared. This application was resolved by the order of District Judge Davies dated 27th May 2021 [B1]. The Cafcass Officer had to intervene to enable the parents to agree a way of re-starting family time after Father had involved the police in their dispute on the weekend of 3rd October 2020, which caused Mother to say that Father was no longer welcome in her home.
21. The Cafcass Officer sets out that there were no significant safeguarding concerns which had been identified about Father which should preclude him from having an active role in A's life. Her impression was that Mother sought to limit Father's involvement in A's life. Mother did not want to communicate with Father directly about A's care as she did not want to "expose myself to further risk of false allegations" and the officer thought that Mother was putting her own feelings before the needs of A to have his care handled consistently by both parents. Mother did say that she was finding the court process difficult but denied that she was worried about losing "control" of A, rather than simply expressing her concerns about Father.
22. The Cafcass Officer considered that A should live with Mother and spend increasing amounts of time with his Father. In her opinion, there appeared to her to be no reason why this time should be limited nor why Father should not take A to his own home. She did not favour two consecutive weekends per month as Father proposed but fortnightly visits alternating between local contact and contact at Father's home. The Cafcass Officer commented on the great shame that these parents, who talked very

convincingly about A and his best interests, could not agree on what those best interests were or communicate effectively.

23. It is noteworthy that Father was seeking a change in respect of A's surname being registered as Father's surname rather than Mother's surname and Mother was asking for a Prohibited Steps Order restraining Father from removing A from the jurisdiction of England and Wales. Mother said she feared that he would take him to Ireland where paternal grandparents live. These are two issues which have been referred to significantly in the evidence and have caused great upset on both sides.
24. The parents appeared in person at the hearing in May 2021. It is noticeably recorded that the judge observes that the "parents have shown that they can work together for the benefit of A in that contact to date involved the parents spending time together when contact was exercised". Difficulties did remain however, and the court recommended that the Family Wizard App was used. Mother says that she did raise the issue of Father's aggression at this hearing but this is not recorded in the recitals to the court order.
25. It was noted that Mother was not able at that point to take A to his Father's home in [LOCATION] due to her health issues but it was hoped in the future she would be able to do so. The court was seeking to balance the concerns of Mother to ensure that progress was made cautiously and at A's pace, with the concern of Father to develop a meaningful relationship with his son.
26. Contact was to take place at the weekend from 10am to 6pm on two consecutive days at the weekend, every fortnight and then from 10th July 2021, including the Saturday overnight. From the 20th August 2021, Father would have fortnightly weekends, one being from Friday to Sunday and the other from Saturday morning to Sunday evening. This order was supposed to provide a framework for contact until A was attending

school. The judge did not order a change of surname as there did not appear to her to be any welfare benefit to A in doing so, particularly given that the order she was making acknowledged “the central role that the Father will play in his son’s life”.

27. Unfortunately, the Father made a further application to the court only weeks later in June 2021, stating that Mother had frustrated the court order by denying contact. It was in my judgment crass and insensitive of Father to serve this application upon the Mother at a contact handover on the weekend of 26-27th June 2021. He says that he accepts this now, although did not do so previously. An examination of the history and evidence would indicate that matters have seriously deteriorated since that point.

28. On the 18th August 2021 both parents appeared before the Justices in respect of Father’s enforcement application and he asked for an adjournment on the basis that he said that the order was now working and he was given time to consider whether to withdraw his application for enforcement. In the lead up to that hearing, on the 10th and 11th July the parents had taken A out together and the following fortnight Father had brought Mother a bottle of wine. Sadly, Father did not withdraw his application despite more positive signs on the 19-21st August when the parents again took A out together and on the 4-5th September when contact took place in Mother’s home again.

29. Father told the lay bench on the 15th September 2021 that he wanted to enforce the order and subsequently a s.7 report was directed by the court on 17th December 2021. Mother says that this was a turning point for her when it became absolutely clear to her that “Father was not motivated by A’s best interests – in fact quite the opposite”. She said in her statement at C24, that it became absolutely clear that he was unwilling or unable to consider the impact that proceedings based on false allegations would have.

30. District Judge Keating expressed her concern at the behaviour of the Father at handovers using bodycam and also within the hearing itself. The same District Judge dealt with the next hearing on the 28th April 2022 and noted that Father had served Mother at 9.30am that morning with a position statement for the hearing which raised the issue of a transfer of residence. Such a suggestion was bound to be very distressing for the Mother and was certainly not the type of issue to be raised unnecessarily or at the last minute.
31. The judge was concerned that this action, which Father described as an “oversight”, could be regarded as deliberate and placed undue pressure and stress upon the Mother, who remained a Litigant in Person at this point [B31]. Father was also still a litigant in person although he was supported by a professional Mackenzie friend, Andrew Weeden in the hearing. Mr. Weeden has subsequently become the legal representative for Father.
32. Mother was noted to be visibly upset during the CVP hearing and raised the issue of her physical health. A s.7 report had been filed to assist the court dated 3rd March 2022 by Helen Hale [the current Guardian] and a student social worker, Demi Meakins. The court had asked Cafcass to address the following:
- Father’s conduct in relation to contact arrangements;
 - his attitude towards the Mother and his inability to recognise the impact of this upon her;
 - the breakdown in communication between the parties; and
 - whether the original order needed to be revisited or a Children’s Guardian appointed.
33. The main issue captured in the report was the poor communication between the parents and the Mother’s perception that Father was intimidating and controlling in

his behaviour at handovers which was causing A to be slightly frightened. Neither parent considered that there were any safeguarding concerns in relation to the other. The worker considered that there were several concerns within the relationship which had led to separation and which were now impacting upon their co-parenting relationship, post separation. However, this was not assessed to be at a level which should prevent contact taking place. A Rule 16.4 Guardian was not thought to be required at this stage. A variation of the family time arrangements was proposed.

34. The judge recorded in her order that the Mother was visibly upset during the hearing and that the Mother was struggling to cope with communication and contact with the Father and the court was concerned that Practice Direction 12J was now engaged. The Cafcass Officer, Helen Hale, having observed the parties at this hearing agreed that contact could not be moved forward and that a finding of fact hearing should be held in order to provide a basis for the assessment of risk and the impact of the alleged behaviour upon the child in order to resolve welfare issues.
35. The judge explained that statements would be required, and Mother was encouraged to set out the concerns and allegations which she made in respect of Father. More time was granted to the Mother to prepare this statement due to her impending operation. On the 1st June 2022, Mother underwent surgery as a result of significant hypercalcaemia caused by hyperparathyroidism. Imaging showed a left parathyroid adenoma which required attention [D35]. Multiple episodes of renal colic and infections had been suffered by the Mother since 2019, as a result of these medical problems. In addition, she had continued to suffer with chronic fatigue syndrome since 2020.
36. Father was advised by the judge that, given he had already accepted wearing a bodycam at handovers and videoing contact, which placed the Mother under great

stress, he should consider his position and whether he could make any concessions in relation to Mother's allegations, to enable the court to move the case forward. The court noted that the Father had sent a message to Mother saying that he would have to suspend his contact pending the return of the matter to court and that this was the reason why he had not seen A since January 2022, rather than a refusal to promote contact on Mother's part.

37. No further extension of contact was ordered. The maternal grandparents were to be asked about assisting with contact handovers. Mother was encouraged to consider having a Mackenzie friend to give her support at future hearings. Directions were given for the filing of evidence leading to a fact-finding hearing and for interim contact, including midweek video contact.

38. On the 12th June 2022, Mother filed her statement [C17] setting out the concerns and allegations which she made against Father. This is the first time that any allegations of sexual misconduct by the Father, become apparent in the court proceedings. Mother alleged specifically:

- being raped by him on the 11th July 2019 when A was present in the room;
- being struck so violently during sexual intercourse on the 18th September 2019 that she was bruised and father taking photographs of these injuries, as he considered it to be funny, something which is repeated on a number of occasions [not alleged to be an episode of rape];
- sexual intercourse on the 23rd December 2019 [now said to be 26th December] in which Father held her face down on a pillow causing her to feel like she was going to pass out [not alleged to be an anal rape];
- coercive and controlling behaviour by Father toward Mother generally.

39. Mother also refers to Father being aggressive and erratic at the hospital when she was admitted due to a problem with renal stones on 24th September 2020. She mentions confiding in a friend [KG] on the 10th November 2019 about some of her concerns regarding Father's sexual behaviour. There are a number of examples given of what Mother considers to be coercive and controlling behaviour by Father and false allegations being made by him in respect of her care of A.
40. On the 26th July 2022, the matter unfortunately came before Recorder Wadoodi rather than DJ.Keating as planned. The Father was by this time represented by Counsel and Mother had a Mackenzie friend. Father considered that a fact-finding hearing was neither necessary nor proportionate and asked the court to review its position. Both parties now agreed that a Guardian should be appointed to represent the child under Rule 16.4 of the FPR 2010 and the court agreed.
41. Mother's position was now that Father should not have any contact at all until the issues she raised had been addressed. It was recorded that Father said that he had only spent 5 hours with the child since the 7th January 2022 as a result of the Mother's non-compliance with court ordered contact. This is a surprising recording in the light of the recital in the previous order of DJ.Keating that this absence of contact was attributable to Father's own decision making.
42. The court recorded that it had identified no safeguarding concerns that should prevent the Father having interim contact, however noting that the Father offered to have his contact supervised as a compromise. A further contact order was made for supervised contact to take place at a contact centre, once identified. Father was ordered to file a Skeleton argument in respect of his argument that a fact-finding hearing should not take place.

- 43.** By the next hearing on the 16th August 2022 both parties were represented, Father by Counsel and Mother by her Solicitor Ms McGurk who represented Mother through to the conclusion of the first fact-finding hearing. The Father had changed his position and agreed that there should be a trial with regard to Mother's allegations but that this could be reviewed by the court on the first day of the hearing. Supervised contact was ordered to take place fortnightly at a contact centre.
- 44.** The finding of fact hearing was due to take place on 21st September 2022 before DJ.Read, however, this was adjourned due to the lack of police and medical disclosure in response to court orders. Father again asked the court to consider whether the fact-finding was necessary and proportionate, but the court considered that this issue had already been determined. The time estimate was increased to three days. There are some noteworthy entries in this order, firstly that Mother had "no objection to Paternal Grandparents enjoying contact per se", something she has later opposed on the basis that they were "complicit" in Father's abuse of her. The Guardian undertook to assess the paternal grandparents.
- 45.** Secondly, at paragraph (p) on B86 that mother's counsel raised alterations to Mother's pleaded allegations:
- [sexual] no.2 (18.9.2019) – this is now confirmed as the "shower" incident referred to by the witness;
 - No.3 (23.12.2019) – this involved anal sex [coercive];
 - no.1 (24.9.19) this incident additionally involved security staff offering to telephone the police.
- 46.** Further directions were made for the adjourned FFH which was to take place on the 15th February 2023 with a time estimate of 3 days. The interim contact position was to continue at the contact centre. Father was at liberty to clarify his case by filing a

statement that set out his position, following the order of Mother's allegations contained in her schedule. This document appears in the court bundle at A8 and is the document that was before District Judge Lindsay. The revised schedule for the hearing before myself appears at A40-45. Mother was to have the benefit of special measures for the trial in terms of separate entrances and waiting areas and screens in the courtroom.

47. Father issued an urgent application on the 13th December 2022 due to the cessation of direct contact. The contact centre had withdrawn their services as a result of a complaint by Mother. Father asked for unsupervised contact to be substituted in its place. The matter was directed to be listed by DJ.Keating for an urgent hearing on the 3rd January 2023 before DJ.Read [B99]. The judge expressed his clear view that there were no safeguarding reasons with regard to Father's behaviour towards his son and that the issue of unsupervised contact needed to be addressed by the Mother once the fact-finding hearing has concluded. It is surprising that the court gave such a clear indication in advance of hearing any evidence.

48. Alternative contact centres were identified as Mother was now opposed to any unsupervised contact taking place. The judge selected the centre in [LOCATION] proposed by Father rather than that in [LOCATION] selected by the Mother which would be much further for Father to travel. The court also expressed its view that:

- i) the Paternal Grandfather, having travelled from [LOCATION] to see his grandson; and
- ii) there being no barrier to unsupervised contact taking place for the paternal grandfather;
- iii) there were no safeguarding reasons why this should not go ahead;

iv) the Guardian supporting this, it was minded to direct a brief in person contact with A today. However, the Mother opposed this step stating that her partner had taken the child off somewhere, she did not know where and she could not contact him.

- 49.** Subsequent to the court's indication with regard to contact with grandfather, which Mother had not previously opposed "per se", she collapsed and urgent medical intervention was sought for her. The judge recorded that contact for Father and Grandfather could not therefore take place today. The judge directed that any suggestion that the FFH should be adjourned due to illness would require supportive medical evidence.
- 50.** The letter from a medical practice, subsequently filed, dated the 7th February 2023 set out at D23 of the bundle indicates that Mother attended A&E with chest pain following this hearing. The doctor describes the symptoms of Chronic Fatigue Syndrome which vary from person to person but which can be aggravated by stress. No specific treatment is recorded as having been given at the hospital on this day. A cardiac work-up has excluded any cardiac cause for Mother's reported chest pains.
- 51.** The supervised contact provided for in the court's order of the 3rd January 2023 did not take place. Mother did not engage with the paperwork necessary to make the referral to the contact centre nor was video contact promoted as per the order at all. The Children's Guardian therefore applied to the court for directions on the 20th January 2023. DJ Read again dealt with the hearing and was told by Mother's Solicitor [Mother too unwell to attend] that Maternal Grandfather had been very ill and unable to promote video contact between Father and A.
- 52.** Mother's position was that she was too unwell to drive to [LOCATION] but could drive to [LOCATION] to take A to the contact centre there. Father said due to his

own medical issues [back pain] he could not drive as far as [LOCATION]. The judge felt that any order he made for contact was unlikely to be effective and required Mother to use her best endeavours to find an alternative supervisor of video contact. Mother was also directed to file a report from a relevant treating health practitioner concerning her current health, by 4pm on the 8th February 2023, as there was a fear that she would not be fit to attend the FFH. The Medical Practice letter referred to above was filed in response to this direction. It does raise the possibility of Mother suffering burn-out as a result of the various pressures upon her.

- 53.** The Guardian issued an application for a psychological assessment of the parents by Dr.Matthews. This was granted by agreement at the conclusion of the evidence in the FFH, by DJ.Lindsay. It is noted that direct contact between the paternal grandparents and A took place during the course of the FFH on the 17th February 2023 by agreement. This was facilitated and supervised by the Mother's new partner.
- 54.** As set out above, the District Judge did not make the findings sought by the Mother in relation to sexual violence, nor in respect of coercive control but she did make findings which amounted to domestic abuse with regard to Father's conduct, including him being prone to over-exaggerate his version of events to portray Mother in a bad light and further his own case, making serious accusations against Mother with little to substantiate them. She considered that such behaviour by Father was not conducive to the parents being able to work together in A's best interests.
- 55.** The Children's Guardian filed a Position Statement dated 29th March 2023, in preparation for the directions appointment scheduled two days later, in which she recommended that the court should direct the preparation of a report by the Local Authority under s.37 of the Children Act 1989. It was not understood at that time that the Mother intended to appeal. The Father was seeking the re-instatement of direct

contact at this stage and the Mother opposed this, submitting that video only contact should take place until after the psychological report was available. Neither parent was at that stage accepting the judgment of the court.

56. The Guardian considered that the relevant Local Authority should be asked to consider whether they:

- a) Should apply for a Care or Supervision Order; and/or
- b) Provide services or assistance to the child/family; and/or
- c) Take any other action in respect of the child.

57. The Guardian did not recommend that any direct unsupervised contact should take place at that stage in the light of the findings of the court and the pending s.37 enquiries. The Guardian opined that the impact of Father's behaviour upon Mother and how PD12J is properly applied needed to be considered in the light of the scheduled expert assessment. Unfortunately, that expert assessment has still not taken place as a result of the appeal and much delayed re-trial. The Guardian was concerned that A had already been exposed to high conflict between the parents.

58. She also made a recommendation that Father should complete educative work around the domestic abuse, although she was concerned as to how successful this would be if he continued to dispute the court's findings in relation to his conduct. She advocated for the Domestic Abuse Perpetrators Programme, although this could not be directed by the court as a contact activity due to the lack of available resource or a suitable alternative. The absence of courses which have been accredited by the Ministry of Justice means that the Father was left to source and fund such a programme which to his credit he has done. Many such parents are not able to afford to do so. However, I will refer to the value of this work later in this judgment.

First Fact-Finding hearing, the Appeal and subsequent Case Management

59. The Mother was legally represented throughout the first fact-finding hearing by Counsel, who had been instructed by her former solicitor. Father was also represented by Counsel. Mother had the benefit of participation directions at that hearing, in that she had screens in place in the courtroom so that the Father could not see her and she him. A separate entrance and waiting area were also afforded to protect and support the Mother.
60. Breaks were given to the Mother during the course of her evidence, most notably a whole day was granted when it became apparent that the Mother had not been given an opportunity to read the court bundle. Mother did not have an intermediary during this hearing, none having been applied for. Nevertheless, she completed her evidence and was tested on all matters, although it was clearly difficult. The District Judge was under a great deal of pressure, as the Mother's evidence proceeded very slowly causing the matter to overrun with a significant break required as set out above and further time constraint as the Father was scheduled to have major back surgery at the conclusion of the hearing.
61. On the 10th March the judge handed down her judgement orally. She did not find any of the sexual allegations proven and made no findings of coercive and controlling behaviour by the Father toward the Mother. She did however find that the Father's behaviour constituted domestic abuse in certain respects, which the Father later accepted.
62. On the 31st March 2023 DJ.Lindsay decided that supervised contact at the contact centre should not be re-instated in the interim pending the outcome of Dr.Matthews' report. Interim contact was to be indirect only via video, facilitated by Mother's partner. By the time of this hearing Mother had changed Counsel and Dr.Proudman appeared on her behalf instructed by Mother's existing solicitor.

63. Counsel invited the judge to re-open/amplify by producing new evidence which had not been part of the earlier FFH, in the form of her new statement dated 27th March 2023 and the exhibits thereto. This is material which should have been available to the Mother at the time of the trial but was not produced. This evidence subsequently became part of the re-trial. The judge indicated that such an application needed to be made formally on notice and directed the same, however the Mother re-considered her position and confirmed on 3rd April that she did not pursue this aspect. The Appeal Notice is actually dated the 29th March 2023 and is signed by the Mother's former solicitor. It is not clear to me when the Mother changed her solicitor.
64. The Appeal hearing was listed on 1st June but unfortunately had to be adjourned as a transcript of the Mother's evidence was required in order to assist the court to determine the appeal. Delays in the commissioning of the transcript led to the matter not being able to be re-listed until the 8th August 2023. I allowed the appeal for the reasons set out in my written judgment dated 11th September 2023, set out at [B230] in the bundle. I don't propose to rehearse those reasons herein, given the length of this judgment. I determined, given the seriousness of the sexual allegations, that it was necessary and proportionate to re-try them, together with the more general allegation of coercive and controlling behaviour.
65. The re-trial was listed for 5 days on 30th October 2023. Directions were given for the filing of further evidence as Mother wished to prepare "a comprehensive witness statement addressing her allegations against the Father, holistically as a pattern of behaviour" [B224], in addition to any further witness evidence. In my judgment it was important to give the Mother an opportunity to set out all the behaviour she said had been abusive toward herself and A. The Father was also allowed to file a comprehensive statement and separately to set out whether he accepted any of the

allegations made by the Mother, stating on what basis he was carrying out the DAPP course which he commenced for six months on the 3rd April 2023 and if he didn't accept her allegations, what if any findings he sought against the Mother.

66. In October the matter was re-timetable as Mother had not filed her statement on time in accordance with the court's directions. In November, the Father made an application for further time to file his statement as a result of being certified unfit to work by his GP, because of stress, anxiety and depression. I extended the timetable for his statement only and not that of third-party witnesses. Also, in November Mother applied for leave to disclose court orders to the CMS relating to a dispute between the parents about payments for A.
67. On the 8th December 2023 I made an order in respect of the Father's application dated 28th November to obtain an expert report in relation to the Whatsapp history between himself and the Mother. I granted this on the basis that the Father would fund the exercise and the evidence would not be admitted into the proceedings unless relevancy could be shown to the issues which the court was being asked to try. This was an issue to be determined at the Ground Rules Hearing [GRH] on the 26th January 2024.
68. At the GRH the court was faced with an application by Father to adduce the evidence of the Whatsapp messages into evidence on the basis that he said that they revealed a different picture of the parents' relationship than that portrayed by Mother. Her Counsel sought to exclude this evidence and also the transcripts of evidence from the previous fact-finding hearing. Mother also applied for interim costs against the Father at this stage, her costs bill totalling some £95,000 approximately at that stage in advance of the re-trial of the FFH.

69. It was not clear to me on what basis the court could determine that Father should pay Mother's costs, prior to having determined the allegations in a FFH. I indicated that this was not an appropriate application at this stage of the proceedings. As is set out in my written ruling arising out of the GRH [B353], and my order of the 26th January 2024, I allowed the transcripts and the Whatsapp messages into evidence but directed Father's Counsel to produce schedules in respect of each, limited to three pages setting out the references which she wished to address in cross-examination of the Mother. The Father's inordinately lengthy and at times inappropriate statement had to be pruned by the court but was allowed into evidence on a reduced basis. The Father had sought to effectively contextualise the whole of their relationship in an effort to respond to the Mother's allegations.
70. On the first day of the FFH, a further attempt was made by the Mother's legal team to persuade the court that the transcript of the Mother's evidence from the previous FFH should not be admitted on the basis that the Mother had not had the benefit of an intermediary when she gave that evidence. However, I did not accede to this application which was opposed by the Father. In my judgment the evidence which was being referred to was clear, contained within the transcript, reduced to a schedule and I was able to make allowances for the different circumstances which prevailed at the time when it was given.

The Re-Trial

71. This hearing was conducted in a hybrid form. In the light of the issues involved, I was required to assume (*per rule 3A FPR 2010*) that the quality of the Mother's evidence and her involvement in the proceedings would be diminished in the absence of

participation directions. The provisions of *PD3AA FPR 2010* were engaged and appropriate adjustments were made so that the Mother could give her evidence from the court room while the Father was away from the court building and participating remotely by the video link with his camera switched off as per all pre-trial hearings.

72. The Mother applied very late in the proceedings for the support of an intermediary at the Ground Rules Hearing on the 26th January 2024. The Father did not oppose this application and this assistance was therefore granted by the court to enable Mother to give her best evidence. Mother's intermediary Paula Backen prepared and filed a report dated 7th February 2024 having had an opportunity in advance of the trial to meet with her client. Miss Backen set out in her report at 3.1 that Mother presents with diagnosed conditions that impact upon her ability to communicate effectively in a court case.

73. She experiences both physical (eg. chronic pain, tinnitus, voice impairment) as well as emotional responses based upon past trauma (eg severe anxiety), breathlessness, poor concentration, and brain fog) which affect both her comprehension and expression. These symptoms, although present in daily life are said to be exacerbated by the court experience. I will refer later to the medical evidence which the court has in relation to Mother.

74. Miss Backen considered that as a result of the above, Mother would have difficulty in court with:

- Concentrating for long and particularly emotive periods;
- Understanding complex or long questions and narratives;
- Managing her chronic pain, tinnitus and respiration;
- Reading even short passages at speed and with understanding;
- Referring to specific dates, times and details of events when under pressure;

- Sitting in the same room as Father.

75. The intermediary made a number of recommendations in her report, some of which were based upon misapprehensions as to the logistical arrangements for the hearing which had been agreed between the legal representatives. All adaptations sought on behalf of the Mother to enable her to give her best evidence were granted by the court. Nothing was refused and I am clear that if there were any further measures that could or should have been provided that Dr.Proudman and her instructing solicitor, who was also present throughout the trial, would not have hesitated to raise this with the court.
76. A number of different court rooms were considered as to suitability with the full involvement of the intermediary. A courtroom which is usually employed by lay justices was eventually selected as it provided a table at which the Mother could sit down next to her intermediary. The use of a microphone to project Mother's voice as suggested by Miss Backen was not compatible with court equipment but more importantly not required as, in the logistics of this particular courtroom, both myself and Counsel could be placed sufficiently close to the witness for her to be heard clearly. This had proven to be a difficulty in the court below.
77. Father was absent from the court building when Mother gave evidence. Mother did give evidence on 19th February in the afternoon and then also on the morning of the 20th February 2024 but felt unable to carry on after the short adjournment. An agreed approach was presented to the court by Counsel. I was told that "despite assiduous efforts" to assist Mother to be made comfortable in giving her evidence by her team and the Intermediary, she did not feel able to carry on. She had been offered an opportunity to give evidence from home, but this did not change the position.
78. It was agreed that witnesses filed on her behalf would be interposed and that her situation would be reviewed on the following day. It was further agreed between

Counsel, that if Mother did not feel able to continue with her evidence on the following day, Dr.Proudman would put the Mother's case through cross-examination and in her closing submissions.

79. Counsel for the Father was content with this approach having spoken to her client and said that she would schedule the matters which she would have further questioned Mother about and submit her document in advance, so that Dr.Proudman could respond. The parties jointly considered this approach to be Article 6 compliant and it was submitted that the alternative of adjourning to seek medical evidence was the less attractive course.

80. I was told that the Mother was in physical pain as a result of the emotional toll upon her and did not feel that she could continue. She was aware of how this failure to continue with her evidence might be considered and had thought about this a great deal, having spoken to her Counsel and to the Intermediary. Mother left to return home and by agreement the evidence of her witnesses was called on the basis that a note of their evidence would be provided to the Mother.

81. On the following day, Wednesday 21st February, Mother again indicated through her Counsel and Intermediary that she did not feel able to carry on with her evidence. I was told that she had arrived very stressed that morning, suffering with pain from her hip. I enquired as to whether she would prefer to give evidence on the link from home but was told by the Intermediary that there were no other adaptations which could be put in place which would make her feel able to continue with her evidence. It was the subject matter rather than the location which was the issue. The intermediary sent through a list of all of the adaptations which had been considered and exhausted.

82. Ms Backen expressed the view [unsworn] that Mother was not in a fit state to continue with her evidence. However, the intermediary is an expert in

communication, rather than a qualified medical practitioner or psychologist. She was not giving evidence to the court in relation to Mother's fitness to give evidence. She was qualified to express an opinion as to the adaptations which could be put in place to assist the Mother to give evidence. No application for an adjournment was made to the court. I indicated that I was perfectly flexible as to how the evidence was received but no further live evidence was given to the court by Mother. I acceded to the agreed approach of the parties as to how to continue the trial in the light of the strain upon both parents and the significant costs which both were incurring.

83. During the course of her live evidence to the court the Mother sat down to give evidence with her intermediary next to her, who located the pages which were being referred to by Miss Phillimore in advance and ensured that the Mother had sufficient time to process the questions in advance of offering an answer. Questions were thoughtfully and carefully put to her and little objection was taken to their content, format or phraseology.
84. It was therefore surprising that Ms.Chhina, Mother's solicitor suggested in her closing submissions at paragraph 16 that, Mother gave evidence, "with no adjustments as required set out in the recent intermediary report". The court made every effort to meet the needs of the Mother as indicated by her very experienced Counsel, Solicitor and Intermediary. However, I have subsequently been informed by Ms.Chhina that this was a misunderstanding in that she was referring to the fact-finding in the court below.
85. After Mother indicated that she could not continue with her evidence, it was agreed that we would proceed with Father being cross-examined in detail by Dr.Proudman and that she would put Mother's case to him. The Father also had some physical

problems in that as a result of back surgery he cannot sit for lengthy periods and therefore required breaks every 45 minutes which was agreed by the court.

86. The Father also encountered problems in giving his evidence and on day four during the short adjournment, the paramedics were called to the court building, as Father had collapsed. It was apparent, towards the end of the morning session that Father was struggling to follow the page references which were being put to him and read the entries. The paramedics advised him that he should not continue with his evidence that day.

87. In the afternoon session, Miss Phillimore, Counsel for the Father, set out the position and asked if the court might consider that it had already received enough evidence to make a decision, as Father didn't want to continue with his evidence. I indicated that the issue of whether her client continued with his evidence was a matter for her and that I would allow her to speak to her client as to whether he was able to continue, with the agreement of Dr.Proudman.

88. Counsel for the Mother indicated that if Father didn't continue with his evidence then he would be in the same position as the Mother, with the same consequences. It was agreed that Father would be allowed to give evidence remotely from home on the following day which would enable him to be taken home to [LOCATION] by his parents that afternoon. On the following day, the Father was cross-examined for the whole of the day on behalf of the Mother until 6pm.

Findings which the court is asked to make

89. The Schedule of Findings sought was re-drawn after the appeal hearing and is set out in the bundle at A40. The abuse alleged encompasses coercive and controlling

behaviour throughout the relationship and after separation, by a pattern of acts with the intention of causing the Mother harm, intimidating, frightening and punishing her by means of sexual, physical, emotional, psychological, verbal and financial abuse, fabricating allegations against her and isolating her from others. This behaviour is said to be ongoing “to date”.

90. The sexual abuse alleged includes generally coercing the Mother into sexual intercourse and performing sexual acts upon her, violently assaulting her during sex and on two specific occasions raping her vaginally and on one date anally. On the first of these occasions A is reported to have been in the room at the time of the attack upon his Mother.
91. Stalking and harassment is said to have occurred after separation with Father using the child as a means by which to abuse the Mother via court ordered contact. The subject child is said to have been subjected to psychological and emotional abuse by Father directly abusing the Mother, at times in A’s presence, causing her significant harm, despite the fact that A relies upon her for his care needs.
92. Mother also alleges that Father has deliberately raised the issue of “parental alienation” against Mother as a further form of domestic abuse to cause the Mother harm, fear and distress. Similarly, the Mother makes two further allegations that the Father has deliberately used the courts, police and social services and his stance toward the Child Maintenance Service to further domestically abuse her.

The Law and practice relevant to the issues which the court is required to determine

93. Dr.Proudman on behalf of the Mother served the court with a 15 page document on the law in advance of the re-trial commencing. The thrust of the guidance set out in

those authorities is not disputed by Miss Philimore for the Father, save where she submits Dr.Proudman has omitted or failed to discuss or give proper emphasis to relevant observations. The import of the guidance is a matter for the court, which is well versed in dealing with cases involving allegations of domestic abuse and serious sexual violence.

94. I have considered the allegations of “domestic abuse” in this case by reference to the definition contained in paragraph 3 of *PD12J* of the FPR 2010, namely:

“domestic” abuse includes any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, psychological, physical, sexual, financial or emotional abuse. Domestic abuse also includes culturally specific forms of abuse including, but not limited to, forced marriage, honour-based violence, dowry related abuse, and transnational marriage abandonment;

“coercive behaviour” means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish or frighten the victim;

“controlling behaviour” means an act or a pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.”

95. Controlling and coercive behaviour has been a criminal offence since 2015 under s.76 of the Serious Crime Act 2015. I have reminded myself of the ingredients of the

offence in considering the evidence in this case. The criminal legislation emphasises the repeated and/or continuous nature of this abuse. It highlights the serious alarm or distress caused by it, as well as the significant impact upon the complainant's daily life, or to use the precise words of the statute its, "*adverse effect on B's usual day to day activities*".

96. At all times, I must follow the principles and guidance set out in *PD12J* of the Family Proceedings Rules 2010. In this case the allegations not only encompass specific acts of sexual violence but also a general pattern of coercive and controlling behaviour. I have reminded myself of the guidance set out in *Re H-N (Children) (Domestic Abuse: Finding of Fact Hearings)* [2021] EWCA 448. I do not intend to set out the clear guidance from the Court of Appeal in relation to FFHs involving allegations of domestic abuse but apply those to this judgment herein. It is vital that the court considers not only specific allegations of violence [including sexual violence] but also whether there are patterns of behaviour which are abusive or harmful.
97. In this case the schedule of allegations which the court is considering was re-drawn in preparation for this re-trial as a threshold clustered schedule of pleadings as set out at A40 and following. The court is considering the broad picture of the nature of the relationship between the Mother and the Father. Separate strands of evidence must be evaluated but then those must be considered in the context of the evidence as a whole. Too tight a formulaic analysis may obfuscate rather than illuminate any patterns of concerning behaviour.
98. It is important however, that I remind myself of the comments of LJ Jackson in *Re L (Relocation: Second Appeal)* [2017] EWCA 2021 which was cited with approval in *Re H-N* to the general effect that:

“...not all directive, assertive, stubborn or selfish behaviour will be abuse in the context of proceedings concerning the welfare of a child; much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour.”

99. I also bear in mind that a vulnerable person may not act in the same way as someone more independent and confident if they are exploited or abused in a relationship. Such a person may be so anxious for the relationship to succeed that they accept treatment that others would not. They may be easy to exploit. They may not realise what is occurring as they are clinging to the dream of a happy family and relationship.

Re M (A Child) [2021] EWHC 3225 (Fam)

100. The 2021 CPS Guidance – *Rape and Sexual Offences – Annex A: Tackling Rape Myths and Stereotypes* sets out that it is not permissible to assume that a delayed or inconsistent account is for those reasons therefore untrue. I remind myself that whilst in **A v B (Appeal: Domestic Abuse) [2023] EWCH 1499** the decision of the trial judge not make findings of abusive and coercive control was upheld, he was criticised for assuming that a failure to complain earlier meant that it was “inherently improbable” that the allegations were true.

101. There are many reasons why someone might submit to an abusive relationship without insight until long after the relationship has ended as in the circumstances in **Re B-B (Domestic Abuse: Fact Finding) [2022]**. In that case the parents’ relationship was the first ever for the Mother, quite different from the circumstances in the instant case in which the Mother has been married before and has four children to that relationship. However, the fact of being more experienced in relationships does not prevent a person clinging to the dream of a happy family life as per **Re M** above. In **B-B** the court considered that the fact that it was the Mother’s first relationship was a

reason why the Mother delayed in reporting the abuse she had suffered, in addition to shame and embarrassment.

102. However, the fact that the court must be cautious when considering rape myths and stereotypes does not mean that a court is precluded from a finding that delay and lack of complaints are relevant to credibility.

103. The court has been concerned only with the allegations which the Mother makes against the Father at this stage. I indicated at the GRH that I considered that it would be an unhelpful distraction to focus on Father's allegations of parental alienation by failure to promote contact at this stage when such serious allegations of coercive control and sexual violence required to be considered at this re-trial. The Mother has however sought to argue that the fact that the Father raised parental alienation at all, is evidence of his domestically abusive behaviour toward her.

104. The Mother, as she makes these allegations bears the burden of proving them. The standard to which these allegations are required to be proven is the civil standard of proof, being the balance of probabilities, nothing more nor less. There is no enhanced standard of proof because the allegations are so serious.

105. However, the court is entitled to consider the cogency of the evidence which is produced in support of those allegations when considering whether the person making the allegation has shifted the burden of proof. The more serious or improbable the allegation, the greater the need for evidential "cogency".

106. Generally speaking, a judge ought to be able to make up their mind where the truth lies, without needing to rely upon the burden of proof but this is not always the case and depends upon the complexity and factual substratum of the individual case.

107. Where I find a fact occurred, I find that it more likely occurred than not. I apply my common sense to the assessment of the evidence. If it is shown that an event more likely happened, then it happened.
108. It is not for the Father to in some way “disprove” the allegations, ie to prove a negative. There is no pseudo-burden upon the Father to establish the probability of explanations for matters which raise suspicion.
109. Findings of fact must be based upon evidence, including inferences which can properly be drawn from the evidence and not on suspicion or speculation. It is for the party seeking to prove the allegation to “adduce proper evidence of what it seeks to prove”.
110. The court must consider and take into account all the evidence which is available. My role is to survey the evidence on a wide canvas, considering each piece of evidence in the context of all the other evidence. I must have regard to the relevance of each piece of evidence to other evidence and exercise an overview of the totality of the evidence in order to come to a conclusion as to whether the case put forward by the person making the allegation has been made out to the appropriate standard of proof.
111. My function in resolving disputes of fact in the family court is fundamentally different from the role of the judge and jury in the Crown Court. *“The primary purpose of the family process is to determine, as best that may be done, what has gone on in the past, so that knowledge may inform the ultimate welfare evaluation where the court will chose which option is best for a child with the court’s eyes open to such risks as the factual determination may have established”.*

- **Re R [2018] EWCA Civ 198**

112. The evidence of the parties themselves is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability. The court has not been able to carry out this exercise to any significant extent in respect of the Mother's oral testimony as she only gave evidence for a short time in comparison to that of the Father.
113. At the conclusion of the evidence and in preparation for the submission of closing written arguments, a course which both sides accepted was appropriate, I requested that Counsel identify any legal authorities which may assist with the situation in which a party advancing allegations did not complete their evidence. In this case, of course, no adjournment was sought, nor was it suggested that any further measures could be put into place which would have enabled the Mother to continue with her evidence. There was no medical evidence before the court to suggest that the Mother was either psychologically or physically unfit to give evidence. However, the court has a great deal of evidence about the strain under which the Mother was operating and has no doubt that giving evidence about such personal matters is extremely difficult, as the Father also seemed to struggle on this occasion.
114. Two authorities were referred to me by Counsel, however, they effectively conceded that neither addressed this singular situation. No further authorities could be located. The first of these was *Coventry City Council, The Parents and XX [2023] EWHC 1284, Lieven J.* In this case the Mother, whose capacity had fluctuated throughout the long running proceedings had left the country and returned to the United States, of which she was a citizen and had there been imprisoned.
115. Mother was not available to give evidence and lacked capacity at the time of the relevant hearing. Lieven J decided to proceed with the hearing in the light of the need to resolve the proceedings concerning the child, the uncertainty as to whether

Mother would regain capacity and the outstanding criminal proceedings against her in the US. Delay being inimical to the welfare of the subject child.

116. Findings were sought by the Local Authority in respect of domestic abuse between the parents and the Father raised concern that the Mother would not be cross-examined. However, there was other evidence before the court in relation to the communications between the parents which in the view of the court demonstrated the true nature of their relationship and the judge decided that it would be fair to determine the allegations despite the fact that Mother's evidence could not be tested by the Father.

117. The Mother in the instant case does not, of course lack capacity. The issue for the court here is how to deal with the limited evidence it does have from Mother, together with the other evidence which it has received and whether this evidence, when taken together, is sufficient to shift the burden of proof.

118. I considered a further authority by Lieven J, *The Mother, the Father and Shropshire Council and H and F [2024] EWHC 344 Lieven J.* In this matter mother had a learning disability and the father had severe learning difficulties and was represented through the Official Solicitor. Mrs.Justice Lieven was conducting a fact-finding hearing in public law proceedings.

119. There was an issue as to whether it was proportionate to hear evidence from the father in respect of the serious allegation made against him. The judge gave a *Re W [2010] Civ 57* ruling that, in the light of his personal difficulties, it was unlikely that his oral evidence would be of assistance. All parties agreed this was appropriate. The father gave a short-written statement denying the allegations made against him. The evidence at the *Re W* hearing was that he was likely to find the process of giving evidence very traumatic.

120. In the instant case, with which I am dealing, the Mother is a very bright person who holds down a very challenging and responsible role as [REDACTED]. It is clear from the other evidence that she is caring very well for A, who is thriving and Mother is maintaining relationships with her new partner and other friends and family members.
121. No *Re W* application was made in this case either prior to trial or at the time when Mother communicated through the intermediary that she could not continue with her evidence. Such an application may have been opposed by the Father. The Mother did manage to give evidence at the previous FFH, albeit with considerable difficulty as is apparent from the transcript. The significant issue here is that the Mother has had to give evidence twice and the pressure of the proceedings has only increased.
122. ***Re O (FFH: Parents refusing to participate) [2018] EWFC 48*** was also an application in public law proceedings, heard by HHJ.Bellamy, sitting s.9 as a Deputy High Court Judge. The parents had chosen not to be legally represented, despite the availability to them of non-means and non-merits tested public funding and the very serious nature of the findings of inflicted physical injury which were being sought by the Local Authority against them. Both parents failed to attend the fact-finding hearing although they did attend some earlier case management hearings.
123. They later steadfastly refused to engage any further in the proceedings, although they did initiate judicial review proceedings against the Local Authority and NHS Trust. The judge had no option in trying to deal with the application in respect of the subject child than to press on to reach conclusions on the evidence which was available to him generally and from records of what the parents had said, as they would not co-operate.

124. It seems to me that I must draw such conclusions as I can from all of the evidence before me, including the transcripts of Mother's evidence in the court below, the admission of which was previously opposed by Mother's legal representatives.
125. Neither side suggested that these authorities assisted the court or provided guidance as to how to proceed in a situation in which the key protagonist does not complete their evidence. Mother's case is now based on the Father's "lies" as she suggests them to be and they are scheduled as an appendix to her written submissions, stating that they prove the findings which she seeks. No further detailed submissions have been made as to Mother's cessation of evidence, save that the court should imagine the difficult circumstances in which the Mother finds herself.
126. It is of course common for witnesses to tell lies in the course of fact-finding investigation and a court hearing. the court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress. I am conscious that the fact that a witness has lied about some matters does not mean that he or she has lied about everything **R v Lucas [1981] OB 720**.
127. I have borne firmly in mind the comments of Lord Lane, CJ in *Lucas*, that:
"to be capable of corroboration, the lie told must first of all be deliberate. Secondly, it must relate to a material issue. Thirdly, the motive for the lie must be a realisation of guilt and a fear of the truth. The jury should in appropriate cases be reminded that people sometimes lie, for example in an attempt to bolster up a just cause, or out of shame or a wish to conceal disgraceful behaviour from their family. Fourthly, the statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence from an independent witness."

128. I have also in mind the commentary and guidance on this factor in *R v Middleton* [2000] TLR 203; *A County Council v K, D and L* [2005] 1 FLR 851; *Devon County Council v EB & Others (Minors)* [2013] EWHC 968 *Baker J*; *Re H-C (Children)* [2016] EWCA Civ 136; *Re CK (A Child Fact-Finding)* [2022] EWCA Civ 952. It is important as per Lady Justice Macur's comments in *A, B and C (Children)* [2021] EWCA Civ 451 that the self-direction is not formulaic. The principles of the direction will remain the same, but they must be tailored to the individual circumstances of the case. Counsel should:

- (1) identify the deliberate lies which it is submitted the party or witness has told during the course of their evidence, upon which they wish to rely and then they must
- (2) set out the significant issue to which it/they relate and
- (3) on what basis it can be determined that their only explanation for the lie/s is guilt.

129. It is important that I also take into account the fallibility of the human memory as was considered by Leggatt J in *Gestmin SGPS SA v Credit Suisse (UK) Ltd & Another* [2013] EWHC 3560. This is particularly pertinent in cases such as this in which the events under the microscope are many years distant.

130. Hearsay evidence is admissible in the Family Court, but appropriate care needs to be applied as was explained by Munby P in *Re A (Application for Care and Placement Orders: Local Authority Failings)* [2016] 1 FLR 1. In that matter the issue related to a Local Authority producing first hand evidence to prove the allegations it was making against the parents. Whilst the court can act on hearsay, direct evidence from those who can speak to what they have themselves seen or heard is much more compelling and less open to cross-examination.

The Positions of the Parties

131. The Mother submits that the court should make all of the findings in her schedule. It is suggested that the Mother did not have any of the adaptations suggested by the intermediary on her behalf which is not accurate.
132. It is submitted on her behalf that the Father's lies prove the case against him. A schedule of what are said to be Father's lies is produced as an appendix to the Mother's written submissions. In addition to those matters set out in the schedule and of general import, it is argued that on the basis of his answers in cross-examination, he has not internalised the lessons from the domestic abuse work which he has completed with the "A" Project [DAPP Reports 14/8/23 [D52] and 13/9/23 [D54]] .
133. The Father submits that he has been greatly prejudiced by the inability to cross-examine the Mother for any significant period and that there were a number of issues of significant challenge which would have been put on his behalf. Examples of these matters are given in an appendix to Miss Phillimore's written submissions.

Assessment of the parties and the key witnesses

134. I heard evidence from the Mother, her daughter, VBS, the Maternal Grandfather, AF, Mother's partner CP, and in addition her friend KG. I also heard evidence from the Father, Paternal Grandfather, TB and the Father's current partner and fiancée, SO.
135. The court has been placed in a very difficult position by the fact that the Mother did not remain in the witness box to have her evidence tested, as was the case with the Father. However, the Mother's written evidence has been considered in addition to her oral testimony and placed into the balance with the rest of the evidence.

136. I have taken fully into consideration the content of the letter from a General Practitioner [D35] dated the 2nd November 2023, in which he says that in his professional opinion, the immense and prolonged psychological and physical stress upon the mother over the last four years is putting her at risk of burn out. He refers to information being given by the Mother about domestic abuse, as far back as 2019 but no detail or context is given as to whether this relates to the Father or her previous partner.
137. The GP also refers to stress from the court case and her medical problems which have led to anxiety attacks and a number of hospital attendances with chest pain. A full cardiology work-up has not found a cardiac cause for these reported symptoms. Mother has reported to her GP that to reduce her stress as much as possible, there should be as little contact as possible with her former partner, for her own and her child's sake.
138. I have taken the time to listen to the tape of the Mother giving live evidence to the court at this hearing to best enable me to have the full benefit of her limited live evidence. The questioning of her by Miss Phillimore for the Father was respectful and clear. I would not have hesitated to cause her to desist had the questioning been in the least inappropriate. The intermediary Miss Backen was protective in her role as intermediary in asking for a question to be re-framed or broken up, although this did not occur on many occasions. It is important that I set out a summary of the oral evidence which Mother gave to the court.
139. Dr.Proudman began her examination on the afternoon of the 19th February 2024, by asking the Mother how she was feeling about giving evidence that day and she answered saying she was "terrified". She told the court about her reaction to some aspects of Father's conduct toward her such as using a bodycam at handovers, making

false allegations against her of assaulting A and dosing him with Calpol and requiring a DNA test about A's paternity. She was "horrified" about the false allegations being made which could have had serious consequences for her and A.

140. Mother explained to the court that she was 100% sure that she had raised the topic of sexual violence in her second meeting with the student social worker, who was assisting with the preparation of a s.7 report on 25th May 2022. Cafcass upheld Mother's complaint against the student social worker, after her subject access request was initiated following the earlier fact-finding hearing. No coercive control tool document could be found on the system when checked, although the student social worker said that she had used it. Unfortunately, there is now no clear evidence one way or the other about the detail of Mother's response in respect of domestic abuse at this time. The student social worker did not give evidence and therefore the only evidence is that of the Mother.

141. In her view the Father had no insight at all in to the impact upon her of his behaviour, even in relation to that which had been admitted by him. She drew attention to Father's allegations of assault on A made against CP and the character assassination of her in Father's most recent statement, as more recent examples of how he continues to operate.

142. In cross-examination, the Mother answered questions about the period during which she said she had lived in a "continuous state of fear and disorientation" as she had alleged in her September 2023 statement at C340. The Mother found this hard to answer and eventually said that she didn't know when she had started to feel this continuously. She said she was frightened from early on and often felt confused and disorientated. Father's behaviour was frightening, she couldn't be clearer than that

and she drew attention to the fact that she had fallen pregnant very early in the relationship.

143. Mother described a complete power imbalance in the parental relationship in that she felt that she couldn't/mustn't upset him [Father]. She could not however remember when this existed save to say that she certainly felt this way at points during the later stages of the pregnancy. She was clear that she had registered A's birth without the Father as he had made threats to take A away from her to Ireland and she understood that he felt stabbed through the heart about this registration and continued to be upset for some time in relation to the issue.

144. Whilst she accepted that there were no whatsapp messages in which he was abusive about the registration or in which he threatened to abduct A, she described him as behaving erratically and being frightening around that time. However, she had apologised to Father in relation to the registration because she didn't want to upset him or his behaviour might become more unpredictable. Mother described the first few weeks after A was born as very challenging because of Father's approach and her own health which was fragile at this time.

145. Mother accepted that in her handwritten response to Father's solicitors dated 30th July 2019 [C389] she did not refer to this alleged threat by Father of abducting A to Ireland, although she did give other reasons for going ahead with this in his absence. Also, in the text correspondence between them referred to at C408 on the 13th July 2019, there is reference to the registration but not to a threat of abduction, just "lots of things" and being under "acute stress". There was, however, she pointed out, a later reference to abduction in a text message from her to Father, in November 2019, as contained in the Father's schedule at A61.

146. The Mother texted Father on 12th November 2019 to say, “*you have said you would take him - you know you have. You even said it when he was in hospital*”. It was clear that the Mother was annoyed about the Father messaging girls on social media shortly after the birth of A. She referred to it in a text message as “*all that tits and ass*” as “porn”. In live evidence the Mother said that she was not proud of the wording of her message but that the Father had hurt her a few days earlier. She considered that she was probably asking him to be more considerate of her. When it was suggested to her that the messages between them do not suggest that she was afraid of Father, she maintained that there was a power imbalance and that she didn’t know what was coming next.

147. A number of matters were put to Mother, which it was suggested indicated that she was not afraid of Father and that her actions undermined him as a parent. Mother denied asserting control over the birth registration of A or undermining him by applying for a passport without his agreement or knowledge. The Mother characterised these steps as protecting A. She accepted sending a document to the Cafcass Officer, listing her concerns about the Father [D17] and also that her comment about Father, “parenting by chocolate button” was not a helpful contribution, although she did consider that Father’s behaviour, which she had observed, was very concerning.

148. The Mother accepted that she did not make any sexual allegations against the Father to Cafcass at this stage, which resulted in the Cafcass Officer concluding that there were “no significant safeguarding concerns” which would preclude him from having an active role in A’s life. Mother said that she didn’t recall being asked about the parental relationship during the meetings with the Cafcass Officer, which took

place over Teams/telecon, as this was during the Covid period [report dated 5th November 2020].

149. It seems clear however, that Mother did not at this stage raise any issues of substantial risk in relation to Father. The Cafcass Officer sets out in her report that both parents gave her a large amount of information and that she could not include everything in her report and therefore she had set out the salient points. Since that time the amount of information which the parents ask the court to consider has multiplied considerably.

150. It is correct to observe that Mother has not been afraid to raise issues or make complaints as she has considered appropriate from time to time. It is submitted that it is surprising therefore, that she did not raise these serious matters at this stage, even in her own document at D17. Instead, she raises issues about Father being allegedly openly homophobic, commenting on people's weight, mocking a child with learning disabilities and using foul language. I take this into account in approaching the evidence as a whole.

151. Mother told the Cafcass Officer that her "primary concern was Father's lack of emotional awareness and self-regulation". This could of course refer to a number of matters. She feared that he treated A as an extension of himself and did not recognise him as an individual. Mother told the Cafcass officer that she was prepared to work with Father but not at the moment, only when she felt better in herself. She was not prepared to be "pushed and needed gentleness". It is clear that Mother was upset by Father's allegations of "parental alienation and that she felt threatened by a potential removal to Ireland.

152. The dispute at this stage between the parents was whether Father should have overnight contact on two consecutive weekends per month, rather than once per

month as proposed by Mother. The principle of contact was not in issue and there was no suggestion that Father posed a risk to A or indeed Mother, who was initially proposing that Father could exercise contact within her home, although this changed during the course of the Cafcass investigation as the parents had a disagreement after Father reported Mother to the police for not promoting his contact in early October 2020.

153. The Cafcass Officer pointed out in her report that it could be argued that Mother's unwillingness to share information about A was working against his welfare. She expressed the view that Mother sought to limit Father's involvement in A's life, which Mother denied.

154. On the second day of the trial, Mother was asked about her unwillingness to provide information about A's schooling now with reference to the Cafcass Officer's comment in 2020. Mother said that she hoped that this would all be sorted out during the proceedings and that she would like to get through them first before she considered disclosing the identity of A's school.

155. It was put to her that she had been considering moving down to [LOCATION] at one point and had told a nurse practitioner about this but Mother responded only by remembering having lots of conflicting feelings. With regard to financial relationships between the couple, Mother said that she could not remember whether it was Father's decision to have separate finances. A whatsapp message was put to her in which she said that Father had chosen to keep their finances separate and she seemed unhappy about this at the time. Mother countered that this message was two days after she had had surgery and she remembered lots of illness and pain and struggling with making and being disorientated by having to make lots of decisions.

156. A number of questions were put to Mother suggesting that she was very capable of standing up for herself and she acknowledged that she had challenged the Father's submission to the CMS, sent the details of Father's DAPP programme to RESPECT to critique, complained about Father's solicitor and paralegal, a student social worker and the current Children's Guardian, Helen Hale. Mother considered her complaints to have been legitimate and pointed out that in her line of work she dealt with the consequences of things which go wrong. However, she had not wanted to make a complaint to the police about the sexual violence she alleged. I do consider that these issues upon which Mother has raised challenge are quite distinct from standing up to the Father himself, in his presence.

157. Mother states that Father was aggressive at the hospital when she was admitted for surgery on 24th September 2019. It was put to her that there was no aggression demonstrated in the whatsapp messages which are exchanged between them around this time. She responded that she was trying not to upset him as she was having surgery and was in lots of pain and it was not many days since the shower incident. The Mother needed a break after discussing this incident and when the evidence was resumed it was agreed that Mother could bring her tea into court with her and look only at the judge when responding to questions.

158. Mother described the relationship as being incredibly difficult and frightening and herself as being confused by how Father behaved, she wanted to be a family "more than anything". She said she was possibly confused when she messaged Father to say that there was "no stress" when they were together on 13th December 2019. The message is more detailed, Mother stating that "we didn't have a single cross word when we were together....it was entirely loving and normal being a family".

159. Mother admitted that she had said that she didn't have the man she loved in a whatsapp message in relation to Father and that she missed his touch and his balls in her face. This was explained as a stupid comment which she knew would chime with him. There are many messages sent by Mother which give the clear impression that she is desperately trying to hold on the relationship.

"All I want is for us to be a family" "Just needed time to heal" ... "I also needed time [especially] after the last 12 months - our experiences [of which] are not the same" 18/10/19

"Is there no future for us" 14/11/19

"just desperate for your love" 14/11/19

"Can we come to you?" 16/11/19

"Shall we come down? Would that make you happy?" 30/11/19

"I want to be a family more than anything...I will do whatever is best for you at Christmas" 8/12/19

"Please don't give up...Please don't go" 7/3/20

"Please come and stay if you can.. You are warmly welcome" 19/3/20

"Is there anyway that you could come and stay...That's what people do who love each other, hold hands in the dark" 29/3/20

"we just lost our way a bit x.....sending warm English arms to wrap around all your sore bits....Yes I'd love to see you"

"Please tell me you want to hug me xxx....Is that what testicles are like?Ouch

xxx....Ejaculation needed xxx....I really, really need a [FATHER'S NAME] hug"

12/4/20

"nothing has changed from my perspective...I still want to work at this xxx" 29/4/20

160. Mother denied being assertive when she told father that he would have to put the “legwork in” to continue the relationship. She said that she was hoping that things could be different, effectively by sending these messages, although she was feeling quite vulnerable really. Mother accepted inviting him to stay but said that she had experienced serious illness and had a lot of confusing feelings. Her message on the 29th March 2020 was, she stated, about as assertive as she would get after a sexual assault [26th December 2019]. She accepted that the relationship was not all horrible.
161. It was put to Mother that there weren’t any messages in which she describes him as having been violent. She countered that the messages she had exhibited to her statement demonstrated her to find his behaviour confusing. She was wondering if his behaviour was normal and so she had asked her friend KG about this as she didn’t know what to do for the best [C185 – whatsapp – 10/11/19]. Mother sent a message asking if it is normal to be slapped on the bottom during sex and for photographs of the consequent injury to be taken but then immediately says, before an answer is forthcoming, she thinks she knows the answer already.
162. Mother’s message on the 12th April 2022 was highlighted in which she said that he might be able to “consign more than three years of lies and mental abuse to history” but which didn’t mention any sexual abuse. She said that she didn’t know why she had not raised the issue of sexual violence in the message but pointed out that she had by that time spoken to KG and ML, health professional and sent a document to [the student social worker], although she said that she had not told the student social worker everything.
163. Mother described struggling to understand what had happened and why Father seemed to enjoy making her feel pain, pulling her hair and hitting her numerous times. She said she would not have used the word “rape” because she struggled with that.

The witness became upset at this point, sobbing uncontrollably and was granted a break until after the short adjournment. After lunch I was told that the Mother felt unable to continue her evidence and it was agreed that a way forward would be to hear from her other witnesses that day and take stock the following day as to whether Mother felt able to continue her evidence the following day. However, the following day I was told that the Mother would not be continuing her evidence.

164. The Mother presented as a very fragile person who was desperate for the relationship with Father to succeed. It is noticeable that she does refer in her message to three years of lies and mental abuse and although she does not mention sexual abuse, she is still clearly complaining about the quality of their relationship. She did also challenge Father on a number of occasions about his self-obsessed behaviour.

KG [C98]

165. This witness had been a friend of the Mother for seventeen years at the time when she swore her statement in August 2022. She is currently employed as a prison officer but came to know Mother when they were both employed by [POLICE FORCE REDACTED] Constabulary. This witness was not required for cross-examination by the Father in the fact-finding hearing in the court below and so there is no transcript of her evidence, as her evidence was unchallenged and not properly taken into consideration by the District Judge which was one of the reasons why the appeal against her decision was successful. The witness gave evidence on the remote link by agreement between the parties.

166. On the 10th November 2019 she says in her statement that Mother messaged her via Whatsapp [message produced by Mother], mentioning injuries that had been caused to her and then photographed by the Father. KG was so concerned that she called Mother to speak about this further. Mother reported that Father would often

take photographs of her body without her knowledge or permission. Mother told her that she had been subjected to a number of incidents of sexual assault and that these were taking place frequently and against her will.

167. There was a specific incident raised by Mother as having occurred when A was just a few weeks old, around July 2019. Mother complained that Father had forced himself upon her, initiating sexual intercourse and refused to stop despite her asking him to do so. He had hurt her breasts during this incident. She was breastfeeding A after birth. Mother complained that Father would have been clear that he was hurting her when he did this and that the incident was non-consensual. Father was said to have apologised afterward. This was around the time she said when Father was reported to be “interacting with pornographic actresses and content” [H11].

168. KG also gave evidence that she was told by Mother about the “shower” incident, when she had been struck multiple times by Father without warning, one of which was so forceful that it had knocked her off her feet. Mother had sustained significant bruising as a result of the assault, which Father had then photographed. Father had made her feel bad about her body after the pregnancy and this had affected her self-esteem. A further sexual assault was complained of by Mother to KG, occurring after Christmas 2019 but she had not wanted to give details.

169. This witness also supports Mother’s account of being cowed effectively by Father’s response to her complaints and her fear of repercussions if she spoke out about the abuse she was suffering. In addition, Mother was stating that she wanted to remain within the relationship and be a family together. KG was challenged in evidence by Counsel for Father and it was put that Mother was exaggerating or fabricating and was she also? This was denied by the witness who gave a straightforward account. It is not clear what she might have been exaggerating.

170. This evidence supports the fact that a complaint was being made by Mother about abusive behaviour being inflicted upon her by Father, around the time when Mother alleges that she was being coerced and sexually assaulted by him. This is a report given by Mother at the time when the relationship was continuing, rather than after separation, in the throes of litigation. The evidence of KG does not prove that the substance of the complaint which was being made was true, but it is supportive of Mother's evidence. The mood of the Mother when making these complaints to her was congruent with the nature of the events described and is similar to that exhibited in relation to Mother's evidence giving.

171. It is submitted by Miss Philimore that KG's evidence is unreliable because she gave strange advice in the circumstances to "reason" with the Father about his behaviour. Mother's written evidence [and previous live evidence] and KG's live evidence do hang together. I have no basis upon which to conclude that this witness has fabricated her account nor to consider that Mother was making up this elaborate story to KG, unless it had some foundation in truth. It seems inherently improbable that Mother would chose to concoct such a false story to KG at this point in time, particularly bearing in mind that there is agreed substance to the account as Father agrees that he would slap Mother in this way, albeit at her insistence.

AF

172. The Maternal Grandfather filed a statement dated the 25th September 2023 in support of his daughter. AF [76 years] is a cancer survivor since 2015 and was seriously ill at the beginning of 2023 when he contracted Covid and was hospitalised for 6 weeks, receiving the last rites at one point. He sets out his professional background in his statement. The majority of his evidence is hearsay in that he is repeating things which his daughter has told him. No complaint of serious abuse was

made to him by Mother during the course of the relationship and he only learnt of the details when overhearing her video conference with her solicitor.

173. It was abundantly clear that he does not like the Father [and Paternal Grandfather] and AF was challenging in the way he spoke about Father in court, calling him an inveterate liar, a “callous boy” who has a problem with women and is a coward. He spoke directly to the Father in court telling him that he was looking him in the eye when he made these comments to him. In his “absolute and clear view”, Father was trying to destroy the Mother and the proceedings were about revenge, as she had stood up to him and Father was trying to get his own way. He said that he wasn’t impressed with Father from the start but tolerated him, thinking that the relationship would not go anywhere and would simply peter out. He was scrupulously and bracingly honest in his direct approach.

174. AF highlighted an incident in hospital after the birth of A in which the Father was lecturing Mother about how to breast feed which he found astounding and recalled rolling his eyes in response. I found this a telling and insightful piece of evidence, which I accept. It is difficult to understand what Father thought he could tell this Mother of five children about breastfeeding. However, the evidence would indicate that Father is very proud of his scientific qualifications [Msc, Msc, Bsc] and feels this gives him knowledge of the inside track. He didn’t want Mother to breastfeed A.

175. AF said that Father has to be right, generally and this continued through every meeting and interaction. Tellingly, his opinion was that the original child arrangements order of DJ.Davies could, in his view, have worked as it “addressed the needs of the parties and the child”. However, seventeen days after the order was made, Father served enforcement proceedings upon Mother. AF didn’t think that any

order for contact would work now. “He shouldn’t be around this child”. “I am concerned for my daughter and my grandson.”

176. A is a charming little boy, loving and gregarious, who is interesting and whose skills are excellent but Father had in his view brought the child nothing but negativity and would continue to do so. He agreed that he was not qualified to say whether A had sustained any damage thus far but given that A had not seen his father for some time, he would not hold any special place in his mind in his opinion, as though he was simply seeing an Amazon delivery driver. AF reported that no-one speaks negatively about Father in front of A because they don’t speak about him at all.

177. He described Mother as “terrified” of Father as a result of the abuse that she had suffered and that she couldn’t be in the same room as him. Mother’s life was her choice but he personally would be pleased if Father was no longer a feature of it. AF had assisted with a handover and some video contact until he became too ill to do so. He described A as not the same bouncy boy after contact with Father “and his entourage”. He had seen A’s reaction at the time of the video contact from which he considered he derived little benefit.

178. Eventually, AF conceded that Father “may well love his child and want to be a part of his life”. He accepted that when he wrote a conciliatory letter dated 13th June 2021 [C220], in which he said that he believed it to be true that Father loved A. He also stated in that letter that Father had a place in A’s life and that “no-one could take that away from him” but as the proceedings have continued, he reported that his views had hardened and he clearly didn’t subscribe to that view now.

179. Unfortunately, although I am sure that AF believes passionately what he told the court and clearly loves his daughter and grandson very much, he did not present as a very balanced or objective witness, which was a factor common to a number of the

witnesses called on behalf of the parents. There was little direct evidence which he could assist me with, certainly not the sexual allegations. The thrust of his evidence was that, despite everything, A is a very happy little boy, who is not encouraged to talk about his Father and that his daughter does not want any further contact with the Father or for A to have such contact either.

CP

180. This gentleman is Mother's current partner, who is a Headteacher by profession. He has been married before and shares the care of his five children with his former wife. His statement is dated the 25th September 2023 and he reports therein that he has known Mother since February 2021 and has been in a relationship with her for over two years. They do not live together, having each a separate home.

181. CP [48 years] described A as "thriving" as a result of the protective factors around him. Father was occasionally mentioned in the context of how damaging this is for Mother but only when A was absent and he would be very surprised if the child had overheard them talking about this. If A was present there would be little mention of Father other than someone saying you are not seeing your dad.

182. A did call CP "Daddy" occasionally in the presence of his own children and this had happened several times per week over the last eighteen months to two years. He didn't correct A as he considered that the child saw him as a positive role model in his life. No-one had had a direct conversation with the little boy, as far as he was aware, to the effect that he [CP] was not his biological father. CP accepted that the bulk of information which he related was also hearsay, reported to him by Mother but he considered that Father's history of coercive control was not good for A. He had witnessed first-hand Father's behaviour at some handovers, during video calls and Mother had complained to him shortly after some handovers about Father's approach.

CP gave evidence about the impact over the years upon Mother's emotional and physical health of Father's behaviour.

183. He reported having seen Father parked around the corner from Mother's home, at a time when Father was in his words, "demanding" contact and then the Father following her car in his own, in CP's view using proximity, threat and surveillance to exert pressure upon Mother. This witness was asked about the dispute which had occurred in relation to video contact between Father and A which he had facilitated from March to June 2023. He describes these sessions as "challenging" as A would show little interest and they would end quite quickly. Father accused CP [22/6/23] of physically restraining A by pulling him away from the camera during a video contact session.

184. CP denied this saying that he had simply put his arm around A to offer him comfort when he was becoming distressed. A had frequently resisted being involved in these sessions and he said he had done his best to persuade A to take part. CP had been concerned about Father asking A to show him various things inside the Mother's home, which he considered to be inappropriate given the allegations of abuse. This allegation against CP brought to an end the video sessions as he felt he had to report this allegation to his employer given the nature of his job and that he could no longer facilitate video contact.

185. This witness was also strongly allied to the Mother's account of her relationship with Father. He could not be said to be a wholly impartial witness. However, I accept his account about the video contact and that he did not physically restrain A, rather sought to comfort him as he was becoming distressed during the session. CP was a straightforward witness and his account was credible and natural. I also accept his account that Father was asking A to show him things in Mother's

living room. This may have been a desperate attempt to keep the child interested in contact by Father rather than an intrusive tactic but it was inappropriate in all of the circumstances, particularly given the nature of the allegations. Unfortunately, this chimes with Father's intrusion into Mother's bedroom with the chocolates, a finding which had already been made against him and which he says he accepts.

186. Unlike Father, CP knows A well, his moods and behaviour and I am satisfied that, having seen him give evidence, despite his support for Mother, that he would not have "physically restrained" A from enjoying contact with his Father. I also bear in mind his professional background. CP was clearly affronted by the allegation. On balance, this is much more likely to be another of Father's exaggerations, as he has admitted a number of incidents of misinterpreting events to suit himself and this seems to be a pattern of behaviour by him. This was a huge miscalculation on Father's part, likely borne out of some jealousy in relation to CP's role in A's life and this directly led to the cessation of video contact for which Father should take responsibility.

VBS

187. This witness is the daughter of the Mother from her previous marriage, who has three children under five years with her partner. She swore a statement dated the 25th September 2023 [C231]. It is very clear that she also is antipathetic toward the Father and refers to him talking a lot about himself and how successful he was in his career, although she actually only met Father on one occasion in 2019. Mother in common with AL and CP does not consider that contact between A and Father is in the child's best interests and that any contact between Mother and Father would be very damaging to Mother.

188. She describes her Mother telling her about Father's "abnormal and sadistic sexual habits", which included non-consensual sex and taking photographs of injuries he had caused to her body. This behaviour was disclosed to her some 18 months ago which would have been approximately September 2022 and therefore long after separation had taken place. She had the detail of one of the allegations incorrectly in that she said that a few days before surgery took place in September 2019, he "as good as forced her [M] to have anal sex". Whilst there was an alleged incident in the shower, this did not involve anal sexual intercourse, on Mother's account. Mother lives 200 miles away from her Mother and has seen A in person on only a few occasions and much of her evidence is based upon report from the Mother.

189. She described Mother becoming less sociable, moving away from her children and worrying more during the currency of the relationship with Father, which, with the benefit of hindsight, she attributes to the abuse she has been told Mother suffered from Father. It is clear that during the relationship Mother did not report to her daughter any serious abuse. However, after separation from the Father, Mother did report to her concerns about Father's behaviour toward her. She described her Mother as worrying a great deal about what Father would make of any incident involving A and also about the contact arrangements. Mother had contacted her at the time when she and A had Covid seeking a witness to her Lateral Flow Test result and told her about the threat by Father to make her do unpaid work.

190. Although her direct experience of what the mother was reporting to her was mostly limited to being told about this, on one occasion the mother called her and seemed to be hyperventilating [C239- 4/3/22] after Father had attended contact wearing a bodycam. Mother also reported that Father kept trying to come into her home on this day. I accept this evidence from Mother, which gave the court some

insight into the impact upon Mother of the Father's attitudes and behaviour. Mother has been video called by maternal grandmother on occasions when A has not wanted to attend contact with his Father and witnessed how the child was behaving.

191. This witness is also clearly partial in supporting her Mother and believing without question everything which Mother has told her about the relationship with Father. The fact that Mother told her approximately eighteen months ago about sexual abuse having occurred, could be regarded as supportive of Mother's account. However, this is hearsay, over two years after the event and does not prove that the acts occurred. The issue for the court is what weight to attach to this evidence. I do not consider that I can attach much weight to the evidence of this witness with regard to sexual matters, as distinct from that given by KG. However, Mother's evidence about the impact upon her Mother of the continuing dispute is of more relevance and assistance.

TB

192. This gentleman is the Paternal Grandfather of A, his first and only grandchild, although he has not had an opportunity to spend much time with him since birth. His statement in the proceedings is dated the 8th December 2023 [C542] and he gave evidence on the remote link by agreement between the parties. In cross-examination, he said he was here to give support to his son, of whom he was very proud. TB was a only a "bit concerned", not frustrated or upset, when A didn't get "the [FAMILY] surname" but he knew it would be resolved. He considered that obtaining the DNA test was a perfectly normal thing to confirm that Father was the Father, not something done to frustrate the Child Maintenance Service.

193. He believed that the relationship between the parents had been on and off and that since continuous allegations had been made against his son. He was aware that Father had made admissions of domestic abuse but he wasn't aware of the exact

terminology of DA, not being familiar with the whole procedure. His son had rarely spoken to him about this, although he was aware that his son had “allegedly” left chocolates on Mother’s pillow. He had not addressed this aspect or the impact of it on Mother in his statement as he didn’t think it was necessary.

194. TB considered the use of the bodycam to be perfectly normal, he was familiar with other people doing this and his son had done it for his own protection. He didn’t consider it a trigger for abusive behaviour. He had no experience of what impact this would have on Mother or A, but bearing in mind that the child was only two years old, he thought that would be negligible. TB said he wasn’t present at handovers when his son was wearing a bodycam as there was no need for this as he was Father’s “witness”. Paternal Grandmother has health problems and is not able to travel as easily as he can.

195. He didn’t recollect a contact handover on the 10th December 2021, at which it was suggested that the men put on a “show of force” by arriving together. He denied any such intention saying that he wanted any opportunity to see his grandson and show love and affection for him. TB became aware subsequently that Mother objected to him attending.

196. With regard to Father serving Mother with court papers at contact on the 26th June 2021, he didn’t recall hearing Father say that he was “looking forward to seeing her [M] in court” and he had no knowledge of the correct procedure with regard to service but thought Father did this on legal advice. Grandfather said he did not see service take place as he was in a different room. His son told him afterwards that he had done it as his lawyer advised and Grandfather had not considered advising him not to do so.

197. TB found the incidents hard to recall, as there had been so many, bearing in mind his age. He was asked about a weekend when Mother said that she thought that both she and A had Covid. He couldn't remember whether Father went to get a test for them or whether he asked Mother to carry this out in front of him. However, the "statement" from him exhibited to Father's most recent statement at C651 Exhibit 60A was a true and honest reflection of what happened on that day, although he couldn't remember when he wrote this. Maternal Grandfather said that A was unwell and TB had asked to see A for a few moments and he sat and held his hand and spoke to him in a caring way whilst the child slept on the settee.
198. Mother said that she had given Calpol to A and he thought that this was done to put him in a deep sleep for their contact and this had happened on a previous occasion but he was not suggesting that he had been effectively drugged or that she did this to frustrate our contact. His evidence was somewhat contradictory in that TB also said that he would expect the Mother of five children to know if a child is ill and treat them appropriately.
199. He reported having high respect for the Mother and would go out of his way to help her, having no animosity at all toward her. He could not point to any help he had actually given to the Mother, however. TB was upset when counsel suggested that he was treating his grandson like an object which he said was inhuman. "A is my priority and a very important part of our lives and we would like to have contact with him".
200. I completely understood the wishes of this gentleman to have a relationship with his only grandchild. However, he could not assist the court as to why he chose to tell the court that Mother had disclosed that he she had become pregnant with her first child at 15 years of age. This was completely irrelevant to the issues before the court

and unfortunately, resembles the character assassination so prevalent in the original version of Father's final statement which I directed should be withdrawn.

201. TB Senior was also a witness who clearly sided with his son. The means appeared to justify the end in terms of the use of bodycam and his son insisting on Mother and A taking a test when she believed they had Covid. His evidence with regard to drugging the child with Calpol to frustrate contact was left unclear. He made that allegation supporting his son in his written statement but appeared to try and back away from this in live evidence. There seemed to be an element of trying to have it both ways which was also a feature of his son's evidence.

SO

202. This lady is Father's fiancée, her statement was dated the 8th December 2023 [C536], which she reported to have prepared herself and said she was giving evidence to support Father. Her evidence was heard on the remote link by agreement between the parties. SO was not aware of any admissions Father had made with regard to domestic abuse as he had not discussed this with her nor the content of the DAPP course that he had taken part in. This was just something she understood he had to do for court. She did not consider him to be abusive, certainly not to her, she knew him very well, had no concerns about him and didn't believe that he had been a perpetrator of domestic abuse.

203. SO was asked about a contact handover and the use of the dashcam facility in Father's car. She said that Father's dashcam was switched off when he got out of the car to meet the Mother and collect A, as he took the car keys with him and no filming therefore took place.

204. She was asked about a contact visit which took place at an airfield and she maintained with reference to photographs and google maps that she was in a position,

whilst seated in the car to see what played out between Mother, A and Father. SO suggested that Mother had an outburst and was “like talking” to herself, seemingly not happy with Father spending time with A. Although she could not hear what was being said, she inferred Mother’s mood from her body language.

205. With regard to Father’s use of bodycam/go pro, she had no concerns about this as it was being used for transparency and accountability, to cover himself and didn’t agree that it was intimidating, confrontational or unproductive to a good handover. In SO’s view, Mother made the process difficult and at times refused for Father to spend time with A, although she had never discussed this with Mother. In her view Father was not having contact because Mother wouldn’t let him. He just wanted to spend time with A but handovers were strained and emotional.

206. Unfortunately, Father’s witnesses as with Mother’s, save for KG, do not assist the court greatly with regard to the central issues which the court has to grapple. They are also extremely partial and have little insight into the perspective of the Mother and her feelings. The court is left with the impression that battle lines have very much been drawn between the Mother’s team and that of the Father.

207. It is clear that the DAPP course with the “A” Project has not been something which Father has discussed with either his fiancée or his own Father. In my judgment, this demonstrates the peripheral role which the course has taken in his life. It was something to be completed and for a certificate to be produced. If this had truly changed some of his attitudes and beliefs, I would have expected this to have been internalised and at least mentioned to those close to him. SO didn’t even seem to be aware of the admissions which Father had made with regard to domestic abuse and appeared to carry the view that all problems were caused by Mother’s behaviour, rather than him bearing any responsibility at all.

[FATHER]

208. The starting point for an examination of Father's evidence is a recognition that

Father has now accepted that he committed acts which amounted to domestic abuse

by doing the following:

- i) Placing chocolates on the Mother's pillow in her bedroom, whilst exercising contact within her home, which was an invasion of her privacy;
- ii) Using bodycam on three occasions at contact handovers - 8 occasions are alleged by Mother but not admitted by him;
- iii) Being prone to exaggerate and portray Mother in a bad light;
- iv) Reporting Mother to Children's Services;
- v) Accusing her of putting A into a Calpol induced coma and wilfully misinterpreting her actions;
- vi) Recording the mileage on Mother's car;
- vii) Calling the police to report that the Mother had physically assaulted A;
- viii) Making up this incident and reporting it to Children's Services;
- ix) Serving Enforcement papers upon the Mother on a contact visit;
- x) On the 28th April 2022 referring to seeking a transfer of residence of A;
- xi) Sending Mother a message with regard to no further handovers taking place but then telling the court that she had failed to promote contact.

209. These were not matters which Father was prepared to accept when he gave evidence at the hearing in the court below, nor which he was prepared to admit after that hearing in his statement dated the 27th March 2023. In that document he effectively sought to argue that the judge had been wrong to make those findings and should see his behaviour as precipitated by the contact dispute. Father has not explained why he did not understand that this behaviour was inappropriate at that time

when he committed it, other than in his statement dated the 21st August 2023 [C198], he explains that his understanding has improved as a result of the DAPP course which he has taken part in with the “A” Project.

210. In this later statement filed after the court had allowed Mother’s appeal, he states that he has “reflected deeply”, taken all of the court’s observations on board and realised that he could and should have conducted himself differently. He suggests that he has a new awareness and insight and that with an improved skillset he can have more empathy with Mother and A.

211. Almost all of this admitted behaviour occurred in the aftermath of the parents’ separation and in the context of their bitter legal dispute. I bear that in mind. However, the court still needs to examine to what extent, if at all, Father’s behaviour post separation is indicative of his conduct during the course of the relationship.

212. The Father was unfortunately not an impressive witness and little of his evidence appeared to be child focussed, nor did he appear to be a very sensitive or emotionally supportive partner. Father repeatedly stated that he was concerned about “my son” but his actions at times belied his statements. He has gone to great lengths to criticise the Mother, her history and family. It was not clear why he indulged in criticism of her adult children in the original version of his statement nor why he exhibited an email from her ex-husband which was also critical of her. This was character assassination rather than cogent evidence which could assist the court to determine the truth of Mother’s allegations. It demonstrated that he had still not taken on board the comments of DJ.Keating about reflecting upon his conduct, made to him directly over two years ago [28/4/22].

213. He described himself as methodical, making decisions after careful consideration, whereas Mother, in his opinion could be highly impulsive and

emotionally charged, seemingly seeking to belittle her. However, he had to concede in cross-examination that he has behaved in an impulsive way with regard to his son. Father admitted for example being very “charged” at the hospital in late September, when he found out that Mother had named her daughter rather than him as her and A’s “next of kin”.

214. Father could not satisfactorily explain why he should get so upset about this, given that they were not cohabiting, engaged or married at the time. It is reasonable to infer in my judgment that he saw this as some type of rejection and that it might compromise his position with regard to A in the longer term, if anything happened to Mother. He didn’t explain what he meant by “charged” but given that Mother was ill, in pain and requiring surgery, this didn’t seem to be the time to be difficult. On Father’s evidence he seemed to be more upset that he wasn’t being allowed to manage A’s care, rather than about Mother’s health situation. Father left the NE after their dispute on the ward and was not present when Mother had her operation.

215. Father clearly hates feeling subordinate or controlled [or having a lack of control] in any way. In his evidence in chief, he complained about being “supervised” by Mother and Maternal Grandfather during contact at a playground. He described this as a very “harrowing” experience in which he felt alienated. Contact had been refused by Mother on the Saturday 11th July 2021, when he visited Sedgefield with Paternal Grandfather and this visit to the park occurred the following day.

216. The Mother submits that as a result of the content of his evidence at this re-trial, the court cannot be satisfied that the Father has made any genuine acceptance that he has perpetrated domestic abuse and effectively that this has been a tactical concession. I am concerned about the totality of Father’s behaviour as set out at Paragraph 208 (i) to (xi) above. I do, however, take into account that most of this

behaviour occurred in the context of the proceedings. The Father seemed to become convinced that the Mother was trying to prevent his relationship with A and fought back using every tool at his disposal.

217. As I indicate above, in my judgment the situation deteriorated rapidly after Father unwisely served Mother with enforcement papers during a contact visit [26-27.6.21], not long after the original contact order was made on the 27th May 2021. He appears to accept now that this was inappropriate, saying that this happened because he was not legally represented, although his Father TB gave evidence that Father had taken this step on legal advice.

218. I do agree with AF that it is a great shame that the order of DJ.Davies of the 27th May 2021 was not given an opportunity to work. Mother seemed content at that stage with Father having regular staying contact. However, I am satisfied on balance that the more Father “pushed” her as opposed to using the gentleness she requested, the more she became convinced that contact was not in A’s best interests. Father indicated at the first hearing before the lay justices that he would reflect on the need for enforcement proceedings but at the next hearing pressed on and matters have steadily deteriorated since that time.

219. I was not convinced that Father had learnt a great deal from the DAPP which he had taken part in. He showed little regret for the use of bodycam, saying that he had done this for protective purposes. In his statement dated the 27th March 2023, Father said that it was “disappointing” that the District Judge had made findings that some of his conduct amounted to domestic abuse. He also sought to contextualise each of his behaviours separately, as he seemed to attempt to re-contextualise their entire relationship in the original version of his last statement which ran to several hundred pages. Father seeks to justify himself by giving his reasons for his actions,

rather than putting himself in the position of the person who has been affected by those actions.

220. Father sought to separate out the incidents as each highly “charged and stressful” in their own individual way and contends that the “chocolates on the pillow” incident should not be included by the court at all, as it was a well-intentioned olive branch. I reject that explanation by the Father and regard his action as rather insidious. He knew that he did not have permission to go into the Mother’s bedroom when he took that step.

221. He alleges that he had the chocolates with him and when A ran into Mother’s room, he then followed and placed them on her pillow as a goodwill gesture. I find it hard to accept that he just happened to have the chocolates with him when A also just happened to run into his Mother’s bedroom. This is too much of a coincidence. In addition, Father admitted that this was a fractious time during which they were trying to re-build relationships. In such circumstances, in my judgment, there was all the less reason to enter Mother’s inner sanctum. This should have been obvious to him. It is not correct, as he attested to the court in live evidence, that he was not aware that Mother was unhappy with him entering her bedroom, as she emailed him about this on the 1st March 2021 [Annex F – C186]. He denied knowing about this to the District Judge and also to myself. He was attempting to mislead the court in doing so.

222. This is an important episode, which in my judgment demonstrates Father’s total lack of sensitivity and judgment. He has made many mistakes in his handling of his dispute with Mother over A. The defence of his actions more generally seems to be that he didn’t intend to upset Mother or indeed A. However, this is not relevant if it should have been obvious that the action he was taking was inappropriate, insensitive or reckless. He seeks to separate out all the incidents of his inappropriate behaviour,

which is the opposite of the approach which the court should adopt, by analysing patterns. It is only by stepping back and considering the evidence as a whole and his behaviour as a piece, that I have been able to reach a conclusion in this matter.

223. The Father appears not to listen to the directions of the court. On the 14th October 2021, DJ.Keating recorded in her order that the contact book which was passed between the parties was not to be used for evidence gathering. Despite this warning as to his conduct and how to approach contact, Father accepted that he attended contact handover only 2 days later wearing a bodycam, which he says he wore to protect himself from false allegations and “poor behaviour from her”.

224. However, it was poor behaviour from the Father which the District Judge had been concerned about in her order of the 14th October 2021. The Mother was clearly expressing stress in respect of these enforcement proceedings as the judge records and the judge informed both parents that referral to third parties such as the police and children’s services was inappropriate. The Father was asked to be aware of the perception of his conduct from the Mother’s point of viewpoint.

225. At the next hearing on the 17th December 2021, the judge expressed her concern that Father had chosen to use the bodycam only days after she had warned him about Mother’s perceptions of his conduct. The court expressed its astonishment that Father was taking this step and also taking family members to handovers as “witnesses” which he freely accepted. I find it very concerning that even within a court hearing it is recorded that having been given a full opportunity to set out his position first, Father then interrupted Mother, “within seconds” when she was setting out her position. Mother told the court that he often spoke over her. She found his behaviour at handovers to be intimidating and controlling.

226. The judge was of the view that Father had little understanding of the impact that his conduct had upon the Mother. She was further concerned that he had embarked upon these enforcement proceedings so soon after the original order had been made with a full consideration of the issues and the consequent impact upon the Mother and the child. The judge made an order that Father must not record contact handovers by any means [B27].

227. If the Father was prepared to ignore the court's directions, bulldozing on with his decisions and then treat the Mother with such little respect, even within a court hearing, this gives an indication of his mindset which is part of a pattern of behaviour which the court has to evaluate. If Father behaves in such a way in court, how does he behave at handovers? In his evidence to this court he seemed unaware of the impact upon the Mother of behaviour at contact handovers, dismissively saying he had never seen her have a panic attack, as though it hadn't happened if he hadn't witnessed the event.

228. He told the court that the dashcam on his car didn't work and so Mother was "overreacting to circumstances which didn't exist". There seemed little true acceptance of his insensitivity, simply that he had been judged to have been wrong. Father has never submitted any bodycam or dashcam footage to the court and therefore a great deal of upset has been caused for little tangible benefit, save that Father would likely submit that its use had served its purpose by keeping Mother in line and stopped her being "abusive" to him. However, in failing to produce the footage taken, Father has prevented the court from having an opportunity to judge his conduct at a handover as much as Mother's.

229. The nature of Mother's abuse was not specified rather, Father said that Mother would be passive/aggressive and delay and close the door on him and say that A

didn't want to go. The "false allegations" which were being made against him leading to his use of bodycam were not particularised in any detail. Father described himself as "frustrated" and "angry" on these occasions that he had come so far and wasn't getting to see his son.

230. There appear to be a significant number of occasions in which Father accepts that his behaviour has been attributable to him being "charged", "frustrated" or "angry". This is in sharp contrast to how he portrayed himself to the police when he complained to them on the 13th June 2021, that Mother was breaching the contact order [G3]. He reported that he stayed calm because A was appearing anxious and stressed during these fraught handovers.

231. It is difficult to understand the point of Father's March statement, as he simply seems to be telling the judge that she was wrong. He has now however accepted that the District Judge was correct to characterise this behaviour as domestic abuse. It is clear, however, that he wanted to "contest" as he put it in the statement, the lack of finding of parental alienation.

232. There has been a pattern of Father grossly exaggerating Mother's behaviour and treatment of A and seeking to involve the authorities to support him. He accepts this but has not explained why he has acted in this way, satisfactorily or at all. In his August 2023 statement he sought to apologise for behaviour which he now accepts was inappropriate [C198]. However, in his oral testimony those concessions did not appear to be genuine.

233. Exaggerating Mother's behaviour to professionals was in my judgment, manipulative behaviour, which shows a lack of awareness and insight into the impact on Mother and the potential consequences for A of his actions. Father denied saying to Mother on the 12th June 2021 that he would get her to do unpaid work. However,

this threat came from somewhere and was repeated by Mother to her daughter V in distress, as she was concerned for the impact on her employment.

234. On the 13th June 2021, as set out above Father actually went to the police station to complain to the police about frustrated contact but also raised issues about Mother's fitness to care for A as a result of her CFT. Mother says he was aggressive and frightening on that day. Father was adamant that he made a complaint to the police that day of Mother perpetrating a violent assault against A but the police record reveals no such complaint. The police refused to get involved and said, understandably that this was a civil matter. Apparently the "trigger point" as Father described it was that Mother wouldn't let him go out into town with A and she pulled him away from Father. He said her action was very abrupt and the child got upset.

235. On the following day 14th June 2021, he took his concerns to [AREA] Children's services. He reported assaults on A by Mother on the 30th May 2021 and the 13th June 2021. In these voluminous papers and in the significant involvement of professionals, no question marks have ever been raised about Mother's ability to meet this child's care needs. Only Father has raised this. No action was taken by the local authority in response to his complaint.

236. Father told the court that Mother had threatened suicide on two separate occasions, in July 2019 and also in October 2019. He was not very clear about the July episode and whether this was an actual threat to take her life or simply as per his evidence at the previous hearing [I246], something which Mother had mentioned thinking about. On the latter occasion, 14th October 2019, he rang the police [G4] and told them that she was depressed. This Father said this was a very serious example, Mother was heavily on medication and had attacked him, pounding on his chest. He

denied overexaggerating but agreed that he had still gone off to [LOCATION] for a conference leaving Mother in sole care of A, despite his concerns.

237. He agreed that he had not told the police that Mother had assaulted him or that he feared for A's safety, quite the opposite as he told the police that he didn't have any concerns that the "baby would not be well cared for" [G4]. In sharp contrast in his response to Mother's schedule of findings for the trial in the court below he said at A14, that he "feared for my own and A's safety".

238. I can only conclude as Father could not reconcile these different accounts that Father was indeed overexaggerating and had little if any genuine concern for A or indeed Mother or he would not have left the country. I do not accept his account as set out at C602 of his statement, as the police evidence undermines his contentions. If Mother had hit him, it would obviously have been a relevant matter to raise with the police and I have no doubt given his presentation in this trial that he would have done so. It is not surprising that the District Judge made the finding she did but what is surprising and disappointing is that, despite saying he concedes this behaviour, he still does not truly accept this.

239. Father's evidence in relation to his accusation against CP of "assaulting" A during a video contact session was very confusing. He initially said that he agreed that he had misrepresented CP's evidence about this, as he had tried to suggest that CP had admitted restraining A during his live evidence to the court. This was not correct. I became concerned during the course of Father's evidence that he appears to believe that everything he personally believes to be true is true, as opposed to considering the actual evidence which is before the court.

240. It had to be pointed out to Father that CP had not admitted restraining A.

Father then asserted that what he had seen was true. "I know what I saw and I stand

by it.....my claim that he restrained A is not unfounded”. He could not describe the action he alleged to have taken place very well at all. I was left with the clear impression that this was another exaggerated account by Father as he has been prepared to do this in respect of Mother.

241. In live evidence to myself Father suggested that Mother had “violently” pushed A away several times, with the child landing on his head on two occasions as I refer to above. However, in his statement in August at C203, Father accepted the court’s finding that this was an example of him being prone to exaggerate and indeed actually making these episodes up. Of all the many negative things Father has said about Mother, he has had little tangible criticism to make of her care of and love for A, save for these two allegations.

242. Father’s evidence was often contradictory in that he would stand by his assertion such as that Mother induced A into a Calpol induced coma but would then also stand by his apology for accusing her of this behaviour. He still clung to elements of the calpol incident in his evidence, accepting his father’s interpretation that this was done by Mother deliberately to knock out the child and frustrate contact but eventually said that he would now accept that A was ill that day. The pattern demonstrated is that the court makes a finding, the Father says that he accepts it and then when asked about the detail, he reverts to his original position that it did happen in the way he says and that he has not exaggerated or fabricated. His admissions are not genuine in my judgment.

243. The issue of recording Mother’s mileage was a similarly concerning picture in that Father denied this to the District Judge, however she made a finding about this, which he eventually accepted. He admitted in evidence to this court that he had obtained information from Mother about this, in my judgment in a covert way, by

making conversation and asking her: how the new van was; if she had had her first service yet on the car and what the mileage was? This was all a subterfuge to check her mileage. Father knew what he had done at the time when he denied recording Mother's mileage in the court below. In evidence at this trial he clearly saw no problem with this conduct or the impact on Mother when she realised that he was doing this to check her movements.

244. Father's behaviour with and attitude to the Covid episode was also very concerning in that he wasn't prepared to accept that Mother and A were ill at the time and insisted on obtaining a test or "assisting to make things better" as he insisted it was, as he didn't believe they had Covid at the time. This was the weekend of the 26-27th June 2021 when Father served court papers upon Mother and told her that he would see her in court, although he disputes saying "he looked forward" to it.

245. This latter part of the alleged comment hardly matters in the context of this dreadful decision making. Father describes this as "another emotionally charged time". His accounts were unfortunately unreliable and his evidence at times nonsensical, desperately wanting to be right. Father has at times deliberately misled the court as in March 2022 when he told the court Mother had failed to promote contact but then had to concede that he had told her he would not attempt contact until the next hearing.

246. Father's excuse for this was that he did not mean to mislead but this is not a valid excuse as on two occasions he sought to mislead the court, having been reprimanded by DJ.Keating he again had this false allegation recorded in the subsequent order of Recorder Wadoodi at a later hearing. Such admissions and concessions as were made in respect of poor decision making were minimal and not solidly based.

247. Sexual matters seem to be very prominent in Father's mind. Mother drew attention to the fact that Father chose to follow a number of women on Instagram [53 conceded by Father] called variously: "*vixen official*"; "*kendralust*" and "*bigboobsbooty*" [H11]. This was characterised as "porn" by Mother and her Counsel. Pornography being defined as sexual subject material, such as a "picture, video or text that is intended for sexual arousal". The screenshot produced by the Mother dated the 13th July which she dates as two days after Father raped her, shows some women in a state of undress [H11].

248. Father has not explained why he chose to follow these women on Instagram only a matter of weeks after the birth of his child. I do not approach this evidence on the basis that a man who chooses to look at such pictures or chat with the women in them, is more likely a rapist. This is no more appropriate than considering that because a woman seems to be interested in sexual activity at times, she will always consent to sexual activity. Father's interest in "glamour models" is part of the evidential backdrop. The court is determining the allegations which the Mother makes against Father, rather than making any type of moral judgment about whether that is appropriate in the context of their relationship.

249. The Father's approach to sexual matters is as relevant as he appears to consider Mother's attitude. The theme of Father being preoccupied with sex is apparent in the whatsapp messages which he has sought to place before the court. The purpose of the production of this material by Father was to contextualise the sexual relationship between the parents, given that Mother enlarged her sexual allegations against him in her most recent statement in September 2023 to cite regular sexual coercion. Prior to this Mother had made three specific sexual allegations.

250. I decided at the Ground Rules Hearing that this material should be admitted into evidence in order to provide the backdrop to the parents' sexual relationship which the Mother said was coercive and the Father said was consensual. There is nothing within the whatsapp messaging which indicates that the Father is sexually controlling or that the Mother is complaining about his sexual behaviour. It has been asserted by the Mother in her evidence to the District Judge that she had no interest in sexual matters in the period after A's birth.
251. In her statement dated 27th March 2023 in response to the findings of the court, Mother in common with Father attempts to argue that the court's findings are wrong or should be changed. She produces screenshots, upon the basis of which she submitted that the court might wish to change its findings. This material should have been available to the Mother at the time of the FFH. Mother produced a screenshot of Father's Instagram interest [Annex A], whatsapp messages between herself and Father which she said supported the anal rape allegation [Annex B +C], a screenshot of messages between herself and her friend KG [Annex D + E].
252. The screenshot at Annex B is dated 27th December 2019, which is the day after Mother says that Father anally raped her. She messages him to say that "her bum is sore", in the middle of an exchange about "[LOCATION]" which is a nature reserve at [LOCATION] in [LOCATION] which is near to Father's home, she having stayed at Father's house over the Christmas period. The Father then appears to send the Mother a GIF [graphic interchange format] or moving picture message of the character "Pingu" with a sore bottom. The court is asked to infer from this that the Father is accepting that he anally raped Mother.
253. At Annex C [C185] Mother produced a screenshot of a message exchange between the parents in which there appears to be a search for a kitchen implement.

Mother says that Heston [Blumenthal] doesn't have to work in these circumstances and Father says, "I don't stick my willie up Heston's bum". When Mother replies "Rude!", Father replies "I had your bottom" and Mother replies "Shh". This is asserted to be a confession by Father to forced anal sex.

254. The Mother has not been available for cross-examination in respect of those matters. The attributed significance of those comments is denied by the Father, who says that the sore bottom is just about the slapping of Mother's bottom and relates to a scene in a film called "Bad Santa", which they were both familiar with. However, that explanation does not fit with his comment about "sticking his willie up her bum". He has not explained why he said this and seemingly could not. Father was absolutely adamant that they had never had anal sex together. He described this as abhorrent and disgusting.

255. The Father was also asked in cross-examination about a picture of himself with an erection which he chose to send to the Mother on the 23rd March 2019 in response to a picture of her bare pregnant tummy [C404]. He explained this by saying that he got aroused in response to Mother's sexting, love bombing which preceded this photograph of her. He asserted that there was a whole series of sexts for an hour or more which preceded him having an erection and deciding to send her a photo of this.

256. The short adjournment interrupted this series of questions. Father collapsed during that adjournment and when cross-examination resumed the following day he had to accept that there was no sexting or love bombing in advance of his erection reaction shot. He accepted that what he had said was untrue but countered that there were numerous other examples of sexting which he could refer to if asked. He

suggested that Mother's objection to this was just playful but did admit that sending the photograph was "just wrong".

257. Following this series of questions, it was put to Father that he was sexually demanding of the Mother but he said that was a gross misrepresentation, he was actually "quite timid" about such sexual matters. I found this very difficult to accept in the context of other evidence about Father texting asking if he could have "any action" and talking about putting his willie up Mother's bottom. Father also then admitted that he did ask Mother if there was any chance of a "blow job" [oral sex] because Mother had allegedly offered this as payment when he did something for her.

258. Father accepted that he had slapped Mother during sexual intercourse but had only done this at her specific request and that this had not done anything for him, "sometimes you make sacrifices for your partner". One of those sacrifices appeared to be having to call Mother a "stupid bitch" or a "dirty bitch" which again, she had specifically requested him to do.

256. Father said he was respectful of Mother and if she didn't want sex then he would not sulk and if she wanted sex, he would be guided by this. However, there is evidence of Father asking for sexual relations even when Mother was clearly upset and ill, which does not sit easily with these contentions by him. It is difficult to accept that sexual intercourse between them was "overwhelmingly initiated by Mother" as Father chose to respond to Mother's schedule of findings at A8.

Analysis of the Evidence

257. This is a very complex, difficult and unusual case, particularly in the way in which the issues have played out. The matter was challenging at the time when it was tried by the District Judge and sadly the difficulties have only been magnified by the effluxion of time, the attitudes of the parties and the volume of evidence which they

have chosen to place before the court. The pressure upon the parties generated by these long running proceedings was demonstrated by their individual presentations before the court.

258. At the point of the hearing when the Father also didn't wish to continue his evidence, I was very concerned as to how the court was to proceed to determine the welfare interests of A. However, as the Father's evidence progressed and after a great deal of consideration and a thorough review of the evidence, I have come to the conclusion, on balance, that the Mother has established that the Father's behaviour both during the relationship and after separation has been a matter of serious concern.

259. The basis upon which I reach that conclusion is that the Mother's account of sexual violence is supported by the evidence of KG, an account which was given to her by Mother at the time when this behaviour was said to be continuing. I accept the evidence of KG as a truthful witness, who appears to have no reason to lie about what her friend told her and who was concerned about Mother's welfare but was unable to persuade her not to continue in the relationship. I don't consider that her advice to reason with Father, was odd, given that Mother was adamant that she wanted to continue the relationship. KG's evidence was not undermined by cross-examination or by other evidence available to the court.

260. As I have already indicated, this case is unusual on its facts and in the way it has proceeded. I do not intend to set any precedent for family courts to routinely make findings against parents who have not had a full opportunity to test the evidence of their accuser. Every case must be judged on its own individual facts and evidence. In this case the Mother gave evidence about these matters previously and the court has a full transcript of that evidence, which I have carefully considered.

261. It is obvious that the Mother struggled emotionally with giving evidence at the previous hearing. The court also has the benefit of a further statement from Mother and she has given some live evidence at this trial, which has importantly enabled me to make some assessment of her as a witness. The duration of her evidence was not only 40 minutes as has been set out by Counsel for the Father.

262. Mother gave evidence for almost 2 hours in separate parts over two days. She was challenged that she was lying and exaggerating about the sexual violence she was alleging had occurred. Whatsapp messages which were said to be inconsistent with her allegations, in which she seemed to be seeking sexual relations and physical closeness to the Father were put to her. It was asserted in cross-examination that there were no messages in which she was alleging sexual violence or expressing fear of the Father.

263. It is clear that the Mother has suffered with very precarious health since the pregnancy with A. This has at times, posed very serious physical problems for her and the management of her CFS is a significant burden upon Mother. The stress which these proceedings have caused to the Mother has been apparent in her presentation at both trials, at case management hearings and in her consultations with health practitioners and from the evidence of those close to her. The Father's behaviour in the court proceedings, as set out above, has clearly not assisted.

264. The intermediary was allocated to enable her to give her best evidence to the court, however the stage was reached at which all adaptations had been exhausted and Mother said that she could not continue. I am very mindful of the fact that the Father has not had a full opportunity to challenge the Mother on all of the serious allegations and I have examined with care the schedule produced by Miss Phillimore of the questions which would have been put to her, had Mother continued with her

evidence. A number of those questions were put to the Mother and she answered them in my view to the best of her ability.

265. It is a matter for the court to determine what weight to give to the evidence which I have heard from the Mother. I am satisfied that there would have been no purpose in adjourning the trial to obtain medical evidence in respect of the Mother. Neither side clearly wished to take that course, which is understandable given the history. This would have only created more pressure on the parties, incurring further costs with an uncertain timing for the conclusion of the trial.

266. If some form of medical report had been directed, Mother would likely have described to any medical practitioner her stress levels and physical symptoms and they would have repeated those issues in a report. It seems to me that the essence of this is whether Mother's presentation is genuine. I am satisfied from all that I have read about the Mother and seen during her attendance within the courtroom, that her presentation is genuine and is caused by a combination of physical and emotional problems which have completely overwhelmed her during this second fact-finding trial. The Father did not seek to argue that Mother's presentation was fabricated.

267. How is the court to approach a situation in which the alleged victim of domestic abuse appears to be so traumatised or damaged by the proceedings and the abuse, which they say that they have suffered [some which is admitted], that they cannot complete their evidence? This obviously depends on the individual circumstances of the case but in this matter, the court has been encouraged to make the best decisions it can on the available evidence and the Father has agreed through Counsel, that this is Article 6 compliant.

268. I have borne in mind throughout that the Mother's allegations were only made first in June 2022 and did not surface in the first set of proceedings or initially in these

enforcement proceedings. However, I have come to the conclusion that the hearing on the 28th April 2022 was a watershed moment at which point the Mother decided to raise these issues fully having been encouraged by the District Judge and in the view of the Mother bullied by the Father. It seems that the Mother had been prepared to allow contact to take place previously and put his previous behaviour to one side but the more the Father pushed her, the more intimidated she became and it was in that climate that the allegations were first detailed. The Guardian agreed at that point that it was appropriate to hold a fact-finding hearing, despite the Father's opposition.

269. It is clear as a point of detail that the allegation of anal sex taking place on the 26th December 2019 was raised by Mother at the first abortive FFH in September 2022. Father has repeatedly suggested that this was only raised at the FFH in February 2023 which is not correct. The detail was however, lacking in advance of that trial.

270. In my judgment, it is only appropriate for the court to make those findings where there is evidential cogency in the absence of Mother being fully tested. It is not appropriate to make findings in respect of allegations which required further testing in cross-examination, as a result of potential ambiguity. I have borne in mind throughout that it is not for Father to disprove the allegations or prove himself to be innocent of them. It is not appropriate to reverse the burden of proof because of the Mother's difficulties.

271. Father has been able to put before the court all of the evidence he wished to in terms of the Whatsapp messages and transcripts. He has not been restricted other than in respect of continued character assassination of Mother and her children, which was not allowed but that evidence was never relevant to the issues which the court was to try. It is not clear what the Father sought to achieve by raising these issues but it is concerning that he thought it was appropriate.

272.The Father’s evidence on a number of important points was lacking in credibility, most significantly that he could not give the court a consistent account as to whether he and Mother had sexual intercourse on the night of the 11th July 2019 or not. This was a very significant issue, being the first allegation of rape in time. Father told the District Judge on the 23rd February 2023[I297] that they did have sexual intercourse, it was consensual and that A was present in the room but told this court that they did not have sex and just “spooned” [lying close together].

273.When the discrepancy was pointed out to him, he attempted to say that he stood by both accounts, then said, “I did not have sex with her”. This did not make sense but gives some indication that Father realised that he had made a mistake and was not willing to accept that he was wrong. He forcefully said, “I have never, lied to the court, ever” during his evidence at this trial but I have set out above a number of matters on which the Father has, at least, sought to mislead the court.

274.Father could not explain why he gave two different accounts nor why he had changed his account so significantly. It is hard to understand why his memory on this issue would be better now than it was a year ago. However, he did not assert this to be the reason for his changed account. He did not concede that he couldn’t remember what had happened. Father has never before in his statements, or otherwise, denied having sexual intercourse with Mother on the 11th July 2019. The fact that he chose to change his account so significantly at this point of the proceedings without providing a reason for the change, in my judgment damages his credibility, in relation to this episode and also more widely.

275.Father has in my judgment shown a lack of respect for Mother during the proceedings in a number of ways. He has tried hard to paint her as unusually sexually active, that she was, “always interested in sex”, effectively a bad Mother, who

abandoned one of her children and whose elder children, he criticised [druggie son].

In fact, the evidence would suggest that he is the one who is highly sexualised. The second allegation of sexual assault relates to the 18th September 2019. Mother was by this time suffering very significantly with renal pain problems. She drove down to stay with Father, bringing A with her, on the 18th September 2019. This was a very difficult journey in which Mother had to take a break due to the pain from which she was suffering. Father agrees this is accurate.

276. Mother's account was that she got into the shower to see if the warm water would ease her pain and Father got into the shower and had sex with her. This was not a planned encounter. Mother says after sexual intercourse took place, Father then hit her about the buttocks and thighs, at one point knocking her off her feet. This attack caused injuries, which Father thought was funny and photographed them. This is the description which she gave to KG.

277. Father's account is that Mother followed him into the shower and then requested that he hit her after an unsuccessful attempt to have sex due to the location and has back problems. He says that this was something he did not initiate but was something that she wanted. He did not refuse to hit her despite her clearly being ill. Father agrees that he hit her so hard on this occasion that he caused a handprint on her right buttock [I234] and then at her request, he took a photograph of this injury, which he says Mother found funny.

278. I find it hard to accept that given that the Mother was in so much pain that she had to break her journey and only a week later was admitted for surgery, that she would demand to be hit on her buttocks and thighs and for any injuries to be photographed. The Father told the District Judge that the mother asked him to have sex again later that evening [I235]. The Whatsapp evidence demonstrates Father asking for "action"

ie sex in advance of Mother's journey south, rather than Mother. It also reveals Father offering to show her his penis and asking her to show him her breasts, seemingly via whatsapp photo exchange. It is correct to point out that she assents to his request for "action".

279. The Mother's written account of her shock and disgust at what had been done to her, during this incident is supported by the evidence of KG. The Father's lack of sensitivity and concentration on his own needs, particularly his sexual needs is demonstrated in the whatsapp conversation that took place between the parents in advance of her journey down to [LOCATION] on the 18th September 2019. Father agreed that Mother was upset in relation to a number of issues on this day and Father's response on the 17th September was to call her "*a big girl's blouse*" and to say "*show me your tits*", "*want to see my knob?*", "*that'll cheer you up*", "*be nicer with A asleep and you between my legs*" and ask if there was "*any chance of action tomorrow*". This does not represent the timid, respectful person he portrayed himself to be in relation to sexual matters.

280. The Mother, in my judgment has proven that Father was sexually violent and coercive to her, at least on the 11th July 2019 and on the 18th September 2019. I find on balance that he did rape her on the 11th July 2019 when A was in the room with them, that she made it clear to him that she did not want to have sex and that he was hurting her breasts during this incident, not long after she had suffered with mastitis. The account given by Mother is supported by the evidence of KG, albeit the witness was not aware of the date of the incident. I am satisfied on balance that the account relates to this incident as it was described as occurring when A was a few weeks old.

281. I find that on the 18th September 2019 Father likely got into the shower with Mother and initiated sexual activity. I do not consider that it is appropriate to make a finding

of rape in relation to this incident without hearing from the Mother in relation to this incident, when she could have clarified her evidence. In her first written account of the 12th June 2022 at C18 Mother says that they had sexual intercourse and then Father struck her so violently that he caused her bruising to her thighs and buttocks. She does not say that he raped her. The main complaint relates to the assaults after sex had taken place.

282. In her most recent statement dated the 29th September 2023, Mother says that they had sexual intercourse in the shower but that this was “probably” something which she approached with a “degree of resignation”, as the Father does not like to hear the word “No”. She had responded the previous day in the affirmative to his enquiry as to whether there might be a chance of any action during her visit. That does not of course mean that she had to go through with it the following day. I note that it is asserted in the schedule at A41 that this was a vaginal rape but the schedule is not evidence. I must evaluate evidence and in the absence of clarification from the Mother, I do not consider that I can make this finding.

283. It is not clear that the Mother indicated to Father that she did not want to have sex at the time and she does not say that she resisted in anyway to demonstrate her unwillingness to consent. This is distinct from her evidence in relation to the 11th July 2019 incident. I am clear, however, that Mother did not consent to the assault and the photography of her injuries which is what she sets out in her statements and reports to KG. She also, did not report to her friend that the “shower” incident was a rape. I am not suggesting that she would have had to fight him off but that in the absence of Mother’s complete evidence on this incident I do not consider that I can make this finding.

284. This is a different situation to that which the Mother describes having occurred on the 11th July in respect of which she told KG that she made it clear to Father that she didn't want to have sex but that he wouldn't stop. There is no such account in respect of the 18th September 2019 either by Mother in her statements or to KG. The complaint was about the assault afterward rather than a rape. I find on balance on the basis of Mother's complaint to KG that Father did assault Mother on that date, causing her injuries, that he took photographs of those injuries thereafter and laughed about this.

285. Father agrees that they, at least attempted to have sexual intercourse on this day in the shower, although it was not very successful. Father also agrees that he would strike Mother, albeit at her request and that he has thereby caused mark/s to her body, and did so on this day, so there is some level of agreement about events. The scenario is not an inherently improbable one. The only issue between the parties is, at whose instigation the violence took place.

286. The court must be fair to both parties. I am mindful of the potential impact upon a victim of domestic violence of the behaviour complained of, which may lead them to have difficulty in communicating the full extent of what has happened to them. However, I do not consider on balance that I can make any findings about the alleged anal rape on the 26th December 2019, without hearing the evidence of the Mother be tested. KG was told only that there had been a further sexual assault, after Christmas but Mother refused to give any details. Therefore, there is no support for this allegation and there has been no opportunity to challenge the Mother's evidence in relation to this alleged incident.

287. Although Father admits that they did have sexual intercourse on this day, he denies that this was anal intercourse and says that this has never occurred between them. He

has asserted that anal intercourse was something which Mother wanted to “explore”.

No details with regard to anal intercourse were given to KG. I appreciate that

Mother’s case is that this occurred on a number of occasions and that the messages exchanged between them could be said to be suspicious but the court should only make findings on the basis of evidence, rather than suspicion or speculation.

288.Although I have made findings against Father of rape on the 11th July 2019 and of sexual violence on the 18th September 2019, that does not in my judgment provide a sufficiently solid evidential platform for finding that this Father anally raped the Mother. I do however find that a further sexual assault took place after Christmas 2019 in accordance with Mother’s disclosure to KG but I consider that anal rape is such a serious finding that it is not proportionate or fair to make a finding that this is what took place, when Mother hasn’t been tested in relation to this incident and there is no other evidence upon which I can base the finding. I do not consider that such a finding is necessary in the light of my other findings.

289.More generally, on the basis that I find that Father raped Mother in July when A was present and beat her causing injuries on the 18th September, he showed little concern for Mother in meeting his own sexual needs and was sexually coercive, as she described to KG. It is noticeable that Father sent a message to Mother on the 17th September as set out above, in which he clearly was not concerned that A would be present in the room when sexual activity took place.

290.Father’s conduct in following so many glamour models on Instagram at a time when he is in a relationship with the Mother, indicates in my judgment, his highly sexualised approach. It is noticeable that when Father left Mother’s home after the rape incident on the 11th July 2019 and returned home to [LOCATION], he was looking at glamour models’ feed on instagram. Mother refers to this when she texts

him on the 13th July 2019 saying that he should be looking up, “maternal mental health rather than tits and ass” [A61]. I find that Mother’s comment that Thursday [11/7/19] was lovely “aside from when we got to bed” is supportive of her account of a sexual assault having taken place. The fact that she doesn’t call it out as a rape, does not in my judgment undermine her account in relation to this.

291. Mother did explain in her live evidence under cross-examination that she wouldn’t use the term, “rape” and that this message was about as assertive as she got with Father. In my judgment, the evidence would demonstrate, particularly the whatsapp messages that this Mother was desperate for the relationship to continue. She wanted to be a family with the Father and their baby. She didn’t understand why he was treating her in the way that he did and was confused and at times stood up to him but kept succumbing and continuing with the relationship. This is not unusual behaviour for victims of domestic abuse. It is clear from their messaging, that in the Spring of 2020 she was more desperate for the relationship to continue than he was.

292. I have considered the whatsapp messages which have been scheduled and highlighted by Miss Phillimore for the Father as indicating that Mother was interested in sexual activity between them as a rebuttal to her denial of this. I don’t see the early messages in October and November 2018 as relevant at all and they seem to have been highlighted to make the Mother look sexually voracious. The messages in January and February 2019 would indicate that all is well in the relationship at this stage but there is a sharp contrast with Mother’s message on the 15th June 2019. This is one week after A has been born and Mother says she “feels like death right now”.

293. The Mother’s message on the 12th July 2019 is highlighted in which she asks “are we moving forward together or apart [I324] which in my judgment is consistent with a relationship in crisis after the incident on the 11th July 2019. The next day Mother

comments on how Father has spent all night on social media [glamour models] but was not speaking to her, making her feel totally “worthless”. In my judgment this fits with a pattern of a woman desperate to make sense of her relationship with the Father, what has just occurred and his anger over her sole registration of A. Her low self-esteem is apparent in this messaging.

294. By October 2019 Mother is messaging, *“all I want is for us to be a family.....just needed time to heal.....I also need time after the last 12 months – our experiences of which are not the same.”*

14/11/19 – *“Is there no future for us?.....just being desperate for your love”*

8/12/19 – *“I want to be a family more than anything...I will do whatever is best for you at Christmas”*

13/12/19 *“ I want to be together [FATHER].....we didn’t have a single cross word when we were together....No I don’t think we need time apart...there was no stress when we were together. It was entirely normal, loving and being a family. We dealt with stuff as a couple. That’s how it should be and all I have ever wanted”.*

295. I do take into consideration that these messages are cited as examples of Mother not being afraid of Father and seeking out his attention which is said to be inconsistent with what she alleges but in my view, they can be read in a wholly different way. Mother appears to be idealising the relationship and rather pathetically clinging to her dream of them as a family. She does raise issues of concern but not in a forceful or in a very challenging way. She tells Father that his behaviour scared her after the birth of A. It was a horrible rather than a joyful time. *“Its not meant to be a dig or anything”*. As late as April and July of 2020, Mother still seems to be desperate to hold on to the relationship if she can persuade the Father to continue.

296. Mother was asked about the sexual references in cross-examination and she said that she had used words such as, having his “balls in [her] face” because he knew this would “chime” with him. At first blush this could indicate that Mother is happy with their sex life together and wants it to continue. However, I consider it is more likely that she was desperate to keep the relationship alive and because sex was so important to the Father she was using this language because it was more likely to get his attention, rather than talking about her feelings. Similarly, Mother was asked about her use of the phrases such as: “*want to snuggle you*”; “*really, really need a [FATHER] hug*”; “*sending you warm English arms to wraparound all your sore bits*” and she said she was referring to closeness [just wanting to be held/shown some love [A59]], rather than sexual activity.

297. The messages sent by Mother to Father from 20th August 2019 to 21st December 2019 were cited as examples of Mother having sexual desire in contrast to her account that she did not and similarly Mother’s position is that she wanted closeness with Father rather than sex but that was something that he wanted. These messages in my judgment have to be seen as part of the wider canvass of evidence. It is superficial and misleading to take them at face value as potentially undermining Mother’s assertion that she didn’t have much sex drive in this period. What is clear on the evidence is that Father did.

298. In considering the evidence and making findings which I consider to be proportionate in all the circumstances of this case, I do find that there was a power imbalance in the relationship and that there was sexual violence which Mother seemed to feel powerless to address. I accept her account of feeling confused and frightened by the Father’s behaviour which she gave in live evidence to the court. She appears to have been completely disorientated by the turbulent nature of this relationship which is

obvious from the chronology. It is clear that Mother made a number of voluntary trips down to [LOCATION] with A but this was in the context of her desperately seeking to please the Father and continue the relationship.

299. I find on balance that Father was sexually violent and coercive on occasions. I have concluded that he beat Mother on the 18th September 2019 without her consent and took photographs and laughed about it. I find that it is likely, as Mother says and she told KG, that this happened on more than one occasion and that Father was sexually forceful in ensuring that his sexual needs were met.

300. This is a clear example of coercive and controlling behaviour. I conclude that Father was aware that Mother was desperate for the relationship to continue and exploited this. Judging by the content of his evidence, Father has little awareness of and insight into his actions and the consequences thereof, even after taking part in the DAPP course. He seems to believe that if he has no intention of causing harm then his action will not cause harm. This is simplistic. On an analysis of the evidence Father gets very annoyed if matters don't progress as he would wish and he can behave in a punitive way.

301. The way he dealt with Mother in relation to the Parents/Grandparents whatsapp group is a clear example of that. Father could not explain properly or at all why he had removed Mother from that group on two separate occasions. His explanation in relation to the first removal on 20th June 2019 was that "it just wasn't working" but he then re-instated Mother on the 30th June 2019 and then excluded her again on the 8th August 2019. It is really sad to see how happy everyone was when A was born and then how quickly things soured, however, Father's behaviour in relation to this group was controlling in my judgment.

302. Another indicator of Father's attitude and behaviour was his approach to lecturing Mother about breast feeding. Mother says that he didn't want her to do this, seemingly relying upon his position as a man of science. She was an experienced Mother having had 4 other children. There didn't appear to be any sound reason why she should not breastfeed and why he couldn't accept her superior experience.
303. There are a number of indicators in Father's behaviour, at least since the birth of A which, when considered as part of a picture, indicate that he was a rather controlling partner, particularly when this is put into the balance with his attitude to sexual matters. Father was clearly incandescent about registration of "his son" in his absence and this issue rumbled on for a long time. I am satisfied on balance looking at Mother's text message of the 12th November 2019, when they were still in a relationship of sorts, that Father did threaten to take A to Ireland and this frightened Mother badly.
304. Father sending the solicitor's letter to Mother is echoed in his later behaviour of serving court papers upon her. It is noticeable how firm and absolutist he can be with her, effectively refusing to communicate or discuss their future until she had answered the letter. In my judgment, what underpins Father's behaviour is likely a selfish wish to get his own way, irrespective of the implications for the Mother, or indeed at times A.
305. During the course of their relationship, he wanted to have sexual relations with her when he wanted, as he wanted and assumed because she had shown some interest in sex early in their relationship that she would just go along with whatever he wanted to do, even just weeks after having a baby or when she was ill. He paid little regard to her wishes or wants, hence the rape on the 11th July 2019 and the beating on the

18th September 2019 as examples. He seemed little concerned generally that A might be in the same room when they were having sexual activity.

306. There has been coercive and controlling behaviour during the relationship in sexual matters and that has coloured the power balance between the parents. I am not satisfied that on the evidence I can conclude that Father raped Mother on the 11th July 2019 to punish her for the registration of A. Neither am I satisfied that I can conclude that the sexual and physical violence was perpetrated in order to deliberately frighten Mother. In my judgment it is likely that it happened because that was something he enjoyed and wanted to do. Father's behaviour was overbearing, arrogant and controlling at times during the relationship but I am not prepared to make all the findings sought on behalf of Mother, nor are they proportionate.

307. Father's coercive and controlling behaviour has been most prevalent since the breakdown of the relationship and in his approach to securing family time with his son. He has used any weapon at his disposal without any thought for the impact upon Mother and A. He has been determined to win at all costs, even if that included exaggerating and making up allegations and misleading the court as to events. He was not a reliable historian and seemed unable to give a straightforward account at times and when caught out struggled to accept that he was wrong.

308. Father has used the police, children's services and the courts to punish Mother for what he perceives to be parental alienation but is actually Mother's response to his constant approach of bullying and pushing her to get what he wants. There has been little, if any proper recognition by Father, of Mother's ill-health during this period.

309. I make no findings in relation to financial abuse as this has not in my judgment not been sufficiently evidenced. I have no idea as to whether the various applications for variation of child maintenance made by the Father were well founded. I have little in

the way of documentation about this and do not consider that it is appropriate to make findings purely on the basis of assertion. These proceedings are however, a different matter in that Father has repeatedly failed to review and change his behaviour. He was advised two years ago by DJ.Keating to do so in the light of his ill-advised bodycam wearing. He has failed to do this, stuck in a pattern of justification by saying that poor behaviour was “mutual”.

310.It is clear that Mother initially did not want to raise the allegations of abusive behaviour and did try to promote contact but Father’s bullying attitude has rebounded on him, causing her to pursue these allegations against him. This has echoes in Father’s production of the whatsapp messages which appear to show more about Father’s attitude than that of Mother. In my judgment it is clear that Mother was trying to avoid having to address these exquisitely painful aspects of their relationship and would not dream of going to the police about them because she is a very private person and would find the public exposure even more tortuous than these proceedings. The shame and embarrassment of dealing with these issues in such a public forum would, I am satisfied have been too much for her as it has been in this process.

311.I am satisfied that it is fair to make the findings which I have, on balance taking into consideration all of the written and live evidence which I have read and heard. I have had a sufficient opportunity to make an assessment of the Mother as a damaged but genuine witness, whose account is supported by the evidence of KG and the other available evidence such as whatsapps. The Father does not ask the court to draw any adverse inferences from the Mother’s failure to complete her evidence, in the light of her accepted vulnerabilities.

312.The Father has had an opportunity to challenge her evidence in the court below and to an extent in this court. It is notable that the Father failed to challenge the evidence of KG in the court below. I have made allowance for the disadvantage to the Father of not being able to fully challenge the contested allegations. I have attempted to strike a fair balance in making only those findings where there is evidential cogency and declining to make findings in respect of incidents in respect of which it would have been helpful to have further evidence from Mother. In my judgment, whilst this is an exceptional case, the process has been fair to the Father.

313.This has been a marathon judgment to write. I cannot possibly include every point in this complex matter within this very long judgement. I have made the findings that I consider to be proportionate and appropriate on the evidence. It is not necessary to make a finding about every instance or piece of behaviour. Rather it is important to reach a decision about the nature of the parental relationship by standing back and reviewing their history in detail. It has been impossible to write a shorter judgment and indeed it could have been much lengthier.

314.In summary therefore, I find that Father has been physically and sexually abusive toward the Mother and has used the courts, police and social services and Cafcass at times against her to secure his aim of unsupervised family time with A. I do not find that he has, necessarily, done this deliberately to cause her harm, distress and fear, as I consider it unlikely that he intellectualises it in that way. He has behaved in this way to get what he wants and is prepared to do and say whatever he needs to achieve this.

315.I consider his behaviour to have been coercive and controlling during the relationship, physically and sexually and to an extent emotionally, as a result. Since separation, the Father has subjected Mother to psychological harm by his selfish and

careless approach to fighting for contact. In his mind the end justifies the means. At times such as when he placed chocolates on Mother's bedroom pillow and when he covertly checked her mileage, he appeared to have no regard at all for her privacy. A has been distressed at times, as Father has admitted, by the extreme tension between the parents at handovers, which I find has been caused or at least exacerbated unnecessarily by Father's attitudes and behaviour.

12th June 2024