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Neutral citation number: [2025] EWFC 153 (B)

Case No: SO23P00288

IN THE FAMILY COURT SITTING AT BOURNEMOUTH AND POOLE

Courts of Justice

Deansleigh Road

Bournemouth

BH7 7DS

Date: 4 June 2025

Before:

DISTRICT JUDGE VEAL

RE J AND K (CHILDREN) (FINDING OF FACT)

B E T W E E N:

A Mother

Applicant

- and -

A Father

Respondent

Elicia Davis (instructed by **Footner & Ewing LLP**) for the **Applicant**

The **Respondent** appeared in person and was assisted by a Qualified Legal Representative,
Esther Oluwafemi

Hearing dates: 12 – 14 May 2025

JUDGMENT

District Judge Veal:

Introduction

- 1) The court is concerned with J, who was born in 2015 and is now 9 years old, and K, who was born in 2018 and is 6 years old. The children's mother is M, and their father is F. Whilst meaning no disrespect to either of them, I will refer to them as "mother" and "father" respectively.
- 2) The mother commenced these proceedings on 23 June 2023, at which time she sought a child arrangements order and prohibited steps order. She explained that the parties had operated an agreement whereby the father had contact with the children on alternate weekends. She said that the father had made a malicious allegation on 12 June 2023 to the local authority that she had abused the children, and had not returned the children to her care. She made allegations of domestic abuse against the father, which are for me to consider during this hearing.
- 3) The case has had a somewhat tortuous procedural history which is helpfully set out in a case summary within the bundle. I will not rehearse all of that.
- 4) It will suffice to say for present purposes that, on 19 July 2023, the court made an interim order that the children live with the father, due to safeguarding concerns. Those concerns form his allegations for the purposes of this fact finding hearing.
- 5) On 5 October 2023, the court determined that a fact finding hearing was necessary and proportionate. The court maintained the interim order that the children live with father, and directed that supervised contact take place with the mother. K has attended contact, but J has not been attending. I will come back to that issue later.
- 6) On 29 January 2025, the Family Court at Southampton transferred the case to this court. A directions hearing took place on 7 March 2025 and the case was listed on 12 – 14 May 2025 for a composite fact finding and final hearing. Unfortunately, due to matters outside the control of the parties and the court, including issues with interpreters and the illness of counsel, the hearing did not conclude. I therefore set the matter down for judgment on the fact finding element of the hearing today, and have listed on 7 July 2025 for a welfare hearing, when the author of the child impact report dated 2 May 2025 is available.
- 7) I have read an extremely large bundle of documents which runs to about 1,300 pages. I have been assisted during the course of the hearing by the parties, the mother having had legal representation and the father the assistance of a qualified legal representative. Interpreters have also assisted the parties, including during the giving of the parties' evidence and that of the maternal aunt.

- 8) The fact that I do not mention something in this judgment does not mean that I have not fully considered it, but it is impossible to refer in this judgment to absolutely everything I have heard and read.
- 9) There is no dispute in relation to the jurisdiction of this court. I am satisfied that, because the children are habitually resident in England and Wales, this court has jurisdiction to deal with the issues in this case.
- 10) It is also undisputed that both parties have parental responsibility for the children.

Legal framework

- 11) In this case, domestic abuse has been raised as an issue. That engages Practice Direction 12J to the Family Procedure Rules. Guidance has also been given by the court, and particular consideration to cases involving allegations of domestic abuse was given by the Court of Appeal in particular in *Re H-N & Ors (Children) (Domestic Abuse: Finding of Fact Hearings)* [2021] EWCA Civ 448 and in the more recent case of *Re K* [2022] EWCA Civ 468.
- 12) An examination of principles applicable during fact finding hearings has also been helpfully set out by Cobb J in the decision of the High Court in *Re B-B* [2022] EWHC 108 (Fam), in particular at paragraph 26 of his judgment.
- 13) Section 1 of the Domestic Abuse Act 2021 confirms that behaviour is “*abusive*” if it consists of any physical or sexual abuse; violent or threatening behaviour; controlling or coercive behaviour; economic abuse; psychological, emotional or other abuse. It does not matter whether the behaviour consists of a single incident or a course of conduct.
- 14) That definition has been incorporated into Practice Direction 12J to the Family Procedure Rules at paragraph 2A. Practice Direction 12J provides further assistance, at paragraph 3, with what coercive or controlling behaviour is.
- 15) Those definitions, and domestic abuse in more general terms, were further considered in *Re H-N*, and I have in mind that which is said by the Court of Appeal, in particular at paragraphs 25 – 34 of the judgment. Within those paragraphs is a reference to the judgment in *Re L (Relocation: Second Appeal)* [2017] EWCA Civ 2121, in which Peter Jackson LJ made the point that:

“Few relationships lack instances of bad behaviour on the part of one or both parties at some time and it is a rare family case that does not contain complaints by one party against the other, and often complaints are made by both. Yet not all such behaviour will amount to ‘domestic abuse’...”
- 16) Pursuant to paragraph 29 of Practice Direction 12J, the purpose of a fact finding hearing is to permit the court, wherever practicable, to make findings of fact as to the nature and degree of any domestic abuse which is established, and its effect on the child, the child's parents and any other relevant person.

- 17) It is helpful to have firmly in mind why that is important, and how the findings fit into the overall task that the court is to perform in these proceedings.
- 18) The issues for this court focus primarily on J and K and their needs. In determining questions about their upbringing, it is the children's welfare throughout their childhood that is of paramount consideration: Section 1(1) of the Children Act 1989.
- 19) The concept that domestic abuse is harmful to children speaks to a great extent for itself. If any explanation were needed, it can be found in paragraph 4 of Practice Direction 12J and paragraph 31 of *Re H-N*, to which I have already referred.
- 20) Other fundamental principles to which the court will have regard include that any questions about the children's upbringing are ones that the court should try to resolve without delay, because delay is likely to prejudice their welfare: Section 1(2) of the Children Act 1989. The court will not make any order unless it concludes that it would be better for the children than not making an order: Section 1(5) of the Children Act 1989.
- 21) And, importantly, subject to any questions about risk of harm, the presumption is that the involvement of both of their parents in the lives of J and K will further their welfare: Sections 1(2A) and (6) of the Children Act 1989. When parents live separately, it follows from that that the starting point is that children should remain in contact with the parent that does not administer their day to day care. That starting point is, of course, always subject to the children's welfare.
- 22) When coming to its ultimate conclusions, the court will have regard to the considerations referred to in Section 1(3) of the Children Act 1989. That will be the subject of further exploration in due course.
- 23) For present purposes, however, it is helpful if I further identify that, if domestic abuse is found in a case, paragraphs 35 – 37 of Practice Direction 12J deal with additional factors which need to be considered at the welfare stage. Those include the physical and emotional welfare of the parent with whom the children live, before, during and after contact.
- 24) Article 8 of the European Convention on Human Rights is engaged, and so any order the court makes is weighed against the right of those affected to respect for their private and family life, and their home.

Evidence

- 25) In resolving disputed issues of evidence in this court, where a person asserts a particular fact, it is that person who must prove it. Because the mother and the father each make allegations which I am to determine against the other, each bears the burden of proving their own allegations. At no stage does the burden reverse. The person against whom any given allegation is made has to prove nothing.

- 26) The standard of proof is the balance of probabilities. In other words, if it is shown that any particular fact is more likely than not to be true, then it is treated as having happened; if it is not proved, then the fact is treated as not having happened. This is sometimes referred to as the binary effect. The court is entitled to take into account inherent probabilities and improbabilities in deciding whether a fact is proved, but must base its findings on evidence, including reasonable inferences, and not speculation: *Re B* [2008] UKHL 35.
- 27) The court has regard to the totality of the evidence and does not compartmentalise it. My role is to survey the evidence on a wide canvas, considering each piece of evidence in the context of all the other evidence. It is in that way that I come to the conclusion whether the case put forward by each party has been made out to the appropriate standard of proof: *Re B-B*.
- 28) I remind myself that it is common for witnesses to lie in the course of an investigation or a hearing. They may do so for a variety of reasons, for example, shame, misplaced loyalty, fear or distress. It does not follow that, because they have lied about one thing, they have lied about everything: *R v Lucas* [1981] QB 720.
- 29) Witnesses may also be fallible, which goes to the reliability of their testimony rather than their credibility. I have in mind that a witness' recollection of events is a process of fallible reconstruction which may be affected by external influences and supervening events, moulded perhaps also by the process of litigation, with past beliefs being reconstructed to make them more consistent with present beliefs and motivated by a desire to give a good impression: *Gestmin SGPS SA v Credit Suisse (UK) Limited & another* [2013] EWHC 3560 (Comm).
- 30) It is also important to consider whether discrepancies in the evidence arise because of lies designed to hide culpability, lies for other reasons or from faulty recollection or confusion at times of stress or when the importance of accuracy is not fully appreciated. The possible effects of delay and repeated questioning upon memory and hearing the accounts of others should also be considered. A desire to iron out wrinkles may lead to a process of what Peter Jackson J (as he then was) described as "*story creep*," without any necessary inference of bad faith: *Lancashire County Council v C, M & F (Children – fact finding)* [2014] EWHC 3 (Fam).
- 31) In general terms, I have in mind that the court room is an alien environment for most witnesses, and in particular in the emotionally charged atmosphere of a contested family dispute, I do not make the assessment of their evidence solely by virtue of their behaviour in the witness box: *Re M (Children)* [2013] EWCA Civ 1147.
- 32) It is often unreliable to draw a conclusion from a witness' demeanour as to whether they are telling the truth. Such an approach may reflect conscious or unconscious bias and prejudice. The objective and reliable approach I adopt is to focus on such matters as the internal consistency of the evidence, its logicity and plausibility, details given or not given and consistency against other sources of evidence (including what the witnesses have said on other occasions) and

other probable or known facts. However, where facts are not likely to be primarily found in contemporaneous documents, my assessment of credibility does include the impression made upon the court by the witness, with due allowance being made for the pressures that may arise from the process of giving evidence: *Re B-M (Children: Findings of Fact)* [2021] EWCA Civ 1371.

- 33) I have heard direct evidence from witnesses during the hearing, of things that that they have said, done and experienced themselves. There has also been original evidence, for example evidence of things said which are relied upon for the fact that they were said, rather than necessarily for the truth of what was said. I have also been taken to hearsay evidence, matters not experienced by the relevant witnesses directly but which are relied upon for the truth of their contents, to which the court will generally speaking attach less weight, in particular when hearsay is in competition with direct evidence.
- 34) This is a case in which there are a number of allegations, characterised as physical abuse, emotional abuse, sexual abuse and coercive and controlling behaviour. The parties have produced schedules of allegations. For ease, I will refer to the allegations by the numbers in their schedules, using “M” for the mother’s allegations and “F” for the father’s.
- 35) In the context of Practice Direction 12J, and as confirmed in cases such as *Re R (Children)* [2018] EWCA Civ 198, *F v M* [2019] EWHC 3177 as well as *Re H-N*, the parties need to appreciate that the purpose of the family tribunal is not to establish guilt or innocence but to establish the facts so far as they are relevant to inform welfare decisions about the children.
- 36) I have in mind the principles set out by MacDonald J in *Re P (Sexual Abuse: Finding of Fact Hearing)* [2019] EWFC 27, which further develops his judgment on the correct approach to such cases in *AS v TH (False Allegations of Sexual Abuse)* [2016] EWHC 532 (Fam). Cases of alleged sexual abuse create particularly acute forensic difficulties, not least because the abuse is not commonly witnessed by third parties. Allegations may emerge some time after the abuse is alleged to have occurred, and long after any physical evidence has disappeared.
- 37) I also have regard to the dangers of making assumptions in the context of sexual allegations: assumptions as to the kind of person who is a victim, the kind of person who is a perpetrator, how a victim might react and how a perpetrator might react. In the context of serious sexual abuse, there is no typical victim and no typical offender. Delay in reporting such behaviour does not mean it is untrue: a late complaint does not render an allegation untrue any more than a timely complaint renders it true. Equally, just because someone who says that they have been the victim of a serious sexual abuse has given inconsistent or incomplete accounts in the past does not mean that their allegation is untrue. Experience has shown that inconsistencies in accounts can happen whether a person is telling the truth or not. For instance, some people may go over and over events in their minds and their memory may be clearer or can develop over time, whereas other people may try to avoid thinking about an event at all, and so may have difficulty in recalling it accurately.

- 38) Just because someone consents to sexual intercourse on one occasion, that does not mean they must have consented to sexual intercourse on other occasions. There is a difference between consent and submission. A person consents if they agree to something when they are capable of making a choice about it and are free to do so. Consent can be given enthusiastically or with reluctance, but it is still consent. But when a person gives in to something against his or her free will, that is not consent but submission. They may submit due to threats, out of fear or by persistent psychological coercion. In those situations, they do not have free choice and this does not amount to consent freely given.
- 39) I have not heard evidence from either J or K during this hearing. However, a number of documents I have read refer to the accounts given by the children. When weighing up the evidence, I must consider the fact that the children's evidence stands as hearsay and has not been tested by cross-examination. The circumstances or context in which the children have given their evidence must also be considered, taking care not to focus attention on statements made by them at the expense of other evidence.
- 40) In *Re P*, MacDonald J draws on a number authorities for the propositions (a) that very young children do not appear to have the same clear boundaries between fact and fantasy as those which adults have learned to draw, (b) that children are often poor historians, likely to view interviewers as authority figures, many being suggestible and others anxious to please, not necessarily expressing themselves in clear terms and capable of misunderstanding or being misunderstood, and (c) the danger not only that children's memories may be completely usurped, but that they may embellish or overlay a general theme with apparently convincing detail that can be very difficult to detect, even by the most expert assessor.
- 41) In this case, there has been no formal ABE interview of either child. I have firmly in mind the terms of the Achieving Best Evidence (ABE) Guidance (January 2022). The Guidance is advisory rather than legally enforceable, and breach of the Guidance does not lead to inadmissibility of evidence. It is important not to discount a child's testimony merely because that child has been exposed to suggestive questioning. However, significant departures from the Guidance are likely to result in reduced, or in extreme cases no, weight being attached to the interview. The court must therefore consider whether any flaws are so fundamental as to render the interview unreliable or to diminish its weight: *Re E (A Child)* [2017] 1 FLR 1675.
- 42) The relevant question is whether any breach is forensically significant: to what extent, if at all, do any failures undermine the reliability of the evidence: see *Y and E (Children) (Sexual Abuse Allegations)* [2019] EWCA Civ 206, per Baker LJ? Did the omissions undermine the credibility of what is being said, put words into the child's mouth by suggesting an answer, encourage the child to exaggerate for reward, or cause the recorded account to be inaccurate or unreliable or assume an outcome? Of course, the court may evaluate the evidence given in a flawed interview in the context of other evidence and ask itself to what extent there is corroboration from elsewhere.

- 43) In overall terms, then, when considering whether the case has been proved to the requisite standard there is an overarching importance in the court standing back from the case to consider the whole picture and ask itself the ultimate question whether that which is alleged is more likely than not to be true, avoiding in the case of multiple allegations capitulating to suspicion and what MacDonald J in *Re P* described as the “*beguiling adage*” that there is “*no smoke without fire.*”

Issues of fact and the evidence

- 44) In this case, I have heard live evidence from the mother, Ms L, the maternal aunt, and the father.
- 45) My overall impression of the mother’s evidence was that she told the court whatever she wanted to say, and often answered a different question to the one asked in the process. Her evidence was internally inconsistent at times.
- 46) The maternal aunt’s evidence was quite vague in places. It, too, was internally inconsistent, and inconsistent also in many respects with the mother’s evidence.
- 47) The father presented as articulate and clever. He gave very short answers in the main, and in a fairly measured way.
- 48) The parents come from Romania. They commenced their relationship in 2014. J was born in October 2015. The parties married in 2017. K was born in December 2018. The parents then came to the UK in December 2020, initially without the children.
- 49) In February 2021, the mother alleges [M8] that the father raped her. She stated that the father had been drinking with colleagues and was drunk when he arrived home. The parties were staying with friends at the time, but those third parties have not made statements.
- 50) The parents had an argument, the mother said, because she wanted to go to Romania to see the children and had bought a plane ticket. During that argument, the mother said that the father told her that he wanted to have sexual intercourse with her. She told the father that she did not want to. She alleges that the father then penetrated her for three or four minutes on the bed in bedroom before falling asleep. The mother states that she was crying. On the following day, there was no discussion about what had happened but the mother then travelled to Romania.
- 51) The mother first made a report to the police about this allegation on 12 September 2021. At that time, she told police that the parties had separated two weeks previously, and that the father had moved out. The mother reported that the father had turned up at the home, the parties had argued and, in front of the children, the father had said, “*Mummy is a whore.*” At the time, the mother reported a sexual assault which had taken place “*a few weeks ago,*” and there was also reference elsewhere to it having said to have been at the end of February or in March 2021. The mother reported that she had not consented, but that the father had not physically forced her to have intercourse. The police also

recorded that the mother *“did not necessarily overtly refuse but she certainly never consented and it would have been clear it was against her wishes.”* The mother alleged controlling behaviour on the part of the father. Ultimately, it appeared that the mother did not support a police investigation at the time and police took no further action.

- 52) On 23 March 2022, the mother had renewed her allegation and she told the police that she had kept telling the father, *“No.”* She could not remember whether anyone else had been home at the time.
- 53) The father was interviewed on same day, and denied the rape. He agreed that the parties had argued, but he had said that that was about the maternal aunt rather than the mother’s travel plans. The father said that he had bought the mother’s plane ticket to Romania, and that the parents had had consensual sex after making up.
- 54) The father continues to deny the allegation. He told the court that he had not been out for the evening, and he had not been drinking. He said that he paid for the mother to travel to Romania by coach. He set out in his statement that the argument between the parties had been about the mother’s unrealistic expectations of him. He had gone for a walk around the block and the mother had insisted on joining him. He said that the mother had been affectionate towards him.
- 55) In his oral evidence, the father told the court that there was no argument at all, although he at one stage had contemplated staying in a Premier Inn. He went out to have some fresh air, and the mother had told him that she would not let him go alone. They had met a man on the walk with a Boxer dog called Jack.
- 56) His position was that all intimacy was consensual although, somewhat oddly, he told the court that he had checked with the mother at least twice whether she wanted him to continue or stop. He said that that was because that they had had a small argument and he did not want her to feel pressured. I pointed out that he had said in cross examination that there had been no argument, and his response was that the parties had had a disagreement although he could not remember what it was about.
- 57) He ultimately said that he would always ask the mother, before and during intercourse, whether she consented or not. He seemed to say at one stage that he would do so because he was worried that she may make allegations against him because he had heard about other people having had false accusations made against them. Later, he said and that he would check the mother’s consent because the mother had previously told him that a former partner of hers had had intercourse with her without her consent, and he did not want that to be an experience that the mother might repeat: he did not want the mother to feel under pressure. I understood through submissions made on behalf of the mother that the mother would not have accepted that she had told the father that she had been abused previously, had that been put to her during her evidence.
- 58) The parties’ children came to the UK to live with them in May 2021.

- 59) The mother confirmed that the parties separated in August 2021. The mother told the court that she and the father had been having issues in their relationship. She accepted that she did not take allegations reported to the police in September 2021 further at the time, and told the court that she had resumed the relationship with the father because of the children. She did not want to have to tell them later that she had had a choice and that she had chosen to separate from their father. She had delayed in reporting the matter at all, however, and when I asked why she did make the report to the police, given that she had also said that she had not wanted to take her allegations further, she said that she had felt that she should, and I inferred that that was just so that there was a record.
- 60) As I say, the mother told the court that she reunified with the father for the sake of the children. The father had promised her a new start. She thought that the father would change but he did not. That was something which she realised fairly quickly, she had wanted to make it work for the sake of the family.
- 61) The father did not agree that that was the context. He said, in effect, that the mother relied on him for money and he had wanted to ensure the welfare of the children, and to spend as much time with them as possible. He denied that it was the mother who provided financially for the family. He referred to working two jobs and the mother having had access to his bank account. He referred to it as the family's money. There was no evidence from the mother about the financial dynamics and I am not proposing to make any findings about who provided for the family and who did not.
- 62) On either party's case, though, theirs appears to have been a less than satisfactory relationship from the autumn of 2021, which each of them had remained committed to only for the sake of the children.
- 63) At end of 2021, the mother alleges [M1] that parties were arguing, during which the father grabbed her by the throat when angry, applying force such that she was struggling to breathe. This, she alleges, took place in presence of J who told the father to leave the mother alone.
- 64) The father denies the allegation. He told the police on 23 March 2022 that it never happened. In fact, he accepts that the parties were arguing over money. He denied that he was swearing, and that the mother had asked him to stop. He said that the mother threw her slippers at him, and then came across the room towards him, as if to hit him. He denied grabbing the mother by the throat.
- 65) The father said in his statement that, to move the mother out of the way, he put his hands on her shoulders, picked her up and moved her to the sofa. I checked that with him, and it was confirmed via the interpreter that the sense of what was in his statement was the same in the Romanian and English versions of it. In his oral evidence, the father said that that was a mistake, and that he had effectively sat the mother down on the sofa by putting his hands on her shoulders. He said that he could not go around her because she was coming towards him across the room, and he did not want to engage with her. He did not put his hands around her neck. The father acknowledged that J had entered the vicinity but the father said that his body would have been obstructing J's view.

- 66) The police disclosure reveals that J told the school in or about December 2021 that the mother hit him. The mother denied that. There was also evidence of K having sustained a burn from an aerosol which was within reach of him, as a toddler. The latter in my judgment raises a supervision issue. However, the conclusion of the investigation at the time was that neither parent physically chastised the children, and that K was an active and accident prone toddler.
- 67) The parties finally separated in about January 2022, and the father moved out of the family home in February 2022.
- 68) In February 2022, the mother alleges [M4] that the father threatened to kill himself if the mother did not take him back, and said he would rather kill the mother than see her with someone else. That is characterised by the mother as emotional abuse. She said that the father would also turn up at events to insult her and humiliate her in presence of third parties and the children. The mother said that she considered the father's behaviour toxic, but accepted having made no report to the police about it at the time.
- 69) The father denies the allegation. He said that he had not threatened to kill himself, and that he never wanted to reunite with her. The father said the context of the parties' separation was that the mother was having extra marital relationships, he did not trust her, and that their relationship had become toxic. He described the mother's behaviour as volatile. He said that the mother had told him that, if he wanted to see the children, he would have to pay her money.
- 70) The mother also alleges [M7] that the father then harassed, threatened and intimidated her over the following months, until August 2022, by repeatedly messaging her, and watching and monitoring her. She says that he told her that she would lose the children and that he called her a whore.
- 71) That is also denied. It was put to the mother that the father's electronic devices were with the police from time of his arrest in March 2022, and so he could not have done what was alleged. The mother said that the father was still in touch with the children, and so she believed that a friend of the father had provided him with another telephone.
- 72) The father denied tracking the mother via her mobile telephone. He said that the police had seen his telephone, which was a Zanco phone, which is recorded as having no means to transmit spyware or any tracking apps. He accepted that the police had not seized that phone until August 2022. However, he said two other telephones were seized in March 2022. I have found no reference to that in the police disclosure, although it is correct to say that the father was arrested in March 2022 as well, and that would have allowed the police the opportunity to obtain the father's mobile telephone data.
- 73) The mother does accept that the police did look at both parties' telephones, and she considered that screenshots of messages at pages 251-253 of the disclosure bundle formed part of that. Those are very difficult to read, but it was put to the father that these were communications from him which were abusive. The father's answer was that the telephone number shown was not his. He said he

only had one telephone number. He denied also that he had set up fake social media profiles to harass the mother.

- 74) A police report on 13 March 2022 records that the father had presented outside the family home and asked the mother to take him back. The police noted that it was still his home and the issue was that he had nowhere else to go.
- 75) On 21 March 2022, the mother alleges [M2] that the father had contacted J at about 7:00am and questioned him about who was sleeping on the sofa. It appears that, by this time, the father was living elsewhere, but very close to where the mother and the children lived.
- 76) In any event, the mother agreed that the father could see the children before he went to work. The mother told court that she had been content for the father to have contact with the children. She did have concerns about risks of the children being exposed to toxic behaviour, but the father was never violent towards the children directly.
- 77) The mother alleges that the father tried to enter her home to see who was there. She then asked him to leave. She alleges that the father became angry and punched the mother to her head, above her ear, as a result of which she fell and sustained bruises. She stated that both children were present.
- 78) The maternal aunt told the court that she was living with the mother and the children at the time, having moved in in 2021. Apart from a period of two months in August 2021, she had lived with the mother continuously. She had her own bedroom in the property, next to the living room, and confirmed that no one was sleeping on the sofa. The maternal aunt did not see or hear the argument alleged by the mother, despite being in the next room, but she heard a bump thinking that the noise came from outside the house. She said that J came into her bedroom in a state of distress, and her oral evidence was that J had said that the father had hit the mother. The maternal aunt was unable to explain why something as important as that was not included in her witness statement, which set out only that J told her that the mother had passed out. The maternal aunt did not call the emergency services, she said because she was panicked.
- 79) After the father left, the mother alleges that he called her and threatened to take the children away if she did not reconcile with him.
- 80) The mother reported the father to police. That report refers to the mother not having identified any injuries. A police officer recorded that J told him that the father had pushed the mother in the living room.
- 81) As I have already said, the father was interviewed by police on 23 March 2022. Said he went to see J at about 7:10am, and that the mother had shouted at J to get back inside the property. She then pushed J inside. She punched the father in the jaw, and told him that she would get the father put in prison for assaulting her. The father maintained that evidence in his witness statement and in cross examination.

- 82) The father was bailed with conditions not to contact the mother directly or indirectly, except in relation to child arrangements, and not to attend her address.
- 83) The mother did not wish to engage in a video interview with the police and did not support an ongoing investigation. No further action was taken in respect of the matters being investigated at the time.
- 84) Of course, the police look at such matters with an eye on whether there is a realistic prospect of a conviction, per the Code for Crown Prosecutors, to the criminal standard of proof. I consider matters through a different lens, applying the civil standard of proof, and having had the benefit of hearing live evidence.
- 85) An assessment by Southampton City Council children's services, undertaken in March 2022, recorded that J engaged well during the assessment. That sets out:

"It is concerning that J can narrate how his father put his hands on [the mother's] neck and [the mother] was trying to push him away and trying to tell [the father] to stop hitting his mother."

That appears to be a reference to the circumstances of allegation M1, which is consistent with what J is said, in notes from an IDVA meeting on 19 July 2022, to have said to police in March 2022. I have also seen a statement from a police officer dated 21 March 2022 which confirms that.

- 86) The father did not accept the truth of what J had reported. He said that he was not trying to cover up what he had done, and queried why the professionals would have placed the children in his care if they had had concerns.
- 87) The assessment by Southampton City Council went on to conclude that J had witnessed events in respect of allegation M2, but I have not been able to find an account of what J is said to have actually reported. The local authority expressed concern that the children had seen violent behaviour by the father towards the mother on two occasions, and also verbal abuse.
- 88) On 19 May 2022, the mother alleges [M5] that the father attended her home intoxicated, and was shouting and being aggressive outside it. The mother stated that that caused her, the maternal aunt and the children to feel scared.
- 89) The father's position was that he had not been drinking and had attended the mother's home to deliver pizza to the children. The mother acknowledged that one of the children had contacted the father and asked for pizza, but said that the father had turned up without pizza. In contrast, the maternal aunt told the court that the father did have pizza in his hand, and she seemed to accept that the police were already there by the time the father arrived. The mother accepted that she had called the police.
- 90) The father's evidence was that he bought four pizzas but was intercepted by two policemen when he got to the property. He said that a policeman had answered the door. J then told the policeman that the father was bringing pizza, and the father then handed over two of the pizzas and left.

- 91) The children were made subject to Child In Need planning in June 2022 due to the allegations of stalking and coercive and controlling behaviour made by the mother. At a Child In Need planning meeting on 9 June 2022, the father appears to have indicated that he wanted to have his family together. He told the court that he had meant that he wanted to have a relationship with his children.
- 92) On 9 July 2022, the mother alleges [M3] that the father attended her birthday celebrations uninvited, that he was verbally and physically abusive, and that the children were present throughout.
- 93) The father's account is that the mother's party was taking place in the back garden of the property in which he was living at the time, he thinks in order to make him feel uncomfortable. The mother told the court that the party was in the maternal aunt's friend's garden, whom it transpired was someone who lived in the same building as the father. The maternal aunt agreed that the communal garden of her boyfriend was also used by the father because of where he was living at the time. Both the mother and maternal aunt appeared to me to be surprisingly reluctant to admit that.
- 94) The father said that he had not intended to attend the party, but he was concerned about drinking, drug taking and rowdy behaviour in the presence of the children. He said he therefore went to speak to the mother about his concerns, and was intending to ask her to take the children indoors as it was getting late. They children would have been six and three years old at the time. He accepted that he should perhaps have called the police if those were his concerns although, I am bound to say, this is the sort of conversation that I would anticipate that many parents would be able to have directly with one another.
- 95) The mother said that the party was a barbecue, which had started at about 5:00pm. She said that the atmosphere was a "*decent*" one: there was no substance use and no excessive alcohol consumption. The father arrived at the party when it close to getting dark, at about 8:00pm or 9:00pm.
- 96) The maternal aunt stated that the barbecue started at about 5:30 – 6:00pm. Alcohol was being consumed but no drugs, she said. She did not remember if the children remained until the end. She thought that the father had arrived at about 6:30pm or 7:00pm, acknowledging that she told the police that she was assaulted by him at 10:00pm.
- 97) The maternal aunt stated that the father was drunk before he arrived. The mother told the court that the father came to the party with a dozen beers under his arm, and so did the maternal aunt, something neither of them mentioned in their statements. The father denied drinking or turning up with beer.
- 98) The mother alleges that the father swore at her, and verbally abused her. The mother said that there was no conversation about the children, and that the father was asking which of the men present she was sleeping with.
- 99) I was keen to know why the father was allowed to stay for three hours on the maternal aunt's evidence. The maternal aunt said that, at the start, the father did not seem aggressive, although he was abusive the whole time. He kept repeating

that it was a communal garden and that he was entitled to be there. The maternal aunt did not call the police because she hoped he would calm down and things would not escalate because children were present. I did not understand the logic of the maternal aunt's expressed hope in that respect, not least given that the parents accept that the children were there throughout.

- 100) At some stage, it is alleged that the father lost his temper. The maternal aunt asked the father to leave. The maternal aunt did not recall if she threw a small speaker at the father, as he told the police and the court. The maternal aunt stated that the father was holding a beer bottle in his right hand and struck her in face with it, causing a cut under her left eye which was less than half the length of the eye. She said that her eye swelled up and she had a panic attack and fainted.
- 101) The father accepted throwing a plastic cup of water at the maternal aunt after she had made a rude comment about his aunt. The father denied being generally abusive at the party or refusing to leave, but accepted being rude back to the maternal aunt when she had insulted his aunt. He said that the maternal aunt had thrown a small plastic speaker at him, which is when he then threw the cup at her. He doubted that it would have caused significant injury, and there was no sign of bleeding at the time. He said that he then returned immediately to his room.
- 102) The father gave a similar account to police on 18 July 2022. He said that he had been present at the party for 20 mins. He denied having gone to cause trouble. He had told the police that the water in the cup was thrown only, not the cup itself, and that he had made offensive remarks to the mother and maternal aunt, but only after they had made some to him.
- 103) I have seen photographs of a black eye exhibited by maternal aunt. Those are not date stamped. The maternal aunt told the court that she thought that they had been taken four or five days after the incident by her boyfriend, who then sent them to her by Snapchat. She took a screenshot of the photographs, but no longer has that screenshot because she has since changed her telephone and the Snapchat account. I note, however, that the maternal aunt's statement is dated relatively recently, 8 November 2024, and the photographs were exhibited to that. She told the court, although I gave her the opportunity to do so, that she had no way of proving when the photographs were taken.
- 104) The photographs appear to show an injury to the maternal aunt's right eye, and she attributed that to the photographs having been taken with the front camera of her boyfriend's mobile telephone, ie. that on same side as the screen. I did not understand her answer to why she had asked someone else to take the photographs, if effectively her evidence was that it was taken with a camera which could have been used to take a selfie. It would have been much more awkward for her boyfriend to have taken a photograph of her with the front camera of his telephone, as opposed to the rear camera which would have been facing towards the maternal aunt. In re-examination, the maternal aunt rowed back completely from her earlier evidence and said she could not remember how the photographs had come into existence at all.

- 105) The photographs show no obvious sign of a cut. The maternal aunt accepted that. The bruising did not extend to eyebrow as the maternal aunt had told the police. The maternal aunt confirmed that she did not seek medical assistance at the time.
- 106) There is reference in the police disclosure to photographs too, but which are not contained in the police disclosure. The maternal aunt initially confirmed that those were the same photographs as exhibited to her statement in these proceedings, but then seemed to retract from that later in re-examination. The police referred to two cuts, rather than one.
- 107) Southampton City Council's assessment in March 2022 had noted from school records that, in March 2022, the maternal aunt had a black eye caused by K throwing a television remote control. The maternal aunt did not remember which eye that had affected, and told the court that it was a minor injury. However, it was described in the school records as very visible black eye with significant bruising and swelling. The maternal aunt continued to describe it as a minor injury despite that, and told the court that the photographs she had exhibited were not of this particular injury.
- 108) The mother also alleges that the father, on 9 July 2022, called her a whore and said things like, *"Come out to suck my dick."*
- 109) The mother reported the matter to the police, but not until 18 July 2022. The only witness who was prepared to give a statement to the police was the maternal aunt, and her statements are broadly consistent with the witness statements given to this court. The maternal aunt confirmed that third parties at the party did not want to give statements, that they had not made their own reports to the police because she did not want them to, and that she had not reported it earlier because she did not think it was serious at the time.
- 110) The police went to the garden on 18 July 2022 and found a number of broken glass bottles. They seized shards from each but found no blood on the shards, although it was recorded that it had rained since the party.
- 111) The police took no further action in relation to the investigation of assault after the maternal aunt retracted her allegation on 7 August 2022. She told the police that she had become friends with the father and, on 30 August 2022, that she wanted to withdraw the allegation for the sake of the family, because there had been no further incidents.
- 112) The maternal aunt was asked what had changed now, in that she is once again pursuing the allegation in the context of these family proceedings. She said, somewhat cryptically, that she did not recall why she withdrew the allegation previously. She said that she had hoped things would get better. It was put to her that she was helping the mother to build a case against the father to restrict his relationship with the children, which she denied.
- 113) Winding back to 17 July 2022, the mother alleges [M6] that the father approached her in the community. She was speaking to a male friend outside a coffee shop and the children were present. She alleges that the father called her

a “*scumbag*” and “*whore*” and used offensive language, and followed her and children. He picked up K and continued to swear.

- 114) The mother made a report to the police, and her statement to the police gave a similar account.
- 115) The father accepts seeing the mother and children but denied approaching them, following them or using abusive language.
- 116) In his police interview on 18 July 2022, the father said that had tried to avoid the mother, but K had spotted him and run up to him crying. He said that J then came to indicate that the mother was calling the police. That was also his evidence in these proceedings. He said that J had told him that the mother was going to tell the police that the father was kidnapping K. He told the court that he had no interest in the person with whom the mother was speaking, but that he was really concerned about the way in which children presented on that day.
- 117) The police body worn footage included an account given by J, which has been transcribed or summarised within the police disclosure. It was contemporaneous, in that the father was still present. It set out that J told the police that the father was following them, and that the father had become angry when he had seen the man that the mother was talking to, and that the father had said a bad word to her. J said that the father had pulled K’s hand, so J hit the father.
- 118) The mother said in her statement that the father was bailed on conditions, which she alleges the father subsequently breached. I do not need to determine that issue.
- 119) The father states that he commenced a new relationship in July 2022. He continues to have a happy and healthy relationship with his partner, Ms P.
- 120) On 4 August 2022, a domestic abuse worker at Southampton City Council, working with the father carrying out perpetrator work, emailed the police. She said that the father would sit outside a friend’s flat, someone he rented a room from. He was said to be in an on / off relationship with the lady concerned, and that the worker was concerned that he was using her to be able to stalk the mother, who lived opposite. The father had also reported that the mother was undertaking sex work.
- 121) The father explained that he was undertaking perpetrator work because he was advised to do so by a social worker. He did not remember when that advice was given, but he understood that children’s services thought that he was a violent or mean man, although he did not believe he was. He says he engaged with the work to prove that he was not a perpetrator of abuse.
- 122) The father accepted that he referred to the mother as “*the creature*” and that he had said that the mother had been unfaithful to him. However, when asked whether the domestic abuse worker was wrong about him having told her that he believed that the mother wanted him back, and that he would take her back, he thought that the domestic abuse worker was wrong about that and had

misinterpreted what he had said. He said that he had not seen the email from the domestic abuse worker until he received the disclosure in these proceedings. I am not sure when the disclosure was received, but the domestic abuse worker has not been called to give evidence.

- 123) The father accepted that he would sit outside his flat, but he was not stalking the mother. The friend whom he rented from was not Ms P. The father said that the children would be left playing on the road unsupervised, and he had had to intervene after K was almost run over. He said that he had tried to speak to the social worker about that. There is nothing in the email about that, and the father suggested to the court that the domestic abuse worker was biased against him.
- 124) He did not initially accept that he had told his domestic abuse worker that he received updates to his telephone from the mother's bank, but he did ultimately concede that, until the mother changed the email address associated with her bank account from his to hers, he having initially set up the account for her, he did receive emails from her bank.
- 125) By October 2022, the father had moved to Bournemouth. It appears from the police disclosure that the mother had said that the stalking and harassing behaviour she had alleged had, by then, ceased. The police then determined to take no further action in relation to the stalking investigation.
- 126) The father alleges that, from about January 2023, he and his partner started to notice bruises on J.
- 127) It appeared to be common ground that J took up kickboxing. The mother states that that was in February 2023, and that J would sustain bruising as a result of that.
- 128) On 17 March 2023, the father says that he noticed a prominent injury to K's neck when getting him ready for bed. He alleges [F1] that the mother was responsible for that, through lack of supervision if it was not an injury inflicted by her, and that [F2] she neglected to seek medical attention and was dishonest about cause of the injury. The father said that he did not have any medical training. However, he said that, when he became aware of K's injury, he showed his partner who did have medical training. Ms P thought that the injury looked like an infected burn. The father and his partner then took K to Bournemouth Hospital. He alleges that he was told that the mark was inconsistent with the explanation from the maternal aunt that it had been caused by K's skin becoming caught in a zip.
- 129) The mother states that the injury was sustained when K had tried to zip up his coat when with the maternal aunt, and he caught his skin. The mother was very vague as to date when the injury was caused. She was not present at the time, but at work. She said that she was told about the incident by the maternal aunt, after the nursery had raised it with her. The mother told the court that she had applied betadine antiseptic powder and banocin that evening, but says that K had had a reaction to it which is why the injury in the photograph does not look like it was caused by a zip mark.

- 130) Surprisingly, the maternal aunt did not deal with this incident at all in her statement. In examination in chief, she said that the mother was working on that day, and that she took the children to preschool. The maternal aunt said that she did up K's jacket zip and caught the skin on his neck. She demonstrated a zip which went from the bottom of K's jacket, diagonally across his chest from bottom to top. At end of the day, the nursery told her that K had a mark on his neck. She believed that it had been caused by the zip. The maternal aunt remembered the mother treating the injury, but that it had not helped because K seemed to be allergic to the substance. The maternal aunt denied that the injury was caused by a cigarette.
- 131) The notes from the hospital dated 18 March 2023 set out that the mark was inconsistent with skin being caught in a zip, "*due to location.*" It was described as a round, 1.5 – 2 centimetre wound which had scabbed over, in other words a healing wound. There was the possibility of it being a burn mark; it was also put to the mother that it was a cigarette burn, which she denied.
- 132) As I have said, the maternal aunt indicated that the zip went diagonally across K's chest to one side of his neck. The father disputed that K had an item of clothing which zipped up in that way although, if K had, he accepted that the location of the injury might have been consistent with a zip catching the skin.
- 133) Children's social care made enquiries of the mother on 19 March 2023 and satisfied with the explanation given by her that it was an injury sustained when K was at nursery.
- 134) The mother told the court that she had told the local authority that it had happened at nursery because she was at work when she was asked. The mother said that she had had an interpreter when she spoke to social services on the telephone, but not when she was visited at home, and that she believed that she told the local authority that the injury might have been sustained at nursery or at home. I did not understand her inconsistent evidence in these respects: on her own evidence, she had been told by the maternal aunt that the injury had been sustained at home when K was with the maternal aunt. The mother denied that she had been trying to protect her sister.
- 135) The father, for his part, told the court that he did not accept that the injury was not a burn. He did not speak to the mother about how she had treated the injury, but he had googled the two types of antiseptic that the mother said she had used and concluded that the one would have cancelled the other out. Although I am not an expert either, I did not understand how he had ruled out the possibility of an allergic reaction to one or both types of antiseptic.
- 136) On 20 March 2023, the father contacted the nursery and was told that there was nothing in its records about this injury. I doubt that the latter can be right for reasons I will come to.
- 137) In any event, the father alleges that the mother then withheld contact for three weeks. I asked the mother whether that was correct, and it appeared that it was. The mother told me that the father had only had contact by Facetime and that

they conversed less. She was unable to say why the children did not see the father for three weeks.

- 138) An email from the nursery on 21 March 2023 describes how marks on K's neck were noted on three occasions in a week. It looked worse on each occasion, having started as a red line three centimetres long. The second time it was seen, it was significant red mark which looked like an insect bite. It was recorded that it then worsened to an infected, crusted over sore about the size of a ten pence piece. It was unclear precisely what the date of that was but, from the police disclosure, it appears that the information was originally sent to the police on or before 20 March 2023. It was noted had the sore had improved a lot by 21 March 2023. The police considered the cause of the injury to be inconclusive, and recorded in fact that K had not given any explanation for the injury himself.
- 139) On 10 June 2023, the father noticed extensive bruising to J's thigh and back. He exhibits photographs of the bruising, which he alleges [F3] was caused either deliberately by the mother or by inadequate supervision. He then returned the children to the mother's care on 11 June 2023.
- 140) The mother's position is that these were injuries sustained during kickboxing, or in play with other children. As I have said, both parents were aware that J was going to kickboxing classes.
- 141) By 12 June 2023, new bruises had appeared on J's stomach and leg. The father asserts that those must have been sustained since he returned J to the mother's care on the previous day.
- 142) Southampton City Council commenced a Section 47 investigation on 13 June 2023.
- 143) During a joint visit by social services and the police on 13 June 2023, K told an officer that the mother hurt J with her hands and that J did not make a noise when the mother hurt him. Whilst J did not say anything similar, he was observed to be closed and guarded when asked about the injuries,
- 144) However, the child protection medical request form also dated 13 June 2023 sets out that both the mother and J had said that the injuries were sustained during play. The medical noted unexplained clusters of bruising over J's back, thighs and abdomen which were in a distribution not usually seen in accidental injury, and that physical abuse could not be excluded. There was evidence of dental neglect in respect of J and poor dental hygiene for both children.
- 145) Again, the mother told this court that J's injuries were likely to have been sustained during play with other children.
- 146) The mother was arrested and bailed on conditions not to contact the father, his partner or the children. The children were placed in the father's care.
- 147) I have seen an email from the children's school dated 15 June 2023 which expressed dismay about that given the history of what is described as the father's "*coercive and threatening behaviour.*"

- 148) From 18 June 2023, the father states that the children started to open up. J, he says, told him that the mother and the maternal aunt had hit and punched him. One of the father's allegations [F6] is that the mother physically chastises the children.
- 149) Set against that, however, is an update from the school on 20 June 2023, shortly after the bail conditions had ended, which records that J had run up to the mother and greeted her with a huge hug.
- 150) When the mother's bail conditions ended, the father told the court that he wanted to increase time spent by the children with her. However, he said that the children became upset when speaking to the mother. This forms part of the father's allegation [F5] that the mother has also engaged the children in conversation about adult issues, has extensively questioned them and has encouraged them to adopt inappropriate behaviour. The latter includes that J told him that the mother makes him steal items from the shop. There was also some suggestion that the mother told J that he could not attend an eye appointment because the father had not paid for it, but the father had established that the eye test was free of charge. The father also makes a suggestion that the mother had effectively intended to bribe J to return to her care.
- 151) When asked whether the mother had been child focused in contact sessions with K, the father's answer was, "*Yes and no.*" Whilst he accepted that the children sometimes behave badly, he did not accept that that would have included the children stealing of their own volition. He maintained that J had told him that the mother had said it was okay to steal, and that was because she had no money to buy food, so the mother would put food in his pockets and the hood of his top.
- 152) The father did accept, looking at the contact notes, that the mother was able to put in place boundaries for K during the sessions. He did not know whether the mother was effective in putting in place boundaries for J and K when in her care, but he did not agree that that would necessarily have included boundaries around theft because of what he said J had told him. He was not able to say whether J was trying to please him, which I thought was a fair response. He denied coaching the children.
- 153) The father also alleges [F4] that, when in the care of the mother, she failed to prioritise their health needs. In particular, both children had significant dental issues. It was put to the mother that her parenting was neglectful, that there were unexplained injuries and poor dental hygiene, but that the children's presentation had improved since being in the father's care. She appeared to accept that she should have responded earlier than she had to their dental needs, but she denied that there would be further neglect if the children were returned to her care.
- 154) It was put to the father that he had parental responsibility, and that the responsibility to attend to the children's health needs was also his, and that he could have registered the children at a dentist in Southampton, where the mother lived at the time when they were in her primary care. His response was that he would not have been able to do that because the mother would have used that

against him, and he was afraid of the mother making more allegations against him. There is also evidence of the father taking action to address the children's dental needs once they were placed in his care.

- 155) The father accepted that he had occasionally fed the children fast food when the children were living with the mother, he says because the mother was not feeding them adequately. Set against that is that the single assessment in March 2022 observed J to be slightly overweight, and the father's evidence that K would eat when bored. The father said that the children were underweight when they came into his care. J was recorded to have put on weight by 16 January 2024, and the father accepted a referral to a dietician. The father did not accept that J had always had an issue with his weight.
- 156) As I have said, the mother's application was issued on 23 June 2023. On 28 June 2023, the father was ordered, at a hearing at which he was not present, to return the children to the care of the mother. He did not do so but, on 19 July 2023, the court made an interim live with order that the children live with him, and the earlier order was discharged.
- 157) In the meantime, on 4 July 2023, J had told a social worker that his mother used to beat him with a belt and that he did not want to return to her care. The outcome of Southampton City Council's Section 47 investigation was to initiate child protection planning.
- 158) On 19 December 2023, BCP Council finalised a Section 37 report directed by the court on 5 October 2023. Direct work was completed with the children on 12 December 2023, by which time J was eight years old and K was almost five. They had been in the care of their father for about six months.
- 159) During the direct work, J told the social worker that he wanted to live with the father and Ms P, and did not want to see the mother because she used to beat him. J reported that both the mother and maternal aunt would hit him, and gave a number of examples in a matter of fact way of physical abuse perpetrated by the mother. One included hitting his hand with a hammer which left him with a bruise on his hand. K also said that he wanted to remain living where he was and, amongst other things, said that the mother hit him really hard.
- 160) The social worker commented that the children had made similar allegations of abuse to multiple professionals, on several occasions. The social worker appeared to have concluded that what the children were saying was true, in that her recommendations were directed at reducing the risk of future abuse.
- 161) I have notes of supervised contact sessions which took place from 9 December 2023 between K and the mother. At a session on 9 January 2024, J arrived with the father and K at the contact centre, but J declined to go inside to see the mother. The contact supervisor recorded:

"I did not detect any signs of anxiety or sadness from K or J. J appeared comfortable in his decision as did K."

- 162) In his statement of 2 July 2024, the father said that he was concerned that the mother was engaging in sex work. He has exhibited a profile and gave this explanation as to how it came into his possession: he said that he received a telephone call from a Romanian man, who was complaining that the mother had not provided services to him but that he had already paid her. The third party had then found the father's number to demand that he repay him the money paid to the mother. The father said that he and the other man had had a tense discussion, during which the father explained that he was not responsible for the mother's debt, after which the third party then provided the screenshots of the profile. None of that is in the father's witness statement, but he said he had no interest in making something like this up after the parties had been separated for two years.
- 163) The mother says that she did not create the profile, and she urged the court to accept that the father had hacked into her telephone account and created the profile using her photographs. The father denies ever having had the mother's credentials to be able to access her account. It was put to the mother that there is no evidence that the father created the profile, and the mother's answer to that was that there was no evidence that she had either.
- 164) I do not need to determine this issue. However, of the two accounts as to how the father came to exhibit the profile, I am bound to say that the father's explanation was more likely. Although he provided a late explanation, when he gave it during the hearing, it was a complex story told in a fairly matter of fact way. In contrast, there is no other evidence that the father had any skills in hacking into telephone accounts, which I would imagine are secure accounts, and it would seem all the more unlikely that that were possible so long after separation.
- 165) It was put to the mother that she had fabricated her allegations against the father, in order to prevent the father from having contact. She denied that. She said that the children need both parents and that she would not prevent that.
- 166) The father told the court that he has prioritised the children's contact with the mother. However, it is a fact that J has not been attending contact.
- 167) It was put to the father, based on the contact notes, that K considers Ms P to be his mother. The father said that K and Ms P have a good bond, and that K calls his partner by her first name at home. K has been in the father's care since he was four years old. Although this issue does not relate to any of the allegations I have been asked to determine, I reached the conclusion that K may well have expressed himself in a way which was confused rather than, if it was being alleged, that the father had been seeking to airbrush the mother out of K's life. Apart from anything else, K has been attending contact with the mother regularly since being in the care of the father.

Analysis and findings

- 168) Standing back and looking at the evidence overall, and re-evaluating the provisional views that I have already expressed, there are number of conclusions that I reach. It is necessary for me to articulate my findings in a linear way. In

reality, the strands of information which inform my decisions are intertwined and each of the answers I give is informed by the whole context.

- 169) In my judgment, the exercise that I conduct is one whereby the court needs not only to consider whether allegations are proved as a matter of fact, but also then whether the facts are capable of amounting to domestic abuse.
- 170) In my judgment, not all behaviour which can be perceived as controlling is capable of amounting to domestic abuse. People deploy a range of skills in order to persuade other people to say or do things which they want them to do. The definitions in Practice Direction 12J to which I have referred leave room for the court to conclude that not all controlling behaviour amounts to domestic abuse, and the court in *Re H-N* to which I referred made it plain, too, that not all patterns of controlling behaviour will be abusive.
- 171) Similarly, not every argument is abusive, and not every name which one party calls the other is likely to lead the court to the inexorable conclusion that one party is a perpetrator of abuse, and that the other is a victim. These are questions of nature and degree and, in my judgment, the fact that people behave badly when life throws a curve ball, when their relationship is on the rocks, or when they separate, can often be put down to people behaving badly at times of stress, rather than abuse: *Re L* exemplifies that.
- 172) However, because these are questions of nature and degree, there comes a tipping point at which behaviour does become abusive.
- 173) I should also say at the outset that I formed the very clear view that there was no real imbalance in the way the parties communicated. The parents appear to have felt able to take each other to task about things which they did not like.
- 174) I am satisfied, as I will explain, that the parents' own conflict between themselves has played out in front of the children on numerous occasions.
- 175) It was not the subject of evidence in court during the hearing, but this court is often told by experts about the effect of parental acrimony on children. That is, that children caught in the centre of their parents' conflict, will often feel conflicted themselves and that may manifest itself in a number of ways and perhaps not immediately. That has an impact on their emotional wellbeing and development.
- 176) As I have already said, if it were not self-evident, paragraph 4 of Practice Direction 12J sets out that:

“Domestic abuse is harmful to children, and/or puts children at risk of harm, including where they are victims of domestic abuse for example by witnessing one of their parents being violent or abusive to the other parent, or living in a home in which domestic abuse is perpetrated (even if the child is too young to be conscious of the behaviour). Children may suffer direct physical, psychological and/or emotional harm from living with and being victims of domestic abuse, and may also suffer harm

indirectly where the domestic abuse impairs the parenting capacity of either or both of their parents.”

177) In paragraph 31, the court in *Re H-N* went on to say also that:

“It follows that the harm to a child in an abusive household is not limited to cases of actual violence to the child or to the parent. A pattern of abusive behaviour is as relevant to the child as to the adult victim. The child can be harmed in any one or a combination of ways for example where the abusive behaviour:

i) Is directed against, or witnessed by, the child;

ii) Causes the victim of the abuse to be so frightened of provoking an outburst or reaction from the perpetrator that she/he is unable to give priority to the needs of her/his child;

iii) Creates an atmosphere of fear and anxiety in the home which is inimical to the welfare of the child;

iv) Risks inculcating, particularly in boys, a set of values which involve treating women as being inferior to men.”

178) There is another general conclusion which I need to express before I address the individual allegations, which is in relation to the evidence of the children. Each party relies, when it supports their case, on things that the children have said, but seeks to distance themselves from them when the things recorded as having been expressed by the children suits them less. Neither J nor K has been formally ABE interviewed as far as I am aware. The sources of evidence of what the children have said include records created by social workers and the police, for example.

179) Both parties were legally represented prior to this hearing, including at the last directions hearing on 7 March 2025. It was only after that that the father ceased to have legal representation and I directed, on 9 May 2025, that a QLR be appointed to assist him. Prior to that, a fact finding hearing was in the contemplation of the parties by the time of the First Hearing Dispute Resolution Appointment on 5 October 2023, and they had legal representation at that hearing and in the period after that until March 2025.

180) I have found no reference to either party seeking that either J or K give evidence at the fact finding hearing, or to any part of the process that would be engaged per *Re W (Children) (Abuse: Oral Evidence)* [2010] 1 FLR 1485. There is no reference either to either party seeking that any police officer or social worker attend any fact finding hearing to give live evidence (as opposed to the author of the child impact report being requested to attend the welfare hearing).

181) For those reasons, I have necessarily worked on the basis that neither party takes issue with the way in which the children were questioned by police officers and social workers. That is important when considering the careful directions I have given myself about the evidence of children and the ABE Guidance.

- 182) Turning to the specific allegations, allegation M1, in my judgment, involved a row between the parties. Both of them agree that that was the case. The mother alleges that the father attempted to strangle her, and the father's position was that he effectively took the mother by the shoulders and moved her to the sofa.
- 183) The single assessment by Southampton City Council in March 2022 and the associated police records suggest that J did see something of what had happened. On the face of it, what J reported was closer to the mother's account of what happened than the father's. Although the father asks the court to conclude that J had not got it right, and I have in mind that J's account was captured a few months after the events in question, the father relies on J's reports for the truth of their contents in the context of other allegations. J appears to be a clever child who is able to express himself easily and, for example, even interprets for his mother.
- 184) The father's own original account involved a significant exercise of physical strength, and I did not understand how physically picking her up and moving her aside would have been a proportionate response to the mother throwing slippers at him even if she was coming towards him. The father's revised account saw him moving the mother by her shoulders to the sofa. I did not believe the father's revised account, mainly because he confirmed that the Romanian and English versions of his statement read in the same way, and I was left with the impression that he was trying to minimise what happened.
- 185) On balance, for those reasons, I consider that the allegation is proven although the context is that the parties were both behaving angrily and badly, and in a way which was liable to expose the children to emotional harm.
- 186) Allegation M2 took place post separation when the father was living nearby. The mother's evidence was that she had consented to the father seeing the children, or J at least, early that morning.
- 187) Both parties describe an altercation between the two of them. The mother alleges that the father assaulted her, and the father alleges that the mother assaulted him. There was no evidence before the court of injuries sustained, whether photographs or any medical notes for example, and the police disclosure expressly refers to there having been no report of any injuries.
- 188) Although the maternal aunt said for the first time in her oral evidence that J had told her that the father had hit the mother, the single assessment from Southampton City Council was unclear about what J had in fact said. That said, the local authority's conclusions seem to suggest that J's account was more aligned with that of the mother, in that he is said to have told the father to stop hitting her.
- 189) In my judgment, and on balance, I have concluded that the father did assault the mother in some way. However, given that the matter was reported to the police fairly contemporaneously, and there was no suggestion of injury at the time, I have reached the conclusion that the severity of the incident has been exaggerated by the mother. I do not make a finding that the father punched the mother to the side of her head. It is likely to have been, at its highest, that the

father pushed the mother, as J told the police. I doubt that J would have been coached by the mother as the father suggested, given the proximity of the police officer's statement, at about midday, to the time of the incident that morning, and J's apparently good relationship with the father. I do not need to make a finding about whether the mother assaulted the father in some way, but I have not ruled out that possibility. Again, this was an unseemly altercation which played out in front of J, inside the home, and was likely to have caused him emotional harm.

- 190) The mother does not discharge the burden of proving the assault in allegation M3. This was an allegation about a party which took place in the father's back garden, which he shared with other residents. I accept the father's evidence that the party involved greater levels of frivolity than the mother and maternal aunt were prepared to accept. The broken beer bottles recovered by the police appear to be consistent with his evidence, and I doubt that the maternal aunt is right that they were from a previous party in that this was an occasion when children were to be present. Broken glass would have posed a safety risk and would have been likely to have been cleared away before the party began.
- 191) The maternal aunt is the primary victim alleged. Her evidence made little sense in many respects. She said, contrary to the evidence of the mother, that the father was present at the party for more than three hours before the alleged assault, and was, all the while, being abusive. I did not understand why she had not telephoned the police or asked him to leave sooner. Surely, the behaviour alleged, if true, would have soured the mood or been inappropriate in front of children? It is more likely that the father was present for a short period, as the mother and father both say.
- 192) If the father were being abusive during his time at the party, it would not have been logical, in my judgment, for the police not to have been called in the hope that the father's already bad behaviour might somehow improve of its own accord. That is especially the case if, as the mother and maternal aunt say, the father had been drinking heavily and continued to do so.
- 193) I therefore prefer the father's account that he went downstairs because he was concerned about the party taking place around his six and three year old children and that he was present only for a short time. He told the police it was 20 minutes.
- 194) That conclusion is also consistent with the fact that no other witness seems to have been prepared to come forward, either to assist the police or this court. That is despite the assault which is then said to have been perpetrated and the fact that children were present.
- 195) The maternal aunt did not seek medical attention for the injury which she said she sustained, notwithstanding its apparent seriousness given the photographs exhibited by her and her own description of it.
- 196) I have already commented on the photographs exhibited by the maternal aunt, and I do not resile from my provisional view that they show the injury to the wrong eye. It does not appear that the police saw an injury themselves, only

some photographs. There had of course been a delay of nine days in a report being made to the police. The maternal aunt gave inconsistent evidence about whether there were other photographs shown to the police, but if there were other photographs, I have not seen those. I have not been able to rule out that the photographs exhibited were of an injury sustained on another occasion. The maternal aunt had sustained one, for example, when K threw a remote control at her on an earlier occasion, and, somewhat oddly, she sought to minimise the seriousness of that other injury during her evidence. The maternal aunt was also given the opportunity to better explain the provenance of her photographs, but ultimately her evidence was she could not prove when they were taken, and she also gave the strange explanation of how the photographs were taken by her boyfriend which I have already commented upon.

- 197) The maternal aunt withdrew the allegation she made to the police, saying that it was for the sake of the family. She was unable to explain why she has renewed it in the Family Court now, and I inferred that she did so only in order to bolster the mother's case. It is likely that she did so at the mother's behest, although it may of course have been a response to the father's allegations of physical abuse of the children which have, to an extent, implicated her.
- 198) In my judgment, for all of those reasons, the mother does not discharge the burden of proving that the father struck the maternal aunt with a glass bottle as alleged. However, it is the father's evidence that he made some offensive remarks to the mother and maternal aunt, albeit he says that that was in response to similar remarks by them. The maternal aunt did not seem to deny throwing a speaker at the father. Again, I make a finding that an unseemly slanging match played out in the presence of the children.
- 199) I will take allegations M4 – M7 as a cluster. What these amount to, in effect, are allegations that the father did not accept the parties' separation and, up until the time that the father found a new partner and moved to Bournemouth, he was harassing the mother, and deploying emotional blackmail or other controlling behaviour to try and persuade her to reconcile with him,
- 200) The fact that, post separation, the father moved to an address within line of sight of the former family home, is an important part of the picture.
- 201) During this period, it is clear that the mother and the father were having disagreements, but also that the father was continuing to be involved by the mother in family life. My findings in relation to allegation M2 illustrate that. Whilst I am not saying that it was wrong for the father to have been involved in the children's lives, the circumstances are liable to have caused the aftermath of the break up of the parties' toxic relationship to have become more protracted than it might otherwise have been.
- 202) Although I do not consider that the specifics of allegation M4 are proven on balance, there is a sound basis in the evidence for concluding, in terms of the generality of allegation M7, that the father was harassing the mother. That finding includes the findings I have made on allegations M2 and M6. I doubt that the harassment went as far as tracking the mother, given the evidence from the police that there was no app on the father's telephone to achieve that. The

mother has not produced exhibits which prove the repeated messaging alleged, and I was not satisfied that the messages in the police disclosure came from the father. However, the domestic abuse worker's account of what the father had told her is significant. I did not see how, as the father suggested, she could have misinterpreted what was recorded in her email of 4 August 2022, except perhaps in relation to the notifications from the mother's bank. Similarly, I interpreted what the father said at the meeting on 9 June 2022 to have meant that he would have liked the parents to reunite, rather than what he told the court during this hearing.

- 203) Moreover, that evidence is consistent with the evidence about allegation M6, in respect of which the mother's allegation is again borne out by what J told police officers at the scene. That suggests that the father was jealous of the other man with whom the mother was speaking. It was unlikely that J had been coached because of the proximity of his account to the events themselves. I did not believe the father's account and find this allegation proven.
- 204) As to allegation M5, however, the mother does not discharge the burden of proving abuse. Both parents and the maternal aunt appeared to accept that one of the children had asked the father for pizza. He then turned up at their home with pizza, even on the maternal aunt's account. The father then handed over the pizza at a time when police officers were already present, which in my judgment is likely to have eliminated the possibility of any bad behaviour from him.
- 205) Thankfully, once the father found a new partner and moved away from her local area, it appears that his harassment of the mother ceased. That is consistent with what she told the police at the time.
- 206) Allegation M8 is an allegation of rape. Although the father submitted that the mother's accounts of the date of the allegation has been inconsistent, I doubt that that takes him very far, except in one respect to which I will return, given that there is some common ground in the parties' evidence. There is broad agreement between the parties about the fact that they had argued about something. The parties also agreed that that argument was followed by sexual intercourse.
- 207) What is not agreed is whether the mother consented to it. The father says that it was consensual, and the mother says that it was not. An issue flows from the police disclosure, which is that it may not have been the case, even on the mother's own evidence, that she overtly made it clear to the father that she was not consenting.
- 208) The father's strange evidence about it being his practice to check with the mother whether she consented to intercourse or not, both before and during sex, was not evidence that I believed. The father gave conflicting evidence about why that was his practice, and he was clear that he kept no record of when the mother consented or not, which undermines the idea that he would make these checks to avoid false allegations. The father had raised this point, and the idea that the mother had had been the victim of abuse previously, for the first time during his oral evidence. It would not, in my judgment, have been a very natural

way of having a sexual relationship and, if either of these things were true and had informed these parties' relationship, I would have expected the fact of these checks to have been raised in evidence earlier.

- 209) The mother's allegation is not supported with medical evidence and was not reported to anyone else at the time, whether to the police or even a friend or family member. Although delay in making a report does not of itself mean that the allegation is untrue, no report was made at the time despite the fact that the mother had travelled to Romania the following day, and so she would presumably have had the opportunity to reflect on what she says was serious abuse perpetrated by the father. The children were not in the UK, and it would have been easier, one might have thought, to abandon the idea of a new life in the UK and simply remain in Romania with the children were she the victim of a serious sexual assault.
- 210) Because the mother's allegation is associated, in terms of timing, with the trip to Romania, I did not understand why she has given such a variety of dates for the allegation.
- 211) What also concerns me about the allegation is that the reports eventually made to the police came at times when the parties had just separated. The mother had made or renewed the allegation alongside other allegations reported. On one view, that can be seen as case building, which is a form of controlling behaviour. That is consistent with the mother's evidence that she wanted to make reports to the police simply so that the police had a record of her allegations. She was unable to offer any alternative explanation for why she made reports to the police which she did not then pursue.
- 212) Although the mother said that she had reunified with the father towards the end of 2021 for the sake of the family, and that she agreed that the father could have contact with the children after the relationship ended in 2022 in order to prioritise children's welfare, I doubt that the sort of angry and controlling behaviour that the mother alleges pre-separation, if it were true, is consistent with that sentiment. That is true even if the father had never been abusive of the children directly, and is consistent with my finding, in respect of allegation M1, that the mother has exaggerated what happened then. If the mother's is the true position, however, I would have concerns about the mother's capacity to protect the children from harm.
- 213) On balance, and in my judgment, taking what I have said together, and because I do not consider that the mother was at a disadvantage in her relationship with the father in communication terms and that each gave as good as they got, I have reached the conclusion that the mother has fabricated this allegation as a tool to try and control outcomes for herself. She made it to the police and left it hanging over the father's head.
- 214) The father does not prove allegation F1, on balance. That is principally due to the nursery's email which identified that the mark initially presented as a red line of about three centimetres in length, which in my judgment is unlikely to be consistent with an injury caused by a cigarette burn. That is notwithstanding that the medical report identified that it was an injury unlikely to have been

caused by skin caught in a zip, “*due to location,*” and the possibility of it being a burn mark, the idea of that having originated from the father’s partner.

- 215) However, the maternal aunt told the court that the injury was sustained when K was in her care, not the mother’s, and she described a zip which could have caught his skin in the location of the injury. That was plausible evidence on the face of it, but what concerns me is that there was no explanation for this mechanism for the incident until the maternal aunt went into the witness box during this hearing. That possibly then explains why there has been no attempt to seek updating medical evidence, whether in relation to that issue or the mother’s assertion that K had a bad reaction to antiseptic applied. The lack of that updating medical evidence is a relevant factor in the conclusion I have reached; I cannot rely on the father’s expressed internet search about the relationship between different types of antiseptic.
- 216) It is, however, correct that the mother did not seek medical assistance for K, and I do have some concern that the mark got considerably worse before it got better, considering the email from the nursery dated 21 March 2023. I also failed to understand, as I have said, why the mother told the local authority that the injury had been sustained at nursery when she knew that it had happened when in the care of her sister. That is perhaps how allegation F1 has come to gather momentum, given the distrust between the parties, but on that basis I do find allegation F2 proven. Furthermore, I am concerned that, after the father reported his concern, and it was a legitimate report to have made in my judgment, the mother’s response was to withhold contact for a number of weeks. In doing so, she used the children as a weapon against the father, placing them in the centre of her discontent towards him.
- 217) What is of concern about allegation F3 is what K told police on 13 June 2023 about the mother having hurt J with her hands. What K, who was four years old at the time, does not provide is any more context. He does not say, for example, whether it was deliberate or accidental, only that J did not make a noise. In contrast, J, who in the context of other matters alleged has reported a lot, told the police officers nothing similar, although he was reported as having been uncomfortable showing anyone the bruises. J is recorded elsewhere as having said that the bruising was sustained during play. He was seven years old at the time, and I have in mind that that is not at all improbable.
- 218) The outcome of the medical examination really takes me little further than that. It did not end conclusively one way or the other, but did not rule out abuse: it observed that the pattern of bruising would be unusual for accidental bruising. The encounter between J and the mother on 20 June 2023 suggests that he was happy to see his mother, although I know that children can be surprisingly resilient.
- 219) About two weeks later, on 4 July 2023, J told a social worker that the mother used to beat him with a belt, and K said that the mother was mean to them both. By that time, the children had been in the father’s care for about two weeks. Since then, the children have maintained their allegations of abuse against the mother, and the maternal aunt has also been implicated, including in the context

of the direct work undertaken with the children in December 2023 and, I note, the child impact report produced in May 2025.

- 220) Of course, it is possible that J's change of position between 13 June 2023 and 4 July 2023 was due to the fact that he had moved to the care of the father and that the father had coached him. That was the submission made to me on behalf of the mother. However, I consider that coaching is unlikely for at least four reasons. Firstly, K's account has been broadly the same since the Section 47 investigation started in June 2023. Secondly, there was no evidence that J had been suggestible in the same way before, for example in the context of the assessment undertaken by Southampton City Council and the police enquiry in March 2022. The mother has relied on what J has said on other occasions for the truth of its contents. In that context, I cannot ignore either that J had reported, in December 2021 even before the parties separated, and when the father would therefore have had no interest in coaching him, that the mother hit him. Thirdly, the children's accounts have not been identical, which tends to undermine the idea of a narrative having been given to them, and the social workers listening to the children's accounts have not flagged any concern about possible coaching. Finally, J has not wanted to see his mother, despite having been taken to the contact centre at least once, and despite knowing that K is having a relationship with their mother. This is not a case in which J is unlikely to have been given the emotional permission by the father to go to contact if he would have liked to. What is more likely is that he has been resistant to going to contact for the reason he gave, which is because of the abuse perpetrated against him by the mother. The contact notes of 9 January 2024 suggest that he was comfortable with his decision, even though K's was different.
- 221) Taking allegations F3 and F6 together, I therefore find them proven.
- 222) There did not appear to be any dispute in relation to the children's dental needs not having been met by the mother. I have explored this evidence already and do not rehearse it. I doubt that the father could simply have taken the children to a dentist at the time when they were living with the mother, as was suggested to him, and he did take action after the children were placed in his care. Based on the mother's admission that she had neglected the children's dental needs, allegation F4 is proven.
- 223) Finally, then, given the findings that I have already made, I find allegation F5 proven as an allegation that the mother has contributed, as well as the father, to states of affairs which have resulted in the children being exposed to dysregulated adult behaviour, which has then caused them emotional harm. I do not need to make findings on the individual allegations that the mother has taught the children to steal or the like.
- 224) J and K are children who appear to have shown considerable resilience, in particular after their parents' separation. As I have said, at the time he was placed in the father's care, J continued to show warmth towards the mother once she was able to see him after her bail conditions ended, although he has struggled since then. K has continued to have a positive relationship with his mother, on a reading of the contact notes. However, I have no doubt that the

children's experiences of abuse have left them more vulnerable. That is down to both of the parents.

225) That concludes this judgment.