



IN THE FAMILY COURT
SITTING AT CANTERBURY

NEUTRAL CITATION NUMBER: [2021] EWFC 79

Date: 23/07/2021

Before :

RECORDER SAMUELS QC

Between :

KENT COUNTY COUNCIL

Applicant

- and -

(1) A MOTHER

(2) A FATHER

(3) BC

(4) A CHILD

Respondents

Tahmina Rahman and Dawn Berry for the Local Authority
Paul Storey QC and Stephen Chippeck for the mother
Sam Momtaz QC and Adrian Pidduck for the father
Peter Donaghey for the child

Hearing dates: 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22 June 2021

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Re A (A Child) (Fact Finding; Modern Slavery)
.....

Recorder Samuels QC sitting as a Deputy High Court Judge

This judgment was delivered in private. The judge has given permission for this version of the judgment to be published. This version of the judgment may be published only on condition that the anonymity of the children and their family is preserved and that there is omitted any detail or information that may lead to their identification, whether on its own or in conjunction with other material in the judgment. This includes, but not exclusively, information of location, details of family members, organisations such as school or hospital, and unusual factual detail. All persons, including representatives of the media, must ensure that this condition is complied with. Failure to comply will be a contempt of court.

Introduction

1. These proceedings concern a child 'A' who is now 4.
2. A's mother is 22 years old ('the mother') and A's father is 28 years old ('the father').
3. The other relevant adult is BC. He is 41 years old.
4. A and his parents are Romanian nationals. Each was born in Romania and the parents married there in August 2016. They travelled to the United Kingdom in May 2019. As European Union citizens they were, up to 30 June 2021, entitled to apply for Pre-Settled Status. I understand that the mother has made such an application for herself and the local authority has made an application on behalf of A.
5. On 5 July 2020 A was taken into Police Protection. On 8 July 2020 the local authority obtained an emergency protection order with respect to A. An interim care order was first made on 20 July 2020 by District Judge Smith. I made a further interim care order on 14 August 2020 and have retained case management responsibility for this matter since that hearing.
6. The hearing was listed for 12 days commencing on 7 June 2021, to consider threshold allegations against the parents and BC. Those allegations are set out in a revised schedule prepared by the local authority, dated 18 May 2021, and include allegations of:
 - (a) Violence by the father against the mother in the presence of A.
 - (b) Rough handling of A by BC.
 - (c) Violence by BC against the mother.
 - (d) Rape perpetrated by BC against the mother.
 - (e) Coercive and controlling behaviour by BC against the mother.
 - (f) An incident on 30 June 2021 which is said to include a serious assault of the mother by BC and another man, an attempt by BC to force the mother into prostitution and events which amount to the modern slavery of the mother by BC.
7. The allegations are largely based upon contemporaneous accounts given by the mother to the Police. However, in the written documents filed within these proceedings and now in her oral evidence the mother has, in large part, denied the truth of the allegations. The local authority assert that either the original allegations are true or that the mother has been dishonest, causing considerable disruption and emotional harm to A.
8. The local authority have been represented at this hearing by Ms Rahman and Ms Berry. The mother has been represented by Mr Storey QC and Mr Chippeck. The father has been represented by Mr Momtaz QC and Mr Pidduck. A has been represented, through his Guardian, Carla Middler, by Mr Donaghey. I am extremely grateful to all the advocates for their considerable assistance in the course of this hearing.

9. I heard oral evidence on 8, 9, 10, 15, 16, 17 and 18 June 2021. I heard that evidence in court at a hybrid hearing. The mother, the father and BC attended in person with interpreters and, for the father, an intermediary. The mother attended with counsel on some days and with her solicitor on others. The father attended with Mr Pidduck throughout. There were advantages, as I will outline, both to the parties attending in court and to my ability to see the parties give evidence in person and observe their reactions to the other evidence.
10. I received written submissions from the represented parties on 21 June 2021 and heard oral submissions, including from BC, on 22 June 2021. I sent out a draft of this judgment on 14 July 2021 and handed down this final version at a hearing on 23 July 2021.
11. I would like to record my gratitude to the three interpreters (Florintin Cernenco, Liviu Vacareanu and Ana Untila) and the intermediary (Kerry Chatterje) who assisted the lay parties throughout this hearing. Their professionalism and the quality of their work were outstanding. This hearing simply could not have taken place fairly without them. I would also like to thank Big Word who were responsive, and found an immediate solution, when a problem arose with an earlier interpreter.

Background

12. There is very little reliable information available about A or his parents in the time before their arrival in this country in May 2019. The mother has reported having two older brothers, an older sister, two younger sisters and a younger brother. She says she was born in the North West of Romania. She described to Dr Wright, Chartered Counselling Psychologist, how when she was 5 years old a family came to Romania from Italy wanting to adopt two children. Her parents did not agree to an adoption but did agree to the mother and her sister spending 6 months a year with the couple in Italy. Her parents separated when she was 14 years of age. She said everything fell apart at the time and her relationship with the Italian couple ended. She was unhappy at school. She did not play with the other children as they called her names. She was not troubled by this as she did not speak with the other children. She did not ask anyone for help and *“still doesn’t”*. Dr Wright reported, *“Then and now [the mother] said she has no friends as she doesn’t trust anyone”*.
13. When her parents separated, aged 14, she went to live at the father’s house. His family agreed she could stay until she was 18. In respect of her relationship with the father she told Dr Wright that *“she never wanted to be with him as an adult...”*. She told him that she came to England *“to get away from everyone in her family... She doesn’t want friends or anyone to talk to.”* She was pregnant at 16 and a mother at 17. Her mother died towards the end of 2020. She told Dr Wright she did not want to talk about her

mother or remember her. All she wanted was a child of her own. She *“doesn’t care about anyone else, just wants her son back.”*

14. The mother’s account of her background as given to Ms Fantaza, a Romanian speaking independent social worker, differs in that she says that the arrangement for her to go to Italy was made by nuns at her nursery and that she only stayed with the Italian family over the summer holidays. She said that the arrangement came to an end when she was 10 when she told her father that she was physically abused by the female carer in Italy. The carer would beat her across the legs, pushed her down the stairs, pulled her hair and would force her to eat food until she was sick. She would make her get up early in the morning and clean the house. By contrast, her sister, who also stayed with the family in Italy, was treated well. She told Ms Fantaza that she enjoyed school and achieved very good academic results (this is also consistent with what she told Dr Mann). She was 13 when her mother left home and father asked her to look after the house and her younger siblings. She met the father when 14 and moved to live with him very shortly afterwards. Their sexual relationship started when she was 14 and he was 21. She reported that the father’s siblings expected her to clean their house and to cook for them. Sometimes the father’s sister, DE, would lock her in the house and took away the key.
15. She told Ms Fantaza that the father would frequently drink alcohol and was rude to her when he did, although he was not physically violent at that time. She said that when she had a heated discussion with the father about ending their relationship he suggested he would make her a child so she would stay with him forever. They married shortly after she found out she was pregnant (August 2016). She said that her mother had supported her in caring for A after he was born and before she came to England. The father’s drinking became more of a problem and he would come home late at night under the influence of alcohol. This caused many arguments between them. She came to England *“to get a better life and to move away from her experiences”* but the father’s drinking problem became worse after the move. He would come home and be rude and insulting to her, and eventually she told him that she did not want this kind of marriage. She was happy that she had a child as *“she would never be alone”*. She said her mother died in November 2020 of Covid-19.
16. The father told Dr Wright that he was born in Western Romania. He has an older brother, two younger brothers, two older half-brothers and an older half-sister. His parents both died when he was aged 18. If he did not behave with his parents he was beaten by his father. He did not like school and struggled to learn anything. He presented a very different impression of his relationship with the mother, than she had. He said that their relationship was very good when they were living in Romania. However, the money he earned from work was not sufficient so they therefore went abroad *“to get a better life”*. Their relationship deteriorated once they arrived in the UK because of BC. He denied any concerns about his alcohol intake.

17. The father's half-sister DE described (to Ms Boca an independent social worker in Romania) a close relationship with the father. Her mother died in 2011 and her step-father in 2014. Her mother died from cancer and her step-father from cirrhosis of the liver. She described domestic abuse between her mother and step-father and that alcohol abuse was a consistent feature in their family. She is in daily contact with the father and he uses her flat as temporary accommodation whenever he returns to Romania. She described a poor relationship with the mother and that she is fearful of her vindictiveness and maliciousness. She had taken out an injunction against the mother via the local Police. She described a conversation with the mother and a 42 year old man on 4 or 5 April 2021 which I will set out later in more detail.
18. Dr Wright has assessed the mother to be of average cognitive ability, but she is, at present, emotionally unavailable to her son as she is suffering severe anxiety. She is more focussed on her own needs to have him as her sole companion, and is not being focussed on or is not understanding, his needs. In his opinion, her behaviour is a result of her childhood trauma. She has recently experienced the loss of her mother so her ability to manage her emotions will be difficult at present and this will make her very emotionally labile and vulnerable. He has diagnosed her with Post-Trauma Stress Disorder and suggests a period of CBT. Dr Mann has assessed her as having a cognitive ability within the borderline – low average range and that she does not present with cognitive impairments or a learning disability.
19. Dr Mann assessed the father as presenting with significant difficulties in understanding and cognitive ability. His cognitive functioning was below the bottom percentile and within the learning disability range. It was said he will need support with communication and in understanding the proceedings. Dr Wright has questioned whether this assessment is accurate and also whether the father is on the autistic spectrum. I have assumed for the purpose of these proceedings that the father's functioning is at the level described by Dr Mann and that he requires the assistance of an intermediary, to be funded by HMCTS.
20. I have limited background information about BC. He is married, with a daughter aged 10. He told me that he came to the UK on 11 August 2018. He was joined by his wife and daughter in February 2019. He met the parents through the father's brother shortly after their arrival in the UK. He formed a friendship with the mother which developed into a sexual relationship, they both say, in January 2020. His wife and daughter returned to Romania in July 2020 and, he told me, his wife is now seeking a divorce there. BC described himself as someone who willingly helps out other members of the Romanian community, for example by finding them accommodation or providing transport.
21. On their arrival in the UK the parents and A lived in a number of different areas eventually settling in Kent. There have been a significant number of incidents in Kent

involving the Police and, to a lesser extent, the local authority. Many of those incidents have involved BC.

22. On 30 June 2020 the mother called 999 reporting that she had been assaulted by two men, BC and another ('BX'). She said that they had told her that she would need to leave the country if she did not become a prostitute. A was with her during this incident. The mother and A were taken by the Police to a hotel for the night and then to a refuge in the North of England. On 4 July 2020 the mother left the refuge and returned to Kent. A was taken into Police protection the next day.

These Proceedings

23. The local authority obtained an Emergency Protection Order on 8 July 2020 which was extended on 13 July 2020. The local authority issued an application for a care order on 14 July 2020. Initial case management and interim care orders were made by District Judge Smith. On 11 September 2020 I determined that A was habitually resident in England and Wales pursuant to Article 8 BIIA. I adjourned the parents' application under Article 15 BIIA to transfer the proceedings to Romania to await the outcome of the fact-finding hearing, then listed in November 2020. I also refused the mother's application for a residential assessment of her and A. My reasons for making those decisions were set out in my written judgment dated 18 September 2020.
24. On 9 October 2020 I joined BC as an intervenor to these proceedings. It was recorded in the order that BC had consulted solicitors and consented to being joined. I was informed that an application for public funding would be made on his behalf. I made a number of other directions including for a psychological assessment of the parents by Dr Wright and for a PAMS parenting assessment of the parents to be undertaken by a Romanian speaking social worker, Ms Fantaza. It seemed particularly important to me that the parents had the opportunity to be assessed by a professional in their first language.
25. Unfortunately, on 2 November 2020, I was compelled to adjourn the fact-finding hearing listed for later that month. The primary reason was because it had not been possible to arrange for the father to be supported by an intermediary. However, there were also issues about Police disclosure. I initially adjourned the hearing to dates in December; however, it did not prove possible to resolve the intermediary issues which necessitated a further adjournment. On 17 December 2020 I dismissed the parents' application for a transfer of the proceedings to Romania under Article 15 BIIA for reasons set out in my written judgment dated 20 January 2021. On the same day I listed a composite fact finding and welfare hearing to commence on 7 June 2021.
26. However, there was then a delay in receipt of the assessments of the parents and of the family members in Romania which in turn led to delays in the anticipated receipt of the local authority's final evidence and care plans. Reluctantly, at a hearing on 28 April

2021, I was forced to adjourn the welfare element of this case. In any event, for the reasons set out below, this fact-finding hearing occupied all the listed time available.

27. Police disclosure in this case has been a complex process because new events have occurred, as recently as 1 June 2021. I pay tribute to the co-operation the Court has received from Kent Police and their instructed counsel, Ms Khan, who could not have been more helpful or responsive.

Participation Directions

28. This case has raised considerable practical challenges. It has been necessary to take a number of steps to ensure the proper participation of all the lay parties. This has been made all the more difficult due to the limitations caused by the global pandemic.
29. It became clear during the case management hearings that a remote hearing simply would not work for these lay parties. The mother and the father had difficulties accessing hearings with a remote device. BC had greater success accessing the hearings but on occasions he appeared to be in his car, perhaps to ensure privacy. Even when the parties were able to join, the remote arrangements for the interpreters were unsatisfactory. It was problematic trying to link the father both to his interpreter and intermediary. Remote hearings meant that the parents were separated from their legal advisers and from the important case papers. Whilst such arrangements were adequate for case management hearings (and I was always encouraged by the parties to continue with hearings notwithstanding the difficulties), they would have been wholly inadequate for a substantive hearing with oral evidence.
30. The mother is alleged to be the victim of physical and sexual assaults. It is said she has been threatened with prostitution or, possibly, is now working as a prostitute. Part 3A FPR, Practice Direction 3AA and Practice Direction 12J are fully engaged. The mother is clearly a vulnerable party. It is the Court's duty to consider whether her participation in the proceedings is likely to be diminished by reason of her vulnerability and, if so, whether it is necessary to make one or more participation directions (Part 3A.4). The court must also consider whether the quality of her evidence is likely to be diminished by reason of vulnerability and, if so, whether it is necessary to make one or more participation directions (Part 3A.5) Before making such directions, the court must consider any views expressed by the party about participating in the proceedings. Mr Storey QC and Mr Chippeck were in a difficult position because the mother's written and oral evidence was, in effect, that she did not consider herself to be vulnerable or require participation directions.
31. The father has alleged in the past that he has been the victim of physical assaults and threats of violence from BC (although he now says he is not in fear or under threat). He has also been assessed as having significant difficulties in cognitive functioning as I have set out above. Ensuring his proper participation in these proceedings equally

required careful consideration. Mr Momtaz QC and Mr Pidduck were in a position to assist because the father, in part, accepts his vulnerabilities.

32. BC does not appear to have any vulnerabilities, but he did not qualify for legal aid and therefore appeared in person before me. Ensuring he received a fair trial was essential, while of course balancing the vulnerabilities of the other parties, particularly the mother.
33. It is important to bear in mind in this context that there is a duty on all parties to assist the court to achieve a just hearing. The overriding objective under Part 1 FPR requires the court, *inter alia*, to ensure that the case is dealt with expeditiously and fairly and ensure that the parties are on an equal footing. The parties (under Part 1.3) are required to help the court to further the overriding objective. Moreover, under paragraph 1.4 of Practice Direction 3AA all parties and their representatives are required to work with the court and each other to ensure that each party or witness can participate in proceedings without the quality of their evidence being diminished and without being put in fear or distress by reason of their vulnerability.
34. The steps taken to achieve the full participation of all the lay parties in this process have very much been a collaborative effort and I am grateful, in particular to Ms Rahman and Mr Donaghey, for the thought they have given to the necessary directions to assist the participation of the mother and also BC.
35. Prior to the hearing commencing I made the following practical arrangements:
 - (a) A large court room was made available in Canterbury for a hybrid hearing, which could accommodate a maximum of 9 people despite Covid restrictions.
 - (b) I directed the interpreters to attend court each day of the hearing in person to be with the lay parties. Save for one necessary change of interpreter for the father, each party had the same interpreter each day.
 - (c) I directed that the father's intermediary was to attend in person on each day of the hearing.
 - (d) I directed that the mother and father were to be supported each day by one of their legal teams. The father was supported each day by Mr Pidduck. The mother was supported on some days by counsel and on others by her solicitor.
 - (e) I directed that an agreed list of relevant documents were to be translated into Romanian for the benefit of the lay parties.
36. At the conclusion of the evidence I directed that all parties, including BC, were to have a full day at court, once the parties had filed their written submissions, to have these interpreted for them and so that BC could prepare his oral submissions in response for the next day.

37. All the other advocates and the professionals attended the hearing by CVP. The Police and social work witnesses gave evidence remotely. The lay parties gave evidence in person. I was physically present in the court room during all of the oral evidence.
38. As the hearing started it became apparent that with three lay parties requiring interpretation, it was better for them to have a single running simultaneous interpretation. This occurred throughout the hearing. Inevitably the evidence and submissions had to be paced to take account of this.
39. BC had not complied with my previous directions for him to file a detailed narrative statement. I had directed that the statement was to be provided by him in Romanian and then interpreted and that the child's solicitor should provide him with as much assistance as possible. I took the view that BC's non-compliance with my direction was not wilful, it was just that without legal advice or assistance he really did not understand what was expected or know where to begin. As a result, I directed that he would provide oral evidence, effectively in chief, on the first day of this hearing. He answered a pre-prepared and agreed list of questions which were asked of him by Mr Donaghey. That evidence took a full court day. It was in my view an essential part of the necessary fair process in this case.
40. Further Police disclosure was provided during the hearing as to the events on 1 June 2021. This had to be seen and understood by all the lay parties, including BC. This inevitably took significant court time away from the evidence.
41. A Ground Rules hearing took place at the Pre Hearing Review on 28 May 2021. The ground rules for the father's participation were set out extensively in the order from that hearing. These included the need for father to have support during the hearing, the need for translated documents and gave instructions as to the method of questioning to be used of the father during the course of his evidence.
42. At that stage it was difficult to provide for comprehensive Ground Rules for the mother's participation because she had not yet met with her trial counsel. I was informed that she had failed to attend two arranged consultations. The mother's situation crystallised somewhat during the course of this hearing when the disclosure from 1 June 2021 indicated that she may have been placed under pressure from BC not to meet with her legal representatives. In light of this information, and a new statement filed by the mother in which she appeared to renew her allegations of rape against BC, the ground rules for her participation clearly required urgent review. The local authority applied (a) that cross examination of the mother should not be conducted by BC but by the child's solicitor Mr Donaghey and (b) that BC should not be present in court when the mother gave evidence but should attend remotely from another room in the building. The applications were supported by the Guardian and not opposed by any party, including BC. I granted both applications.

43. In considering these applications I had at the forefront of my mind the need to ensure that BC's right to a fair trial was not compromised and that his case was properly put to the mother. As BC had already given his oral evidence in chief, the nature and detail of his case was already before the Court, which made Mr Donaghey's task somewhat easier than it may have been otherwise to put to the mother both his questions and, separately where necessary, his version of events. The steps that I directed to be taken were as follows:
- (a) BC was to have as much time as he needed to prepare written questions of the mother in advance of her evidence, with the assistance of his interpreter, to be passed to Mr Donaghey.
 - (b) BC was to have further time, once the mother had answered questions from Mr Storey, Ms Rahman and Mr Momtaz, to add to or refine his questions.
 - (c) BC was to have a further opportunity before the conclusion of the mother's evidence to identify whether there was anything further he wished to be asked on his behalf.
- These steps took place as I had directed.
44. It is right to say that BC in fact had limited questions that he wished to put to the mother. In many ways this was not surprising because the mother in her oral evidence, as set out below, largely sought to minimise the incidents that she had described to the Police. Whilst she did maintain that there had been occasions when BC had engaged in sexual conduct with her without her consent, there was not in fact much of a factual disagreement between them. Both emphasised to me that what had happened was in the context of an otherwise consensual sexual relationship.
45. Nonetheless, I asked Mr Donaghey to ensure that BC's case as set out in his earlier oral evidence was put to the mother for her comment and I am grateful to him for his willingness to do so. In the end I was satisfied that BC's case was put fully and clearly to the mother notwithstanding the participation directions I had made.
46. The situation faced by the court in such a situation is an invidious one and has been subject to much judicial discussion and comment. It is clear from *Re K and another (children) (unrepresented father: cross examination of a child)* [2015] EWCA 543, [2016] 1 FLR 754 that the court has no power to require public funding of legal representation outside of the scope of the Legal Aid Sentencing and Punishment of Offenders Act 2012 ('LASPO'). LASPO provides a detailed and comprehensive scheme and the court has to respect the boundaries drawn by Parliament for public funding of legal representation. Explicit statutory authority would be necessary to enable the court to direct HMCTS to fund such representation and there is no power to direct the local authority to do so (although they can be invited to assist). The statutory code provided in relation to criminal proceedings under s.19 Prosecution of Offenders Act 1985 does not apply to family proceedings. The only applicable statutory code is in s.31G(6) of the Matrimonial and Family Proceedings Act 1984 which states that:

“(6) Where in any proceedings in the family court it appears to the court that any party to the proceedings who is not legally represented is unable to examine or cross-examine a witness effectively, the court is to –
(a) ascertain from that party the matters about which the witness may be able to depose or on which the witness ought to be cross-examined, and
(b) put, or cause to be put, to the witness such questions in the interests of that party as may appear to the court to be proper.”

47. The challenges presented by litigants in person cross examining key factual witnesses where the allegations are of the most intimate and serious nature, and where the litigant and witness are themselves the accused and accuser, were identified, in stark terms, by the President in *Re J (children) (contact orders; procedure)* [2018] EWCA Civ 115. Although this was a private law case, the same issues can arise, as here, in public law proceedings.
48. This is an issue which the court is obliged to tackle head on, despite the obvious frustration that a party to such serious proceedings should be denied legal representation on the same footing as the other parties.
49. Paragraph 1.4 Practice Direction 3AA provides that *“All parties and their representatives are required to work with the court and each other to ensure that each party or witness can participate in proceedings without the quality of their evidence being diminished and without being put in fear or distress by reason of their vulnerability as defined with reference to the circumstances of each person and to the nature of the proceedings.”*
50. Paragraph 28 Practice Direction 12J provides that:
- “While ensuring that the allegations are properly put and responded to, the fact-finding hearing or other hearing can be an inquisitorial (or investigative) process, which at all times must protect the interests of all involved. At the fact-finding hearing or other hearing –*
- each party can be asked to identify what questions they wish to ask of the other party, and to set out or confirm in sworn evidence their version of the disputed key facts; and*
 - the judge should be prepared where necessary and appropriate to conduct the questioning of the witnesses on behalf of the parties, focusing on the key issues in the case.”*
51. Part 3A FPR states that:

“7. When deciding whether to make one or more participation directions the court must have regard in particular to—

- (a) *the impact of any actual or perceived intimidation, including any behaviour towards the party or witness on the part of—*
 - (i) *any other party or other witness to the proceedings or members of the family or associates of that other party or other witness; or*
 - (ii) *any members of the family of the party or witness;*
- (b) *whether the party or witness—*
 - (i) *suffers from mental disorder or otherwise has a significant impairment of intelligence or social functioning;*
 - (ii) *has a physical disability or suffers from a physical disorder; or*
 - (iii) *is undergoing medical treatment;*
- (c) *the nature and extent of the information before the court;*
- (d) *the issues arising in the proceedings including (but not limited to) any concerns arising in relation to abuse;*
- (e) *whether a matter is contentious;*
- (f) *the age, maturity and understanding of the party or witness;*
- (g) *the social and cultural background and ethnic origins of the party or witness;*
- (h) *the domestic circumstances and religious beliefs of the party or witness;*
- (i) *any questions which the court is putting or causing to be put to a witness in accordance with section 31G(6) of the 1984 Act();*
- (j) *any characteristic of the party or witness which is relevant to the participation direction which may be made;*
- (k) *whether any measure is available to the court;*
- (l) *the costs of any available measure; and*
- (m) *any other matter set out in Practice Direction 3AA.*

- 8.(1) *The measures referred to in this Part are those which—*
- (a) *prevent a party or witness from seeing another party or witness;*
 - (b) *allow a party or witness to participate in hearings and give evidence by live link;*
 - (c) *provide for a party or witness to use a device to help communicate;*
 - (d) *provide for a party or witness to participate in proceedings with the assistance of an intermediary;*
 - (e) *provide for a party or witness to be questioned in court with the assistance of an intermediary; or*
 - (f) *do anything else which is set out in Practice Direction 3AA.”*

52. In *Re A (a minor) (fact-finding: unrepresented party)* [2017] EWHC 1195 (Fam) Hayden J expressed his views on this subject in powerful terms:

“60. It is a stain on the reputation of our Family Justice system that a Judge can still not prevent a victim being cross examined by an alleged perpetrator. This may not have been the worst or most extreme example but it serves only to

underscore that the process is inherently and profoundly unfair. I would go further it is, in itself, abusive. For my part, I am simply not prepared to hear a case in this way again. I cannot regard it as consistent with my judicial oath and my responsibility to ensure fairness between the parties”.

53. Both Hayden J and the former President, Sir James Munby, highlighted and emphasised what has been said by the Women’s Aid Publication: Nineteen Child Homicides:

"Allowing a perpetrator of domestic abuse who is controlling, bullying and intimidating to question their victim when in the family court regarding child arrangement orders is a clear disregard for the impact of domestic abuse, and offers perpetrators of abuse another opportunity to wield power and control."

54. In *PS v BP* [2018] EWHC 1987 (Fam), [2018] 4 WLR 1987 Hayden J put forward clear and helpful practical observations (at Paragraph 34) to assist Judges and the profession “*where this kind of situation arises in the future*”. He emphasised that he was not giving guidance as “*There can be no guidance where the situation is, as here, untenable*”. He offers no more than “*a forensic life belt until a rescue craft arrives*” in the form of legislation from Parliament. He said:

*“(i) Once it becomes clear to the court that it is required to hear a case "put" to a key factual witness where the allegations are serious and intimate and where the witnesses are themselves the accused and accuser, a "Ground Rules Hearing" (GRH) will **always** be necessary;*

(ii) The GRH should, in most cases, be conducted prior to the hearing of the factual dispute;

(iii) Judicial continuity between the GRH and the substantive hearing is to be regarded as essential;

(iv) It must be borne in mind throughout that the accuser bears the burden of establishing the truth of the allegations. The investigative process in the court room, however painful, must ensure fairness to both sides. The Judge must remind himself, at all stages, that this obligation may not be compromised in response to a witnesses' distress;

(v) There is no presumption that the individual facing the accusations will automatically be barred from cross examining the accuser in every case. The Judge must consider whether the evidence would be likely to be diminished if conducted by the accused and would likely to be improved if a prohibition on direct cross-examination was directed. In the context of a fact-finding hearing in the Family Court, where the ethos of the court is investigative, I consider these two factors may be divisible;

(vi) When the court forms the view, from the available evidence, that cross-examination of the alleged victim itself runs the real riDE of being abusive, (if the allegations are established) it should bear in mind that the impact of the court process is likely to resonate adversely on the welfare of the subject children. It is axiomatic that acute distress to a carer will have an impact on the children's general well-being. This is an additional factor to those generally in contemplation during a criminal trial;

(vii) Where the factual conclusions are likely to have an impact on the arrangements for and welfare of a child or children, the court should consider joining the child as a party and securing representation. Where that is achieved, the child's advocate may be best placed to undertake the cross-examination. (see M and F & Ors [2018] EWHC 1720 Fam; Re: S (wardship) (Guidance in cases of stranded spouses) [2011] 1 FLR 319);

(viii) If the court has decided that cross-examination will not be permitted by the accused and there is no other available advocate to undertake it, it should require questions to be reduced to writing. It will assist the process, in most cases, if 'Grounds of Cross-Examination' are identified under specific headings;

(ix) A Judge should never feel constrained to put every question the lay party seeks to aDE. In this exercise the Judge will simply have to evaluate relevance and proportionality;

(x) Cross-examination is inherently dynamic. For it to have forensic rigour the Judge will inevitably have to craft and hone questions that respond to the answers given. The process can never become formulaic;

(xi) It must always be borne in mind that in the overarching framework of Children Act proceedings, the central philosophy is investigative. Even though fact finding hearings, of the nature contemplated here, have a highly adversarial complexion to them the same principle applies. Thus, it may be perfectly possible, without compromising fairness to either side, for the Judge to conduct the questioning in an open and less adversarial style than that deployed in a conventional cross-examination undertaken by a party's advocate."

55. In the present case the important factors appeared to me to be as follows:

(a) This is a case where the mother had initially made very serious allegations about BC, including allegations of rape. In line with the central investigative philosophy in Children Act proceedings, the court needed to put in place measures which had the best chance of finding out whether those allegations were true.

- (b) The issues before the court are important and extremely sensitive.
 - (c) The report from Dr Wright as summarised above set out the mother's vulnerabilities in clear terms.
 - (d) The mother's account appeared to be fluctuating which underlined the importance of putting in place measures to ensure she had the opportunity to give her best evidence.
 - (e) There was emerging evidence that BC may recently have been intimidating or attempting to intimidate the mother to ensure that she did not give instructions to her legal team and / or give a truthful account to this court.
 - (f) There is a significant age gap between the mother and BC. As I have said, she is 22 and he is 41.
 - (g) As A is represented, there was an opportunity for questions to be put through his solicitor rather than directly, with BC's full participation in that process.
 - (h) With the assistance of the interpreter it was possible to establish a good remote link between the court room and BC to enable him to observe the mother's evidence without being physically present in court.
 - (i) BC did not himself actually raise any objection to the measures put in place, although by itself this could be in no way determinative.
56. In the course of her oral evidence the mother told me that she is pregnant and implied that the father is BC. Whilst I was unaware of this when making my decision on these issues, this adds a further factor in support of the measures that I directed should be put in place in respect of her oral evidence. In making that observation I bear in mind that one of the allegations in this case is that pregnancy or the threat of pregnancy is one method by which BC is said to have exercised coercive control over the mother.
57. I am satisfied that the steps that I directed to be taken in respect of each of the lay parties, their participation and their evidence has appropriately balanced both the need to ensure full participation by all and the essential requirement of a fair trial. No party has suggested otherwise.
58. The only rational basis to deny an intervenor in BC's position public funding (on the same basis as the other parties), is to save money. However, that decision places additional burdens on others; on the other parties and on the court. As this case has demonstrated, it also increases the length of the hearing with the need to make additional accommodations for an unrepresented party. Additional hearing days add to the costs incurred by the other (publicly funded) parties and to the court. I would be surprised if any actual money was saved here.
59. I would add, as a footnote, that a 'rescue craft' has been seen on the horizon in the form of the Domestic Abuse Act 2021 which was signed into law on 29 April 2021. Section 65 of the Act inserts a new Part 4B into the Matrimonial and Family Proceedings Act 1984. This prohibits cross examination in person in family proceedings of a victim of domestic abuse by the perpetrator of that abuse. Where there is no satisfactory

alternative means for the witness to be cross examined, and where it is necessary in the interests of justice, then ‘a qualified legal representative’ will need to be arranged to act for that party for the purpose of that cross examination. The costs of that representative are to be paid out of central funds. An implementation date for these provisions is awaited as are the accompanying regulations and any guidance from The Lord Chancellor. There is a ‘cross-examination in family proceedings factsheet’ which was updated on 18 May 2021 and sets out the government’s future intentions.

The Legal Framework

60. I am indebted to the advocates for their production of an agreed document setting out a significant number of relevant and potentially relevant authorities. I trust they will forgive me if I take a slightly more selective path. I have, however, considered and am familiar with all the matters they raise.
61. The burden of proof lies upon the local authority in respect of the allegations they make against the parents and against BC. The standard of proof is the balance of probabilities (*Re B (Children)* [2008] UKHL 35).
62. There is no burden, or pseudo burden, on the lay parties to provide an explanation for any disputed allegation or to prove that the allegation is false (see e.g. *Lancashire County Council v D and E* [2010] 2 FLR 196 and *Re C and D (Photographs of Injuries)* [2011] 1 FLR 990).
63. Any finding of fact must be based on evidence, including inferences that can properly be drawn from the evidence, and not on suspicion or speculation (*Re A (A Child) (Fact-finding hearing: Speculation)* [2011] EWCA Civ 12).
64. Evidence comes in many forms. It can be live, written, direct, hearsay, electronic, photographic, circumstantial, factual, or by way of expert opinion. It can concern major topics and small details, things that are important and things that are trivial.
65. The court must take into account all the evidence and furthermore consider each piece of evidence in the context of all the other evidence. The court invariably surveys a wide canvas. A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof (*Re T* [2004] EWCA Civ 558, [2004] 2 FLR 838).
66. The evidence of the parents and any other relevant lay party is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability.

67. The court must keep a focussed eye on the task at hand. It is for the local authority to prove its case. It is not for any other party to disprove it. The court's task is to determine whether the local authority has proved its case on the balance of probabilities. It may not be possible for the court to determine precisely what did happen, or to resolve every factual issue that arises in a case.
68. It is for the local authority to prove that there is the necessary link between the facts upon which it relies and its case on Threshold. The local authority must demonstrate *why* certain facts, if proved, justify the conclusion that the child has suffered or is at risk of suffering significant harm of the type asserted by the local authority (*Re J (A Child)* [2015] EWCA Civ 222).
69. Hearsay evidence is admissible in family proceedings (see Children (Admissibility of Hearsay Evidence) Order 1993 SI 1992/621). However, where a local authority is challenged on some aspect of their case and they are unable or unwilling to produce witnesses who can speak of matters first hand they may find themselves in great, if not insuperable, difficulties if a parent not merely puts the matter in issue but goes into the witness box to deny it (*Re A (Application for Care and Placement Orders: Local Authority Failings)* [2015] EWFC 11). The general rule is that oral evidence given under cross-examination is the gold standard because it reflects the long-established common-law consensus that the best way of assessing the reliability of evidence is by confronting the witness *Carmarthenshire County Council v Y & Others* [2017] EWFC 36 at [8] per Mostyn J. In *Re W (Minors) (Wardship: Evidence)* [1990] 1 FLR 203 at [207] the court observed that “...*hearsay evidence is admissible as a matter of law, but...this evidence and the use to which it is put has to be handled with the greatest care and in such a way that, unless the interests of the child make it necessary, the rules of natural justice and the rights of the parents are fully and properly observed.*”; and in *R v B County Council ex parte P* [1991] 1 FLR 723, BC the court concluded that “*A court presented with hearsay evidence has to look at it anxiously and consider carefully the extent to which it can properly be relied on*”.
70. It is usually unreliable and often dangerous to draw a conclusion from a witness's demeanour as to the likelihood that the witness is telling the truth (*R (on the application of SS) (Sri Lanka) v The Secretary of State for the Home Department* [2018] EWCA Civ 1391). In that case Leggatt LJ gave the following warning:

“40. No doubt it is impossible, and perhaps undesirable, to ignore altogether the impression created by the demeanour of a witness giving evidence. But to attach any significant weight to such impressions in assessing credibility risks making judgments which at best have no rational basis and at worst reflect conscious or unconscious biases and prejudices. One of the most important qualities expected of a judge is that they will strive to avoid being influenced by personal biases and prejudices in their decision-making. That requires eschewing judgments based on the appearance of a witness or on their tone,

manner or other aspects of their behaviour in answering questions. Rather than attempting to assess whether testimony is truthful from the manner in which it is given, the only objective and reliable approach is to focus on the content of the testimony and to consider whether it is consistent with other evidence (including evidence of what the witness has said on other occasions) and with known or probable facts.”

71. In *A, B and C (Children)* [2021] EWCA Civ 451 Macur LJ reminded family courts that:

“A jury would be firmly told, and for good reason, that the presence or absence of emotion or distress when giving evidence is not a good indication of whether a person is telling the truth or not. Equally so in police interview.”

72. Great care must be taken when evaluating the relevance of lies in the context of allegations against parties within care proceedings. The classic statement of principle is to be found in *R v Lucas* [1981] QB 720:

“If a court concludes that a witness has lied about a matter, it does not follow that he has lied about everything. A witness may lie for many reasons. For example out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure...The jury should in appropriate cases be reminded that people sometimes lie, for example, in an attempt to bolster up a just case, or out of shame or out of a wish to conceal disgraceful behaviour from their family.”

73. The latest analysis of the relevance of lies within family proceedings is to be found in the decision of the Court of Appeal in *A, B and C (Children)* [2021] EWCA Civ 451 where Macur LJ said:

“54. That a witness’s dishonesty may be irrelevant in determining an issue of fact is commonly acknowledged in judgments, and with respect to the Recorder as we see in her judgment at [40], in formulaic terms:

“that people lie for all sorts of reasons, including shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure and the fact that somebody lies about one thing does not mean it actually did or did not happen and / or that they have lied about everything”.

But this formulation leaves open the question: how and when is a witness’s lack of credibility to be factored into the equation of determining an issue of fact? In my view, the answer is provided by the terms of the entire ‘Lucas’ direction as given, when necessary, in criminal trials.

55. Chapter 16-3, paragraphs 1 and 2 of the December 2020 Crown Court Compendium, provides a useful legal summary:

“1. A defendant’s lie, whether made before the trial or in the course of evidence or both, may be probative of guilt. A lie is only capable of supporting other evidence against D if the jury are sure that: (1) it is shown, by other evidence in the case, to be a deliberate untruth; i.e. it did not arise from confusion or mistake; (2) it relates to a significant issue; (3) it was not told for a reason advanced by or on behalf of D, or for some other reason arising from the evidence, which does not point to D’s guilt.

2. The direction should be tailored to the circumstances of the case, but the jury must be directed that only if they are sure that these criteria are satisfied can D’s lie be used as some support for the prosecution case, but that the lie itself cannot prove guilt. ...”

56. *In Re H-C (Children) [2016] EWCA Civ 136 @ [99]*, McFarlane LJ, as he then was said:

“99. In the Family Court in an appropriate case a judge will not infrequently directly refer to the authority of Lucas in giving a judicial self-direction as to the approach to be taken to an apparent lie. Where the “lie” has a prominent or central relevance to the case such a self-direction is plainly sensible and good practice.

100 ... In my view there should be no distinction between the approach taken by the criminal court on the issue of lies to that adopted in the family court. Judges should therefore take care to ensure that they do not rely upon a conclusion that an individual has lied on a material issue as direct proof of guilt.”

74. It is also helpful to keep in mind the wise words of Peter Jackson J (as he then was) in *Lancashire County Council v The Children* [2014] EWFC 3, that discrepancies in accounts may occur for a number of different reasons and may not be the result of any deliberate dishonesty:

“One possibility is of course that they are lies designed to hide culpability. Another is that they are lies told for other reasons. Further possibilities include faulty recognition or confusion at times of stress when the importance of accuracy is not fully appreciated, or there may be inaccuracy or mistake in the record-keeping or recollection of the person hearing and relaying the accounts. The possible effects of delay and repeated questioning upon memory should also be considered, as should the effect on one person hearing accounts given by others. As memory fades, a desire to iron out wrinkles may not be unnatural –

a process that might inelegantly be described as ‘story-creep’ – may occur without any necessary inference of bad faith.”

75. All parents are imperfect, and the court must be alive to the risk of being overly judgemental. The former President, Sir James Munby, said in *Re A (A Child)* [2015] EWFC 11:

14. The third fundamentally important point is even more crucial. It is vital always to bear in mind in these cases, and too often they are overlooked, the wise and powerful words of Hedley J in Re L (Care: Threshold Criteria) [2007] 1 FLR 2050, para 50:

"society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done."

The President went on to quote with approval the words of HHJ Jack in *North East Lincolnshire Council v G & L* [2014] EWCC B77 (Fam)

"I deplore any form of domestic violence and I deplore parents who care for children when they are significantly under the influence of drink. But so far as Mr and Mrs C are concerned there is no evidence that I am aware of that any domestic violence between them or any drinking has had an adverse effect on any children who were in their care at the time when it took place. The reality is that in this country there must be tens of thousands of children who are cared for in homes where there is a degree of domestic violence (now very widely defined) and where parents on occasion drink more than they should, I am not condoning that for a moment, but the courts are not in the business of social engineering. The courts are not in the business of providing children with perfect homes. If we took into care and placed for adoption every child whose parents had had a domestic spat and every child whose parents on occasion had drunk too much then the care system would be overwhelmed and there would not be enough adoptive parents. So we have to have a degree of realism about prospective carers who come before the courts."

76. The essential need for a link between the parental behaviour identified and the statutory requirements of s.31 Children Act 1989 were emphasised by Aitkens LJ in *Re J (A Child)* [2015] EWCA Civ 222:

"[vi] It is vital that local authorities, and, even more importantly, judges, bear in mind that nearly all parents will be imperfect in some way or other. The state will not take away the children of "those who commit crimes, abuse alcohol or drugs or suffer from physical or mental illness or disability, or who espouse antisocial, political or religious beliefs" simply because those facts are established. It must be demonstrated by the local authority, in the first place, that by reason of one or more of those facts, the child has suffered or is at risk of suffering significant harm..."

77. Domestic abuse, coercive behaviour and controlling behaviour are defined in Practice Direction 12J as follows:

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

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

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

78. In *HN and Others (children)* [2021] EWCA Civ 448 the Court of Appeal explored the approach to domestic abuse cases in the family court and said:

- a) It is now also understood that specific incidents, rather than being seen as free-standing matters, may be part of a wider pattern of abuse or controlling or coercive behaviour [paragraph 27];
- b) 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 [paragraph 31]:
 - 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.
- c) It is equally important to be clear that not all directive, assertive, stubborn or selfish behaviour, will be ‘abuse’ in the context of proceedings concerning the welfare of a child; much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour. The Court of Appeal in *HN and others* [paragraph 32] endorsed the approach taken by Peter Jackson LJ in *Re L (Relocation: Second Appeal)* [2017] EWCA Civ 2121 (paragraph 61):

“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’, where ‘coercive behaviour’ is defined as behaviour that is ‘used to harm, punish, or frighten the victim...’ and ‘controlling behaviour’ as behaviour ‘designed to make a person subordinate...’ In cases where the alleged behaviour does not have this character it is likely to be unnecessary and disproportionate for detailed findings of fact to be made about the complaints; indeed, in such cases it will not be in the interests of the child or of justice for the court to allow itself to become another battleground for adult conflict.”

79. In *JH v MF* [2020] EWHC 86 (Fam) Russell J. drew attention to the Cross-Government definition of domestic abuse (which includes so-called ‘honour’ based abuse, female genital mutilation (FGM) and forced marriage) which reads

“Any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality. The abuse can encompass, but is not limited to psychological, physical, sexual, financial, or emotional.”

The Guidance then provides that:

“Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capabilities for personal gain, depriving them of

the means needed for independence, resistance and escape and/or regulating their everyday behaviour.”

And:

“Coercive behaviour is an act or pattern of acts of assault, threats, humiliation (whether public or private) and intimidation or other abuse that is used to harm, punish, or frighten the victim. Abuse may take place through person to person contact, or through other methods, including but not limited to, telephone calls, text, email, social networking sites or use of GPS tracking devices.”

The Guidance also addresses factors affecting the seriousness of the behaviours:

“Domestic abuse offences are regarded as particularly serious within the criminal justice system. Domestic abuse is likely to become increasingly frequent and more serious the longer it continues and may result in death. Domestic abuse can inflict lasting trauma on victims and their extended families, especially children and young people who either witness the abuse or are aware of it having occurred. Domestic abuse is rarely a one-off incident and it is the cumulative and interlinked physical, psychological, sexual, emotional or financial abuse that has a particularly damaging effect on the victims and those around them. Cases in which the victim has withdrawn from the prosecution do not indicate a lack of seriousness and no inference should be made regarding the lack of involvement of the victim in a case.”

80. As all parties agreed, this decision of Russell J. helpfully and comprehensively sets out the approach to be taken by the court in a case where rape is alleged. The question is essentially one of consent, and then reasonable belief of consent. When deciding these questions, the court should consider the approach taken within the criminal jurisdiction:

“48. To consider the relevant approach to be taken reference should be made to the statutory provisions in respect of consent; s 74 of the Sexual Offences Act (SOA) 2003 provides that “‘Consent’ (for the purposes of this Part – my parenthesis) a person consents if he agrees by choice, and has the freedom and capacity to make that choice.” There are circumstances in criminal law where there can be evidential or conclusive presumptions that the complainant did not consent set out in ss75 & 76 which, respectively, concern the use or threat of violence by the perpetrator and the use of deception; neither of which preclude reliance on s74 (Cf. Blackstone’s B3.46 2020 ed.)

49. To quote from Blackstone’s Criminal Practice [2020 at B3.28] where the absence of consent is considered it is said “the definition in s74 with its emphasis on free agreement, is designed to focus upon the complainant’s autonomy. It highlights the fact that a complainant who simply freezes with no

protest or resistance may nevertheless not be consenting. Violence or the threat of violence is not a necessary ingredient. To have the freedom to make a choice a person must be free from physical pressure, but it remains a matter of fact for a jury as to what degree of coercion has to be exercised upon a person's mind before he or she is not agreeing by choice with the freedom to make that choice. Context is all-important.” There can be no reason why this approach should not be followed in the Family Court, whilst applying a different standard of proof. The deleterious and long-term effects on children of living within a home domestic abuse and violence, including serious sexual assault, has been accepted for some years, as is the effects on children’s welfare, and their ability to form safe and healthy relationships as adults, if their parents or carers are themselves subjected to assault and harm.

50. *In respect of consent in the criminal jurisdiction, which should inform the approach in the Family Court, the authors of Blackstone’s set out at B3.29 “Consent covers a range of behaviour from whole-hearted enthusiastic agreement to reluctant acquiescence. Context is critical. Where the prosecution allegation of absence of consent is based on lack of agreement without evidence of violence or threats of violence, there will be circumstances, particularly where there has been a consensual sexual relationship between the parties, where a jury will require assistance with distinguishing lack of consent from reluctant but free exercise of choice.” The Court of Appeal Criminal Division considered that a direction along the lines of the direction of Pill J approved in Zafar (Cf. the Crown Court Compendium (July 2019), chapter 20.4, para. 4) may well be appropriate. It should be advisable for Family Court judges to remind themselves of this approach and direct themselves appropriately based on the relevant approach contained in Chapter 20.*

51. *With further reference to B3.29 (Ibid) and the approach to take in making the distinction lack of consent from reluctant but free exercise of choice; “submission to a demand that a complainant feels unable to resist may in certain circumstances be consistent with reluctant acquiescence” (Cf. Watson [2015] EWCA Crim 559); or where a complainant’s free choice was overborne so that they did not have a free choice; an example of which was when a complainant gave into a perpetrator’s demands because she was scared that if she did not he would have sex with her by force.*

81. Russell J. urged judges dealing with this issue within family proceedings to “*remind themselves of this approach and direct themselves appropriately based on the relevant approach contained in Chapter 20.*” That is a reference to the model directions set out in the Crown Court Compendium and Russell J. drew specific attention to Chapter 20.4 para 4.
82. The most recent Compendium, revised in December 2020, provides that:

“The jury may need to be alerted to the distinction between consent and mere submission: see Doyle 1180 in which the Court of Appeal described the distinction between (i) reluctant but free exercise of choice, especially in a long-term loving relationship, and (ii) unwilling submission due to fear of worse consequences. In Zafar, Pill J directed that: ‘C may not particularly want sexual intercourse on a particular occasion, but because it is her husband or her partner who is asking for it, she will consent to sexual intercourse. The fact that such consent is given reluctantly or out of a sense of duty to her partner i[t i]s still consent.’ “

83. It is also relevant to consider the sample direction to be given to a jury in such circumstances:

“It is agreed that D and W have had a long term sexual relationship. This is relevant to the question of whether or not W consented to D {specify act} on this occasion. That is because the situation between two people who have/have had a long term sexual relationship is different from a situation in which two people are strangers or have met one another only a few times.

When two people have/have had such a relationship, there may be some give and take between them in relation to any number of things, including their sexual relationship. And sometimes a partner who is not feeling enthusiastic may nevertheless reluctantly give consent to sex.

However, when two people are/have been in a long term sexual relationship it is not the case that both of them will consent to any sexual activity which takes place. One person is fully entitled not to consent regardless of their relationship. What you must decide in this case is whether W consented freely and by choice, even if reluctantly, to what took place or whether W did not consent but submitted to it. You must also decide whether D may have reasonably believed that W was consenting, taking into account all the evidence including the nature of the [previous] relationship between W and D.”

84. The distinction is therefore between (a) free, although reluctant, consent and (b) submission which is not consent. Opposition to sexual activity, whether physical or verbal (e.g. saying ‘no’), is not consent. However, it is not necessary to demonstrate opposition to show that what took place was rape. Rape occurs when there is an absence of free consent alongside an absence of reasonable belief in consent, whatever the circumstances.
85. Having set this all out in some detail, I am alive to the risk of the court becoming distracted, or too distracted, by criminal law formulations. It is important that this process does not become *“unnecessarily bogged down in criminal law concepts”* (per

McFarlane LJ as he then was in *Re R* [2018] EWCA Civ 198 and see *F v M (Appeal: Finding of Fact)* [2019] EWHC 3177 per Cobb J).

86. The essential task for me is to determine what happened, and whether BC's conduct towards the mother (and the father's conduct towards the mother) was violent and abusive. I will then need to determine whether the facts that I find cross the s.31 threshold and, if so, in what way. It is largely ancillary to that process to seek to determine whether BC's conduct could also amount to a criminal offence.

Modern Slavery

87. The local authority alleges that the events of 30 June 2020 constitute modern slavery and I should make such a finding in relation to BC's conduct towards the mother.

88. The statutory definition of the offence of modern slavery is set out at s.1 of the Modern Slavery Act 2015:

1. Slavery, servitude and forced or compulsory labour

(1) A person commits an offence if—

- (a) the person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know that the other person is held in slavery or servitude, or
- (b) the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour.

(2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention.

(3) In determining whether a person is being held in slavery or servitude or required to perform forced or compulsory labour, regard may be had to all the circumstances.

(4) For example, regard may be had—

- (a) to any of the person's personal circumstances (such as the person being a child, the person's family relationships, and any mental or physical illness) which may make the person more vulnerable than other persons;
- (b) to any work or services provided by the person, including work or services provided in circumstances which constitute exploitation within section 3(3) to (6).

(5) The consent of a person (whether an adult or a child) to any of the acts alleged to constitute holding the person in slavery or servitude, or requiring the

person to perform forced or compulsory labour, does not preclude a determination that the person is being held in slavery or servitude, or required to perform forced or compulsory labour.

89. The relevant parts of Section 3 define ‘exploitation’ as follows:

Sexual exploitation

- (3) Something is done to or in respect of the person—
 - (a) which involves the commission of an offence under—
 - (i) section 1(1)(a) of the Protection of Children Act 1978 (indecent photographs of children), or
 - (ii) Part 1 of the Sexual Offences Act 2003 (sexual offences), as it has effect in England and Wales, or
 - (b) which would involve the commission of such an offence if it were done in England and Wales.

Removal of organs etc

- (4) The person is encouraged, required or expected to do anything—
 - (a) which involves the commission, by him or her or another person, of an offence under section 32 or 33 of the Human Tissue Act 2004 (prohibition of commercial dealings in organs and restrictions on use of live donors) as it has effect in England and Wales, or
 - (b) which would involve the commission of such an offence, by him or her or another person, if it were done in England and Wales.

Securing services etc by force, threats or deception

- (5) The person is subjected to force, threats or deception designed to induce him or her—
 - (a) to provide services of any kind,
 - (b) to provide another person with benefits of any kind, or
 - (c) to enable another person to acquire benefits of any kind.

Securing services etc from children and vulnerable persons

- (6) Another person uses or attempts to use the person for a purpose within paragraph (a), (b) or (c) of subsection (5), having chosen him or her for that purpose on the grounds that—
 - (a) he or she is a child, is mentally or physically ill or disabled, or has a family relationship with a particular person, and
 - (b) an adult, or a person without the illness, disability, or family relationship, would be likely to refuse to be used for that purpose.

90. Article 4 of the European Convention on Human Rights prohibits slavery, servitude and forced or compulsory labour.

91. Guidance in identifying and supporting victims of modern slavery has been produced by the Home Office pursuant to s.49 of the 2015 Act. Mr Storey QC helpfully referred extensively to that guidance in the course of his cross examination of the social worker in this case.
92. Modern Slavery includes trafficking but also encompasses cases of slavery, servitude and forced or compulsory labour (paragraph 2.66). No party seeks to assert that the mother was trafficked either from Romania to England or when she moved from or to Kent.
93. The Guidance further provides as follows:

“Forced or compulsory labour (victim not trafficked)

2.69. UN Convention No. 29 concerning forced or compulsory labour defines ‘forced or compulsory labour’ as ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily’.

2.70. Labour is the provision of any service, not just manual labour. ‘Penalty’ may go as far as physical violence or restraint, but it can also take subtler forms of a psychological nature, such as threats to denounce victims to the police or immigration authorities when their employment status is illegal. Consent is a factor in forced and compulsory labour, but a victim may have given consent in a situation where they felt they had no viable alternative, in which case they could still be subject to forced or compulsory labour. For a person to be a victim of forced or compulsory labour there must have been 2 basic components:

- Means – threat of penalty – for example, threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability
- Service – as a result of the means, an individual provides a service for benefit, for example, begging, sexual services, manual labour, or domestic service.”

Servitude

“2.75. ‘Servitude’ means an obligation to provide a service that is imposed by the use of coercion.

2.76. Servitude is an ‘aggravated’ form of forced or compulsory labour. The fundamental distinguishing feature between servitude and forced or compulsory labour is in the victim feeling that their condition is permanent and that the situation is unlikely to change.”

Slavery

“2.77. The 1926 Slavery Convention defines slavery as ‘the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised’.

2.78. This concept of ownership is what makes slavery distinct – for example a situation where an individual was being controlled by another would not meet this threshold, unless there was clear evidence the person was being used as a commodity. It is a form of servitude with the additional concept of ownership. This section gives further guidance on the components that apply to victims of slavery, servitude and forced or compulsory labour where the victims have not been trafficked – means and service.”

94. Under ‘means’, the threat of a penalty may be the threat of physical violence or restraint but it can also be of a psychological nature, such as a threat to denounce victims to the police or immigration authorities. Consent is a factor, but a victim may have given consent in a situation where they felt they had no viable alternative, in which case they could still be subject to forced or compulsory labour (paragraph 2.81).

95. Paragraphs 2.87 and 2.88 of the Guidance provide:

“There does not necessarily have to be a direct personal relationship in psychological coercion. It could refer to wider issues, for example social stigma. This is particularly relevant in cases involving sexual exploitation or other forms of sexual violence. Other examples include:

- grooming – where individuals are enticed over time to take part in activity in which they may not be entirely willing participants (for example the ‘boyfriend’ method is fairly common in sexual exploitation)
- ‘Stockholm syndrome’ – where due to unequal power, victims create a false emotional or psychological attachment to their controller

In both of these examples the individuals can often first appear to be ‘willing participants’. Due to their age and dependent status, children are especially susceptible to physical and psychological coercion.”

96. At paragraph 2.95 of the Guidance a number of ‘myths’ or ‘common misconceptions’ about modern slavery and its victims are set out. Of particular relevance here is the myth that just because a person does not take opportunities to escape it means they are not being coerced; there are many reasons why someone may ‘choose’ not to escape an exploitative situation including fear of reprisals, vulnerability, Stockholm syndrome, violence or threats of violence and not knowing how and where to seek help. Another

myth is that it cannot be modern slavery when organiser and victim are related, married, living together or lovers. It is said that *“Close relationships are often used to exploit and control others. This is especially relevant in child modern slavery. There have been numerous incidents where ‘boyfriends’ have groomed women and children into sexual exploitation or family members have colluded (intentionally or unintentionally) in the exploitation.”* It is also the case that *“Some people are willing to tolerate their situation because they may perceive it as a ‘stepping stone’ to a better future and may compare it favourably to experiences at home. This doesn’t mean they are not a victim of modern slavery”* and that *“It is not uncommon for victims to reject offers of help at first. This is not unique to victims of modern slavery”*.

97. A National Referral Mechanism has been established to identify victims of modern slavery. Upon referral, the Single Competent Authority will make a ‘reasonable grounds’ decision within 5 working days of referral and then a ‘conclusive grounds’ decision no sooner than 45 days later to determine whether, on the balance of probabilities, there are sufficient grounds to decide that the individual is a victim of modern slavery. I understand that, in the present case, a reasonable grounds decision was made on referral but no conclusive grounds decision was made, because the mother effectively withdrew her allegations against BC.
98. I have not been made aware of any Family Court decision which has considered in detail the operation of the 2015 Act. I am aware, within the criminal jurisdiction, of the Court of Appeal decision of *R v Brencani* [2021] EWCA Crim 731 where it was decided that a conclusive grounds decision that a person was a victim of modern slavery was rightly excluded from the trial. It was a matter for the jury to consider whether the statutory defence of modern slavery was made out. Case workers are not experts able to give opinion evidence to the criminal court and any such evidence is unlikely to be based upon all the material that would be available to the court. By the same process of reasoning, the failure to make a conclusive grounds decision in this case is not determinative and is, in fact, largely irrelevant. I have available to me a much wider range of information that would have been presented to the Single Competent Authority.

The Police and Social Work Evidence

99. On 6 August 2019, about 3 months after they first arrived into the UK, the mother attended at a Kent Police Station alleging that the father and her brother (‘FG’) had been abusive towards her. She said she had been physically assaulted by the father and her brother had threatened to cut her throat. This incident had taken place because the mother had said she wanted to meet BC who was described as ‘a friend’. Later in the day, the father had told the mother to go to her room or he would punch her in the face. He then pushed her in the hallway of their flat. A was present during this incident and the father threatened to take him away from the mother. The mother alleged that the father and her brother are heavy drinkers. She said her brother had tried to suffocate her

with a pillow when she was a child in Romania and, 5 years ago, had showed her a gun and said that if anyone mistreats him they will be shot. She initially said she would be willing to support a prosecution. The father was arrested and interviewed on 9 August 2019. He denied any offence. On 11 August 2019 the mother told the Police that she did not want to pursue the matter any further as there had been no further issues. She was planning to return soon to Romania.

100. The Police notified the local authority of this incident and a child and family assessment was undertaken by a social worker, Gemma Lacey. The mother reported having “*a male friend*” who had been providing her with assistance. She appeared to blame her brother for the difficulties, saying that her relationship with the father had been positive until her brother’s involvement. The parents were said to be in difficulty meeting the £1,050 rent payable on their flat and so were at risk of being homeless. A decision was made to ‘step down’ the case to Early Help for continued support.
101. On 25 March 2020 the father reported to the Police that the mother had been assaulted by BC in a park. BC had followed her there, pushed her to the floor and taken a telephone that he had lent her. A report had also been made to the Police by a member of the public who had said that the mother and BC were in a vehicle having an argument and that they had seen BC on top of the mother. BC had taken the mother’s bag. He was being very aggressive towards her and she was clearly distressed. The mother was initially very upset when the Police arrived and appeared to be scared. The father alleged that the mother and BC had been in a relationship for a number of months. BC told the Police he had been in a relationship with the mother for 5 to 6 months. The mother denied being in a relationship with BC but said that he wanted to be in a relationship with her. She said she was not ready to be in a relationship with him but said “*He can protect me*” (she does not say from who or what). She said “*He wants to be with me and wants to stay with him. Flee with him to another country. He wants to make sure that I live with him for the rest of his life. Yes he hurt me, he threw me on the floor and took my phone and key. He just grabbed me, he didn’t hit me.*” Neither parent co-operated afterwards with the Police enquiries. BC was arrested and gave a ‘no comment’ interview.
102. On 4 April 2020 the father reported to the Police that the mother was refusing to allow him to see A. BC had been following him and threatening to kill him. BC had grabbed hold of A and had said “*he was going to bring some prostitutes to the house*”. On 9 April 2020 the father alleged that BC had grabbed hold of A in an aggressive manner. It was difficult to get any details from him due to the language barrier. The father reported the same day that BC is looking to ‘beat him to death’. It is not clear to me whether these are reports of two separate incidents or the same incident.
103. On 16 May 2020 the mother reported to the Police that she had been assaulted by the father. He had returned home drunk after being out and began to verbally abuse her. She took her key from the front door to prevent the father from locking her in to her

home and sat on the sofa with A. The father then climbed on top of her and twisted her arm to get the keys. She held on to them so he twisted her arm again which caused her pain so she released the keys. The mother refused to support a prosecution. The father was arrested and interviewed. He said that the mother *“ran away to meet that guy she hangs out with”*. He identified that man as BC. He said, *“He destroyed my family”*. *“He calls her all the time. He keeps bothering her.”* *“he goes to the house when I am not there”* *“And he wanted to fight with me in my own house”*. He believed the mother to be having an affair with him. He had not wanted the mother to go out to meet him so had closed the door and locked it. But she had still managed to get out. She had taken his keys and he had tried to get them back from her by grabbing her hand. He admitted to the Police slapping A across the back causing a slight reddening.

104. On 5 June 2020 the mother’s brother FG reported to the Police that the mother was being told to prostitute herself by BC to make money. He had taken her documents to control her and had threatened to kill FG. When the Police attended FG showed the officers messages he had received from the mother in Romanian, which were translated for the Police by their interpreting service. These included messages saying *“he beat me up because I did not have any money”*, *“He told me to go prostitute myself so I can bring him money”* and *“he stole my documents to control me”*. She said he had hurt her leg and had hit her on the head with an energy drink the night before. The Police spoke to the mother and she said she did not know why they were there. She said she must have fallen to have hurt her leg. Nothing had happened to her and she was not afraid of BC. She did not want to report any offences as nothing had happened. The Police at the time questioned whether this was a false report by FG and commented that the mother had denied on 26 May that she was in a relationship with BC. In any event, without supporting evidence from the mother there was nothing to found an investigation.
105. On 30 June 2020 the mother called the Police by a 999 call. I have listened several times to the call. BC can be heard in the background. She was complaining that two men had entered her house and had beaten her. She was scared because one of the men was still there. They had come to see her because they knew the father was in Romania. She said she had also been assaulted the day before. She wanted the Police to come straight away because the man (BC) was going to harm her. She is clearly upset and crying. She said that BC was trying to make her a prostitute. Both men had slapped her on the head and had said she would have to leave the country or else they would force her to become a prostitute. She wanted the telephone operator to stay on the line until the Police arrived because she believed he would hurt her as soon as the call ended. She can be heard crying. She says that A has witnessed what has happened and BC says she is lying because he was watching cartoons. BC had been selling fake national insurance numbers and is afraid she will report him for this. BC can clearly hear the allegations she is making about him to the Police. He is saying that she is lying. The interpreter reports that he does not sound aggressive but is trying to reason with her (although he can be heard later with a raised voice). The mother reported that BC’s wife has arrived

at the property. She says he is leaving the house so that he can hide the fake national insurance numbers. BC claimed to have been hurt by the mother, that she had punched him with a ring on her finger and had hit him with a glass. She is doing what she is doing because she is jealous and wants to separate him from his wife. At this point the mother can be heard crying uncontrollably. He was saying there was a relationship between them but she is denying this. He said she was fabricating the allegations against him.

106. I have also watched the body worn camera footage of the Police arriving at the property on 30 June 2020 several times. A is in the property and aware of what is happening. The mother is clearly very distressed and is crying. She told the Police Officer that at about 3pm one of BC's friends ('BX') called to say he would like to come and have a word with her. BX and BC came to the house and BX punched her and spat at her. BC also spat at her and tried to push her. She called the Police. BX has said to her that she had 10 days to leave the country. She had met BC when she came to the country. He had helped her to obtain a national insurance number and also the father. He had tried to persuade her to be with him. She had had sex with BC and he had said he would pay her. She was unable to work and the father had left without providing her with any support. She said that he had forced her twice to have sex with him. He had told her that he would like her to get pregnant but she does not want to because she already has a child. She said she has not had a relationship with BC. He is married and his wife is outside. BC and his wife had been talking about how to make her prostitute herself. She described having an argument the day before when he tried to strangle her and she had thrown a glass at him.
107. There is also footage at the same time of a different officer talking to BC. He was speaking in English without an interpreter so some of what he was saying was unclear. He described having helped the parents and A. The father had been drinking too much. He started a relationship with the mother. When the father left for Romania he took the Universal Credit money so he borrowed £500 from his wife to pay the rent. She had asked him for more money the day before and he said he did not have it so she took a glass and hit him on the back of the head. He did not want to call the Police because he loves her. He had asked her that if she wanted to finish with him, to do so normally. He was arrested and taken to the Police Station. The mother was taken to a hotel with A.
108. The next day, 1 July 2020, the mother was collected by PC Knight from the hotel and taken to the vulnerable victim suite at the Police Station. She said she had met BC after her family had arrived in the country as he was the person known in the community to go to for translation purposes and ID documents. He had driven them to London to obtain national insurance numbers. BC wanted her to be a prostitute and would give her money, between £10-15 a day. She would have sex with him because she needed the money to look after her child. Some of the sex with him had been consensual and some had been rape. Her husband had returned to Romania because of threats from BC. She had been assaulted by him two days earlier when he had grabbed her by the throat

and was choking her. At that stage she was willing to support a prosecution of BC. The mother was also spoken to by Helen Clarke, social worker. Ms Clarke described her as *“visibly shaking and distressed at the thought of being at the property she was concerned for her and her son’s safety if they were to return there...”*.

109. BC was interviewed by the Police late evening of 1 July 2020. The DVD of his interview has been corrupted but there are some handwritten notes from the interviewing officer. He described having a consensual relationship with the mother but she can be very violent. If she does not get what she wants she resorts to blackmail. Their sexual relationship had started on 3 January 2020. He described his sex life with his wife as boring. Recently he and the mother had been very close and living as husband and wife. He denied the allegations of rape. He said that she had said sometimes that she wanted to get pregnant. He described a violent incident with the father. He knew that the mother was having arguments with his wife.
110. On 2 July 2020 BC’s wife was interviewed. She asserted that her husband was in a sexual relationship with the mother. She was not happy about that. She said her husband had told her that the mother had locked him in the house because he had told her their relationship was finished and she would not accept that. She denied having any pornographic images of the mother on her telephone. She denied having called the mother a prostitute.
111. The mother was ABE interviewed later that day by PC Knight. PC Patterson recorded the interview. I have watched the recording. She said that she had arrived in the UK on 19 May 2019. They were introduced to BC by the father’s brother. BC had driven her to obtain her national insurance number (legally) and on the way home he said she was pretty and he would like to be together with her. He told her that his relationship with his wife was in a very bad state. He had not wanted her to come over to the UK. She described the father as someone ‘in the habit of drinking’. BC told the father that he should not drink so much alcohol and it would lead to the separation of the parents. The father told him to mind his own business. BC asked to meet her in the park but she said no and he should not talk to her any more because the father was not happy with it. Two days later BC saw her and A in the park and started talking to her. They kept meeting in the park.
112. The mother described the incident she had reported to the Police on 16 August 2019. She said that her brother (FG) did not like BC because he thought he wanted to separate her from the father. The father returned to Romania and BC offered to help her because she was on her own. BC came round to her house and would scare her, saying that people would see a girl on her own in the house and may barge in. He suggested he should sleep at her place. He would sleep in the same bed as her as there was only one mattress where she slept with A. He then tried to hold and kiss her. The father returned from Romania in January 2020. A week before, BC started to place his hands on her and to suggest they engaged in sexual activities. She said no. In the video, she appears

to be ashamed to discuss this. He touched her in her intimate areas. This was in December 2019. She told him she did not want to. To start with it was on top of her clothing and then underneath. She would try and push him away. BC found her a small flat in Essex. He would visit almost every day as he worked there. The father returned from Romania. She would argue with the father and then she found a rented place in Kent, her current property. The father rented a different place. BC liked this and *“he came to me, he wanted me to make love with him for money... Because his aim was to take me to pimp me... Him and his wife.”* She said that the relationship became sexual in February 2020, after the father had moved out. His wife was very angry saying that she had seduced her husband. She said BC had told her that she was a girl who was *“on the game”* and that she was making money for them. She told his wife it was not true, it was a lie.

113. The mother reported that, 4 or 5 days earlier, BC had *“taken her by force to make love”*. He came to the house to have a cappuccino and to talk. She told him that she did not want to be with him any longer because all he had done was hurt her. He told her to shut the door because he was cold. He asked whether she was certain he should not contact her again. She said she was and he jumped on her and said *“you are never going to get rid of me and I will give you a child”*. She fell off the settee. He held her by the hands. One hand around her back and one on her mouth so she did not scream. She fell with her head under the table. He undressed her and had sex with her. He tore her underwear because it was quite thin. He told her not to go into the bathroom afterwards so she would fall pregnant. She asked him why he had done it and he said it wasn't any problem as he had had sex with her before. He had forcefully made love to her 2 or 3 times in the past. The first time had been about 2 weeks ago. The same thing had happened. She told him that she did not want to be with him but still *“he took me”*. This also took place in the living room. He undressed her. She was wearing a onesie. He pulled it on one side, bit her and had sex with her. He told her that he wanted her to fall pregnant and she would not be able to get rid of him because he loves her.
114. The third occasion took place at about 3 or 4 in the morning. She was asleep in bed and he came in next to her, she had her back to him. He pulled her leggings down and raped her from behind. She did not consent and did not want to. He had one hand round her and the other hand grabbed her hair. She said, *“what are you doing”*. He said, *“not to worry, it doesn't matter, we've done it before”*. This had been in between the other two occasions. She confirmed that she had had consensual sex with BC on many occasions. The last time had been 2 to 3 weeks ago. She said he would not give her money except for money for cigarettes, milk, bread, juice and sweets for A. He would ask for sex in return. She felt she had to do that, when she said she didn't want to he would not come over and he would not bring her cigarettes. She had no other source of money. She said she was in a sexual relationship with him to get money. She said she was never in a true relationship with BC, like lovers. He was married and so was she. Even had they not been married they never lived together like lovers. Outside of the times she had described she had consented to sex with him.

115. The first time she found out about prostitution was when his wife came to her place. His wife said she thought she was a woman 'on the game'. She said it was not true. She rang BC and explained what had happened and what his wife had said. He said that was not true (that he had told his wife this). He was going to go home and record her. His wife wanted her 'to go on the game' to make money to buy her daughter a house in Romania. He recorded his wife and sent it to her on WhatsApp. He told his wife he had wanted the mother to go on the game to start with but then he fell in love with her. He had told her that they were involved in prostitution in Romania, but there the girls did it for pleasure. The mother denied that she had ever had sex with other people for money.
116. On 3 July the mother was taken to Hospital for a sexual assault assessment. Later that afternoon she was taken to the refuge in the north of England with A. She appears to have left there in the evening of 4 July.
117. On 5 July 2020 A was taken into Police protection. There is body worn camera footage of the Police removing A. The Police asked the mother why she had left the refuge in the north of England. She said she didn't want to stay there and would prefer to return to her own house. A had not liked being there. She said she was very scared before but now she is not. She said she had had contact with BC the day before by telephone. She had called him (he was on bail conditions not to contact her). She did not accept that she had placed herself and A at risk by returning. BC had told her that he was really sorry about what had happened and would not do it again. She had contacted him to arrange for a car to get home. There is also then footage of a welfare visit after A was removed. The mother was very upset. She wanted A returned to her. She said that if she knew this was going to happen she would never have given a statement (to the Police). Nothing she had said was a lie but none of it had happened because although they (BC and his wife) had suggested it, she had not prostituted herself. He had said those things because he loves her and to get away from his wife. She did not appear to understand why A could not be returned to her at her home. She said she would not work with the Police any more because they had taken her child away.
118. I heard brief oral evidence from PC Hill who was present on 30 June 2020 and 5 July 2020. She confirmed that BC had done nothing to impede the Police investigation. She said that on 30 June, even after BC had been arrested, she was not able to leave the property because the mother was so scared. She had to arrange alternative accommodation for the mother for the evening.
119. I also heard oral evidence from PC Knight and PC Patterson who had interviewed the mother on 2 July 2020. PC Knight said that she had visited the mother on 6 July 2020, so after A had been taken into Police protection. The mother said that the incidents she had described in interview had not happened. She had consented to sex with BC. She was not scared or fearful of BC. She did not want to engage any further with the Police,

she just wanted her son back. She spoke to the mother again, by telephone, on 12 July 2020. The mother said there had been no rape and she had consensual sex with BC. His wife was jealous and so was she. PC Knight agreed with Mr Storey that the mother had given a considerable amount of detail in her Police interview. She said that it is possible that the mother's mind she had linked the retraction to getting her son back.

120. On 7 July 2020 the mother told Ms Clarke that she just wants to kill herself, she has no money, she is a Romanian citizen and that A had not been exposed to any harm in her care. The allegations she had made against BC about non-consensual sex were just a misunderstanding. She said that she planned to retract her Police statement. On 12 July 2020 the father returned to England from Romania. He said he had gone there for a holiday and to renew his passport. He said that he and the mother had forgiven each other and wanted to parent A together as a family.
121. Ms Clarke gave oral evidence and described the mother as extremely upset, crying and fearful when she saw her on 1 July 2020. She was concerned for her life if she was to return home. She confirmed that the mother had told her that the father had returned to Romania because he was fearful about what would happen to him. On 7 July the mother said she wanted to retract the statement. She said she had been jealous that BC had not left his wife to be with her. Her impression was that the mother thought that if she was to retract her allegations then A could return to her care. The mother's initial emotional presentation suggested to her that she was not making it up; she did not believe anyone could make up that level of distress. She agreed with Mr Storey that the mother was vulnerable to exploitation. There were a number of indicators of this, including the retention of her official documents.
122. In answer to questions from BC it became apparent that Ms Clarke had been the allocated social worker to BC's family. There had been a s.47 enquiry and his daughter had been placed on a child protection plan. There had been about 10 meetings over the course of a year. Most of these had been virtual because BC's wife and daughter had returned to Romania in July 2020, a very short time after BC's arrest. Nothing had arisen in the course of that assessment to raise concerns and his daughter had said they were a happy family.
123. On 23 July 2020 Miche Adams, social work assistant, asked the mother if she is pregnant. She was reluctant to answer the question but reluctantly said that she had done a pregnancy test which was positive. She said the child was BC's. However, on 4 October 2020 the mother attended hospital having suffered a miscarriage. Ms Adams also gave brief oral evidence. She confirmed that the mother had not wanted either the father or BC to know that she was pregnant. She did not want BC to know because she was worried about repercussions from his wife. The mother had found it very difficult to see past getting A returned to her. She had supervised a number of the mother's contacts. She was a good attender and was always pleased to see A and he was pleased to see her. She was kind and polite, well mannered, communicative and helpful.

124. On 3 December 2020 the father reported to the Police that he had been prevented from entering his home by the mother and the mother's brother (FG). On the same day he reported that BC had threatened to beat him up with a metal wrench. He refused to support a prosecution and said he would be returning to Romania shortly.
125. On 12 December 2020 there was a third party report of a fight inside the mother's home. The mother was being raped by men, it was said, and abused by men coming into the property. The people at the property, including the mother, were spoken to and no offences were reported.
126. On 28 December 2020 the mother reported to the Police that BC had taken her documents, had stolen her phone and was blackmailing her to go to him. He had taken her bank cards, her driving licence and her handbag. The next day the mother told the Police that her items had been returned and she no longer wished to support a prosecution.
127. On 12 January 2021 a report was made to the Police of an incident involving the mother, father and FG. There had clearly been a significant argument at the property with a large amount of blood and multiple broken items. The neighbour in the flat above reported regular disagreements.
128. As I have said, the parties became aware during the course of this hearing of a further incident on 1 June 2021. I have watched the Police body worn camera footage from that event. The mother's brother (FG) had received audio messages from the mother. These have been translated in the course of this hearing as agreed by all the interpreters as follows:

"Message 1 [25:02]

Please, please, he/they won't let me here, he won't let me speak to you. He won't let me speak to no one. He blocks my account. Please, I cannot take it anymore, tell someone, I'll give you my phone number so you can call me on my normal phone.

Message 2 [25:42]

Here he harms me, here he harms me, this guy. I can't take it anymore he doesn't leave me alone, he doesn't allow me speak to my family, he doesn't allow me speak to you, he doesn't allow me speak to anyone. Please, I can't take it anymore, I'm alone here in 4 rooms and look what's happening. Please I can't take it anymore, help me somehow please, tell it to the rest, I can't, I can't, I can't take it. "

129. FG reported that his sister is due to testify against BC in court 'tomorrow' in relation to prostitution allegations. Police officers visited the house. They noted that there are

three security cameras at the front of the property and that inside there is a massage / beauty bed in the corner, there was an array of high heels and the bedroom had red lighting in it. The mother was spoken to by the Police. She appeared to have been crying. She clearly did not wish to co-operate with them. She told the Police that someone had gained access to her Facebook account and can write anything they want. She denied that she was in fear of anyone. Her Samsung telephone had been taken by a former partner and he had been sending the messages. He is addicted to toxic relationships. She said she had a court date next Monday when she needed to get her child back. The Police officer spoke to FG after leaving the mother's address. He played the audio recordings of the mother's messages. It is clear from her voice that it is the mother who left the messages. She sounded very upset.

The Mother's Evidence

130. The mother has filed a response to the local authority's threshold allegations. In relation to the reported incident on 6 August 2019 she accepted that this had happened but A was in his room at the time. There was a verbal argument but no physical abuse. She had not seen BC handle A roughly. There had been an incident in the park in March 2020 but BC had not assaulted her. In relation to the allegations of non-consensual sexual intercourse with BC she said, "*We were together at the time and it was not rape*". In relation to the incident on 29 June 2020 she believed that the Police had misunderstood her. She and BC had had sex and there was no assault. She did not accept that she had been forced by BC into prostitution. BC was giving her money for food and she was upset as he was still married. On 30 June 2020 she was upset at the Police being at her house. She did not accept that she was fearful and wanted to leave the property in Kent. Only BX had threatened her, not BC. BC had not assaulted her. A was not with her, he was in his room playing with toys. She retracted the allegations she had made against BC because they were not true. She had made the allegations out of jealousy. She believes there was a misunderstanding between her and the Police because of the language barrier.
131. The mother has filed a narrative statement (which is undated). She said that BX had telephoned her and said he needed to speak to her urgently. She had called BC who said he would come as well. BX told her that BC was jealous and had accused him of wanting to be with her. BX was rude to her and said he did not want to be involved with her and she was ugly. BC intervened to tell him to speak nicely to her, and BX then said 'go to hell' and slapped her in the face. BC told her to call the Police. A was not in the room, he was either asleep or watching cartoons. She said, "*I think that the Police have become confused about the report that I made. B's friend is also called B and, therefore, I think that [there] may be some confusion about who I was talking about.*" She says she told the Police that BX had hit her, not BC. She did not accept telling the Police that BC had forced her to have sex with him. She said "*This was in relation to me playing with him, I said no initially, but in the end, agreed to have sex with him and it was definitely not rape. He has never raped me, we were just playing around.*" She

did not accept the allegation she had been forced into prostitution. This had come from a recording “*between BX and BX’s wife*” where he said to his wife that he would make the mother into a prostitute. The whole incident had arisen out of jealousy. BC, who she described as “*my boyfriend*” had said they were going to be together and start a family but then she had received messages from BC’s wife saying that had been kissing and in bed together. She was upset with BC because he had lied to her. She denied being in fear. She said, “*I have retracted the allegations that I made to the Police because they are simply untrue. I said them in the heat of the moment because I was very upset about what was going on between BC and I*”. She said, “*The allegations that I made were all in my head because I was very jealous*”. BC’s wife had made threats to her that she would take A away from her. “*She said that she would accept that I would be BC’s mistress and that she is his wife, but I was not happy with that, I was very jealous*”. She said that the people she had asked to collect her from the refuge were “*family friends*”. She did not want to stay there because she did not feel it was a good place for A to be in.

132. On 11 June 2021, on the 5th day of this hearing, the mother filed a further short statement. I will set out the contents of that statement in full:

“1. I make this statement in relation to the ongoing Court proceedings concerning my son A. I have been asked to provide clarification on some of the issues being decided by the Court.

2. There was an occasion when A’s nursery called me. They said that they didn’t want BC to pick A up from school because A was scared of him. BC went to the nursery to speak to them about this but they would not see him. After this I would always take A to and from school by myself.

3. BC wanted to control me, he wanted to stop anyone knowing anything about me or speaking to me.

4. On the occasion that BC took the phone from me he chased me and pushed me from behind, which is why I fell.

5. There were three occasions when non-consensual sex took place, as set out in the Local Authority schedule of allegations. This included a time when BC started having sex with me whilst I was asleep and another when I tried to push him away from me with my feet.

6. BC never threatened me with prostitution, but his wife did during a telephone call.”

133. In her oral evidence in chief the mother said that BC had never hit her or spat at her and had never tried to strangle her (she was crying when she told me that). She had been

told that he runs a false national insurance number scheme but had not seen that herself. She accepted that he did control her during their relationship but he had not prostituted her. There is no relationship with him now. She described him as *“narcissistic, thinking only of himself”*. She was fighting back the tears as she told me about A.

134. In answer to questions from Ms Rahman, the mother again denied that the father had threatened to punch her in the face in August 2019. He had told her to go to her room but had said *“he will slap me with his palm”*. He did not push her in the hallway, he had brushed her with his shoulder. She said she had been misunderstood. The father and his brother are heavy drinkers. On 16 May 2020 there had been an incident with the keys. The father had come home and was drunk. The father had taken her arm and twisted it, but A was not in the room. He was watching cartoons. He was not next to her when she was assaulted. He would not have known about the incident. She was questioned about her finances and said she had saved about £2,000 from her Universal Credit. She said that the relationship with BC had been from the end of December 2019 until June 2020.
135. She said that the incident in the park in March 2020 involved BC putting her to the ground and wanting to play with her. He did not chase her. She denied minimising this incident because she was scared.
136. She maintained that the incidents that she had complained about involving forced sex with BC had happened but she said *“at that time I had a relationship with him... I was upset but that did not mean I did not want it.”* She said that the incidents were *“not a big tragedy”*. She emphasised again that she was in a relationship with him. She said, *“probably he did not know how to behave differently”*. She suggested that the father had treated her in the same way, indeed more so. She said this was *“not a big danger”*.
137. She was asked about the incident on 29 June 2020. She said she was not sure BC wanted to choke her. He had put his hands on her shoulders because he wanted her to stop talking. She was scared so she threw the glass at him. She denied he was paying her for sex or forcing her to become a prostitute.
138. When asked about the incident on 30 June 2020 she said it was BX and not BC that had told her that she had 10 days to leave the country. She admitted telling the Police that BC had wanted her to become a prostitute but said this was what his wife had told her and also BX. BX had asked her to be his mistress or lover. She would have everything that she wanted: holidays, shopping, a house, food. She said that when she refused BX called BC to come to the house. BX then said he wanted to stay away because he would have problems with his own family (he was married). BX pretended to spit in her face. He did not hit her. A was *“at school or in his room watching cartoons.”* She accepted that she was scared at the time. BX said he is ‘a gypsy’ and has power and in 10 days could make her disappear from the country. BX told her he had been told by BC *“you take her and rid me of her”*. She denied every suggesting to BC she found BX attractive.

139. The mother was asked about the incident on 1 June 2021. This was before the body worn camera footage was received from the Police. She said that her brother had received Facebook messages that appeared to be from her. She was not asking him for help from the Police. Her Facebook account had been blocked and she did not know how to recover this so she could speak to friends and family. She did not tell him she was in danger, and suggested he has mental health issues. She was not being held a prisoner and was not being prevented from speaking to her lawyers. She maintained that her phone had been taken and that it had probably remained logged on to her Facebook account. She had given it to BC because he had taken out the contract. She denied having any contact with BC since after New Year's Eve. She said she does not need help separating from him because *"he is not the only man in the world"*. She said, *"If he wanted me in his life he should have taken care of me"*. She is not a child and she has realised that the relationship was not a good one, *"who loves two women; that man does not love at all"*. She said when she found out she was pregnant he did not care. She said, *"This man has never loved me, probably I was a young girl for him to have fun with."* Essentially, the relationship with him had finished when A was taken away. She did not know why there were cameras outside her house. The bed was a beauty bed she uses to put on eyelashes. She is training with this to provide herself with an income. The bed is not for sex or prostitution (she was very upset when she was telling me this). She said, *"Every woman wears high heels"*. The lighting in her bedroom is there because she cannot sleep in the dark since her mother had died. The lighting is not just red, it is 20 different colours.
140. The mother was questioned further once she had seen the body worn camera footage. She then accepted there were audio messages from her and she had sounded distressed. However, she maintained this was all about her Facebook account being blocked. She did not want the Police called, just for her Facebook account to be unblocked. She said this was being made into a bigger issue than it was. In the course of this evidence I saw that the mother appeared to be uncomfortable. She was moving around in the witness box and shifting position. I asked her whether she was in pain and she then told me that she is pregnant. When asked how many months she said she could not say for certain, it could be 4, 5 or 6 months. When she was asked who the father was she said *"I cannot answer this question. If I answer to this question there will be another reason for my child not to be brought back."* She inferred that BC is the father. She said that he knows she is pregnant although she denied speaking to him about it. She said she has heard that he knows *"from friends and acquaintances"*. She told me that she had taken a pregnancy test 2 or 3 months earlier and had seen a doctor at the maternity hospital in Dartford. She had not had a scan, she implied, because of her earlier miscarriage, and she was reluctant to. Ms Rahman put to the mother medical information the local authority had received to suggest that she was not pregnant in March 2021 and, therefore, the last sexual encounter with BC could not have been in December 2020 as both suggested. The mother's reaction was to tell me that *"I thought what happens at hospital is private"*.

141. The mother agreed with Mr Momtaz that during the incident on 6 August 2019 the main aggressor was FG. The argument had been that they were both accusing her of seeing BC. On 16 May 2020 she was “*not necessarily*” going to meet BC, “*I could have just gone by myself*”. She said that the incident with the father was not that serious, “*just a misunderstanding between us*”. The first time she had sex with BC was in January 2020 and the last time was New Year’s Day 2021. She said, “*there were nice, beautiful moments in our relationship*”. He would spend half the time with her and half with his wife. She denied sending the messages to the father as he had alleged on 5 June 2020. She agreed he had left some of her documents in BC’s car. She had asked him for them back and he had said as a joke, “*if I do not give them to you, what will you do?*”. He gave them back to her the next day. When she was asked if she did not send the messages who did, she replied that FG could have done or BC’s wife or the father’s sister (DE). She denied that the relationship with BC had started in 2019 although she agreed he had her date of birth tattooed on his body in September 2019. She suggested he had done this because “*I was his best friend*”.
142. DE’s account of a conversation with the mother on 4 April 2021 was put to her. DE had said she had introduced her to ‘her 42 year old boyfriend’. The mother denied this, “*she is lying a lot and saying things that are not true*”. It was put to her that DE had said that this man had her name and date of birth tattooed on his body. She replied that DE had probably known this from the father. She suggested that DE has always wanted to take A from her and that “*she is a woman who has only done harm every day*”. When she was living with the father’s family in Romania, “*she wanted me to wash her clothes and made me cook and clean for all her brothers.*” She made her work and took all her money. She would lock her in the house. She denied the suggestion that this demonstrates she was still in a relationship with BC in April 2021.
143. She denied that A was scared of BC and did not want him to pick him up from school. She accepted she had been told this by the school staff but it was wrong. She said that the problem was that A did not want to go to school. She suggested he would come home every day hurt or wet from head to toe.
144. In answer to questions from Mr Donaghey (which were largely matters asked on behalf of BC) the mother laughed when she was asked whether she was scared of BC. She said she was upset with him when she called the Police on 30 June 2020, she had wanted to teach him a lesson. BC was not trying to stop her speaking to her barristers. She agreed BC had been a guarantor of her property in Kent and that she and the father had paid him sums for travel costs. She did not think it strange that BC had purchased a telephone for her. She said that he was controlling of her when they were in a relationship, he would not allow her to stay too long on social media and would want her to show him what he was doing. She said (laughing and smiling) that he would treat her like a child and said he was a narcissist in the last part of their relationship. She disagreed with BC’s explanation of the events of 30 June 2020. She had not invited BX

to her home and did not want a relationship with him. She maintained she had been misunderstood by the Police. She explained that her sexual allegations against BC were just “*his manner of making sex*”, “*everyone does sex in a different way*”. However, she agreed there were two occasions when he had sex with her without her consent. She was asked about the incident when BC had come to her home with milk for A and was told to leave by the father. She denied saying that the father had a knife. She did not see what he had in his hand, “*a knife, fork or spoon.*” Yes they were pushing each other but “*it was not that serious*”. In the second incident there was some yelling but she could not see if BC and the father touched each other. She just wanted to separate them and for the incident to stop.

145. The mother’s emotional presentation in the course of her evidence was, as I have described, variable. She was laughing and smiling on occasions. Equally, she was sometimes tearful and crying. Her presentation during the remainder of the hearing was occasionally tearful, but when BC was speaking or asking questions she would often laugh or appear disdainful. She was keen to find someone to ‘share the joke’ with. Sometimes it would be the father. Occasionally it would be someone else in the court room, such as the father’s interpreter.
146. I found the mother’s oral evidence to be generally unreliable. She was keen to minimise to me the seriousness of the events that had taken place, whether between herself and BC or between the father and BC. Where she could, she attempted to place A away from the scene of any event. She was caught out in a blatant lie when describing the events of 1 June 2021, a matter of days before she gave evidence. She only accepted that she had left the messages with FG when the body worn camera footage arrived. She had previously attempted to distance herself from these and had claimed FG had mental health issues, implying he had invented his concerns.
147. I have been invited to conclude that the mother’s evidence has been influenced by BC, despite the participation directions I had made. There were certainly passages of her evidence that are or could be consistent with this, but there were also passages that were inconsistent, such as when she described BC as a narcissist and said that their relationship had not been a good one and that he had probably seen her just as a young girl he could have fun with. Her reactions to BC’s evidence were also not always consistent with fear and influence. What stood out from her evidence was her strong desire to do or say whatever she believed necessary to achieve the early return of A to her care.

The Father’s Evidence

148. In his initial response to the local authority’s schedule of allegations, the father denied that he used or threatened any physical violence to the mother on 6 August 2019. He accepted there had been a verbal argument on 16 May 2020 but there had been no physical violence and A had not been present. In his first statement, dated 5 August

2020, he said he was angry on 6 August 2019 because the mother had been speaking to BC. He did not hear FG threaten the mother. He said, *“I have never hit or been physically aggressive towards [the mother] or A, if I get angry I will walk away from the situation.”*

149. On 28 May 2021 the father filed a further statement. He described an incident in the Autumn of 2020 when he came home from work and found BC at his home. A was in foster care. He told BC to leave and when he refused he took BC by his clothing to get him out of the house. Both he and BC ended up with scratches on their face. The Police were called and he was arrested. He described another incident in the winter of 2020 when BC drove past him and started swearing at him and being verbally aggressive. He got out of the car and was waving an item around at him trying to assault him. It looked like a key to remove a wheel from a car, similar to a metal bar. He called the Police. He said *“I have been scared of BC and felt at risk from him”*. He said that BC has threatened him by text.
150. In his oral evidence, the father told me, as set out in the report of Dr Mann, that he has difficulty remember exact dates and times. His relationship with the mother ended in November 2019 but they reconciled briefly in December 2019. After that they had stayed friends for the sake of A. She had started speaking to BC in the summer of 2019. He blamed BC for having destroyed their relationship. He denied it was in difficulties anyway. BC was told by everyone (his family and friends) to leave the mother alone but he just carried on.
151. He maintained there had been no violence between him and the mother on 6 August 2019. He had just touched her with his elbow when he wanted to pass by her.
152. He described the incident in the park in March 2020. He, the mother and A had gone to the park and then BC arrived. BC asked the mother for her phone and she did not want to give it to him. She ran away and BC ran after her. He either pushed her to the ground or she fell on her own, he could not see which. He had taken A away so did not see what had happened after that. The mother and BC were arguing and went to his car. The Police arrived because someone had called them.
153. On 16 May 2020 he had been at work all day. He was tired when he came home but not drunk. He had had two beers. There was an argument between him and the mother but not a loud one. She wanted to go and meet someone but he did not want her to. He tried to take her keys away so she did not go. He denied twisting her arm, *“I took them nicely but she got scared a little”*. He did not think A was there, perhaps he was in his room watching cartoons. Perhaps he was sleeping. He denied telling the Police in April 2020 that BC had been aggressive towards A, *“Me? I do not remember saying this. Maybe they asked and I said I don’t know.”* He denied seeing BC lose his temper with A. He denied saying in April 2020 that he had been threatened by BC. He was insistent he was not changing his evidence because he was scared of BC. In relation to BC he said

“I have no reason to be scared of him. He is not a monster. I was scared when A was taken away.”

154. The incident at the end of 2020 he remembered as happening in December. He had not been drinking much, perhaps 2 or 3 beers.
155. He said he left in June 2020 to return to Romania to renew his passport and for a holiday. There had been threats from BC such as that he was going to beat him up. He was not to return home to the mother or speak to her. BC told him 2 or 3 times not to come back to the property. He returned in July 2020 because A had been taken into care.
156. In answer to questions from BC he said that he did not remember whether BC had taken him once or twice to get his national insurance number but he then agreed he had gone a second time which was when it had been approved. They went that time without the mother. He agreed that BC had told him *“You shouldn’t drink, you have a beautiful wife and she will leave you.”* He said to BC that they had not broken up because of his drinking, *“we broke up because of you.”*
157. In answer to questions from Mr Donaghey he described more fully the incident in his statement which he said had happened in the autumn of 2020. He agreed it might have been earlier, in May 2020. He had an argument with BC and swore at him. BC said something nasty to him and he went into the kitchen. He did not pick up a knife he picked up a bottle of milk that was meant for A. He smashed the bottle in front of BC, outside the house. He was angry because BC had bought milk for A but they did not need it. BC said they both scratched each other on the face *“but it wasn’t serious”*. The second incident in his statement, in the winter of 2020, he again described more fully. He went out of his house for about 20 minutes. When he got back he saw BC. They exchanged words. The father agreed he had used swear words and BC had sworn at him. He agreed he may have challenged BC to a fight. BC grabbed a spanner from the car. He had said, *“you should hit me with your hands not the spanner”*. Then BC left.
158. Like the mother, the father maintained that nothing that had happened could justify A’s removal, saying *“the child did not have anything to do with what happened. The child had everything well taken care of”*. He did not appear to understand why A had been removed from the mother. He did not know why A would not have been safe on 5 July 2020 at the mother’s home. He had not known the mother was pregnant before her evidence, but he did not appear surprised by this.
159. I find that the father was an unimpressive and unreliable witness in his oral evidence. Like the mother, there was a strong theme of minimisation running through his oral evidence both in relation to incidents involving the mother and those involving him and BC. Like the mother he attempted to distance A from the events that had taken place. I do not know why he told the court in writing on 28 May 2021 that he had been scared

of BC and had felt at risk from him but now told me in oral evidence that he has no reason to be scared of him. It is possible this is due to pressure from BC, but equally it could be to advance a case for A to be returned. The father clearly wants A to be returned to the care of the mother and, like the mother, was willing to say whatever he believed to be necessary to achieve that.

BC's Evidence

160. The only written evidence provided by BC before this hearing was a short statement in which he said *“all the allegations made by [the mother and the father] are false and unfounded and they were made because of [the mother’s] jealousy. [The mother] had an extra marital affair with me, but all the intimate relations happened with her specific consent. I have helped her financially, but I have never paid her for intimate relations. The couple’s relationship was already deteriorated when we both started having an extra marital relationship, she was saying she loved me. I have never forced her to have relations with me...”*. He denied being violent towards A and said that A was happy to see him when he would collect him from school. He said, *“I acknowledge that there were some arguments between us, but I never hit her, let alone in A’s presence, not wanting to affect the child’s mental health.”* He denied any allegation of modern slavery. He said, *“I only want the situation to get resolved and the child to be with his mother.”*
161. As I have said, BC answered a number of questions in oral evidence at the beginning of the case, as had been agreed by the other parties. He confirmed that his wife and daughter have remained in Romania because of the problems here. He met the parents through the father’s brother as they used to work at the same factory. He helped them to obtain legal documents like national insurance numbers and became better acquainted with them. He got to know them more when they moved to Kent. He said the first time he had taken them to obtain national insurance numbers he told the mother that she was pretty. They became closer in November / December 2019. In December 2019 the father left England and the mother had problems paying the rent. He found a property for the mother in Essex and when the father returned he helped them to move there. The first time he had a sexual relationship with the mother was on 3 January 2020, when they were in Essex. After a month in Essex they moved back to Kent because the father could not find work. He said that the father, his wife and the mother’s brothers were ‘never in tune’ with the friendship between him and the mother. This was, at first, a very close friendship. They would open up and tell each other their problems. The father suspected they were having a relationship and would swear at him when drunk. He told him many times there was nothing between him and the mother, but the father did not want to believe it. He told the father that his wife would leave him and he said he didn’t care. There were arguments every few days when he found the father drunk. He was like a guarantor for the rental agreement in Kent. He would have to pay the rent if the parents didn’t. The rent was about £1,050 per month. This was high and there were 2 or 3 months that they did not pay because the mother’s brother’s

left and they could not afford it. He told his wife he was standing as guarantor, and they had arguments because she said not to get involved. Like the father, she thought he had a relationship with the mother.

162. His wife found out about their relationship at the end of February 2020 or beginning of March. By this time the father had moved out of the property and he was staying there but not living permanently with the mother. He was still taking his daughter to school but he was spending more time with the mother. He would stay overnight with her but not every night from March to June 2020. The mother and his wife were arguing during this time. He spent time with A and on one day spent the full day with him when the mother went to work. He would take him to school and collect him. He would change his clothes and arrange food for him. He said, "*A was calling me daddy when he saw me*". He said he had never told A off or touched him. He denied that A was scared of him, but described him as "*a bit of a cry baby*". No-one from nursery ever told him not to pick A up.
163. He was shown the messages which were said to have been sent by the mother to her brother FG on 5 June 2020. He denied that he had told the mother to prostitute herself to bring him money. He agreed they had no money for the rent. He was not working, only his wife was. He lied to his wife to say he had problems with the car to get £500 from her which he used to pay the rent after the father left. Otherwise, the landlord would have evicted her. This was about a month before the incident on 30 June 2020. His wife was arguing with the mother and telling her that he, BC, would prostitute her but this was not true. The mother was "*very very jealous*" that he had stayed with his wife. He was still going to his house and picking his daughter up from school. He and the mother were arguing about money. He said that the mother "*was loving me a lot.... She was trying to make me jealous by speaking with other people and other men.*"
164. He described the incident on 29 June 2020. He denied beating the mother but said he did hold her arms when she was acting in a nasty manner. She was swearing at him and pushing him. She was trying to hit him and did so a few times. He grabbed her hands and put her down on the sofa. She hit her legs on the table when he was trying to restrain her. The mother was lying to the father saying that BC was assaulting her so she could get money from him (the mother could not control her laughter at this point of the evidence). He had a mark on his face from where she had hit him. Then he was going back to the hallway to the kitchen and she hit him with a glass on the back of his head. There was a lot of blood. He cleaned up as best he could. He did not want to call the Police because he loved the mother. He described himself as older and more understanding. He accepted he had grabbed the mother by the shoulders and had shaken her. He demonstrated to me a forceful shake with his hands close to and even touching her neck. He said that A was in his room at the time and possibly asleep.
165. He did not take the mother's documents. Sometimes they were left overnight in his car but that was because they had been to various places together, e.g. to the council or to

schools. He had not taken her documents to blackmail her. He did not know why the mother had accused him of stealing his documents, *“maybe she believed I was not going to return them”*. He had told her a few times not to let the father in the house when he was drunk and swearing at the door, because he knew there would be trouble. He denied ever threatening to kill anyone.

166. He suggested that the mother had made allegations against him on 30 June 2020 because of jealousy and because of the arguments the mother had been having with his wife. On the day she called the Police she had been trying to make him jealous with an acquaintance of his (BX). She had been out for a coffee a couple of days earlier with BX. She had told him *“you are going back to your wife and I will find someone else to love me”*. She had called BX and arranged a date for that afternoon at her house. She did this so that BX would tell BC to leave her alone so they could be together. When he arrived, BC was very upset about the situation. BX told the mother that it was not his business what is between BC and the mother and he had known BC longer than he had known the mother. He said he would not have an argument with BC for the mother. BX told the mother that if he wanted to he could arrange it that in 10 days the mother would need to leave. He told her to go to hell. He did not hit her but he pushed her. She had a cut on her hand (from the glass incident) which started bleeding again when she grabbed her keys. She wiped the blood on his (BC's) body and then called the Police. BC called his wife because he knew he was going to be arrested and wanted to give her his car keys and wallet. When the mother saw his wife at the door she asked him who he wants. He went on his knees crying *“I choose you”* to the mother. She told him she did not believe him and was accusing him of many things. Maybe she called the Police because she was rejected, by BX, and felt embarrassed. That would also explain why she appeared to be so upset on the body worn camera footage.
167. BC denied threatening to beat the father to death. There had been two incidents with the father. The first was one evening around May 2020. He was out visiting friends and the mother called him about 12.30 or 1 am because she did not have any more milk for A. He bought a bottle of milk at a garage for A. The father then arrived home very drunk. The father found them sitting side by side on the sofa and he started swearing at them, telling him to get out of their house. He told the father to leave him alone. The father went into the kitchen to get a knife as he was going to cut him, hit him and beat him up. BC went to leave. The father swore at him and grabbed him by the hand to get him out of the house. They started pushing and shoving each other and were swearing at each other at the front of the house. He scratched the father and the father scratched him. The father spilled the milk in the middle of the road and that made him very angry. He denied threatening the father by text with any physical assault.
168. The second incident was in October 2020. He was passing by the house in his car. The father and his brother were at the corner of the street with some other people. The mother was leaning on the frame of the window and he heard her saying that the father or his brother had locked her in the house. He does not know why they had done this.

He parked to go to the cash machine. The father and his brother were waiting for him. The father was drunk and swearing. He told the father to leave him alone. The father was accusing him of having assaulted his brother. He went to his car and opened the door. The father was pulling at the door. He had a cross spanner and said go away or I will hit you in the head with this. The father was continuously inviting him to go somewhere else for a fight. The mother was in the street and pleading with him to go and so he went away.

169. BC was asked about the incident in March 2020 at the park. He said that the mother was trying to make him jealous. He had given her the phone but the mother had called the father so she could go to the park with him. BC said, "*if you do that you should give me my phone back*". He went to the park and told her to give him the phone. She ran so he chased her to get the phone from her. She slipped on the grass. She got up and he took the phone from her. They spoke and had a cigarette. He was surprised that the Police came. He denied assaulting her. He denied pushing her to the ground.
170. BC denied ever having sexual relations with the mother without her consent. He had consensual sex with her 'hundreds of times'. He said that they both wanted to have a child together. He denied raping her on the three occasions identified. He said there was consensual sex on each occasion. He said theirs was "*a mad love*" and he had a thing of tearing her underwear. He said, "*every couple makes love in their own way*". He denied being coercive or controlling of the mother. He would give her money sometimes to get something for herself or A but he never paid her for sex. They were living together and in a relationship.
171. In the second part of his oral evidence, during cross examination, BC told me that he is currently on Universal Credit and receiving £1,300 to £1,500 per month. He is paid by friends for his diesel if he takes them on a trip in his car. He does not receive an income other than for benefits (the mother was laughing at this evidence). He said that the people who had collected the mother from the refuge in the north of England were BA and LC who are from Kent. He knows them but has no real connection with them. He denied providing anyone with false national insurance numbers or running a prostitution business. He said it was not him that spoke with the father's sister in April of this year. He has no criminal record, only a fine for not wearing a seat belt.
172. He told me that his relationship with the mother ended on 30 June 2020 although they spent the evening together in the New Year of 2021. They last had sex New Year's Eve / New Year's Day. He is happy that the mother is pregnant. He had heard this from someone else but cannot remember who. He did not hear it from the mother. He has not contacted her, even to the extent of crossing to the other side of the road if he sees her. He described A as "*a very spoilt child*". He denied causing him any harm. Every time A saw him he would stretch out his arms and say "*Daddy, Daddy*". He said he has no problem with the father, "*we are people not animals*". He denied that they were rivals

(for the mother's affection). He maintained that the father's relationship with the mother had finished before his relationship with the mother started.

173. There were passages of BC's evidence in which he described his attitude towards the mother, and some more general views. In relation to the incident in the park in March 2020 he said he had told the mother that he wanted his phone back if she was going to meet with the father, *"I said yes let him buy you a phone if it is him you want to go with"*. He denied being sexually violent towards the mother, *"we were in a relationship"*. He told me he was ashamed of speaking of such things and wanted to apologise to the ladies (the mother was laughing at this point). He said that he and the mother would make love sometimes *"in a mad way"*. They would have an argument and then have sex together. She would pretend to be upset with him, *"these are gestures that females do"*. He said she would be saying no but he knew she meant yes. He said *"I am 42 years of age and have 16 years of marriage. I know very well how a woman behaves when pretending she is upset when she is not... when she has a certain purpose"*. The 'certain purpose' he referred to was when the woman wants something from the man. He said that where he comes from the man *"has 100% power in the house... everything the man wants the woman must obey."*
174. He described the incident on 29 June 2020 as the worst argument they had had. The mother was angry with him and very upset because she had no money to pay her rent. He said he grabbed her and pushed her onto the sofa, holding her there by her arms. He was angry too. He said, *"stay here the hell woman, stay down"*. He denied trying to control the mother's life but when they were living together *"I took a bit of authority because that is what we men who have to be the pillar of the house (do)"*. Culturally, he explained, he would not readily accept that his wife would have coffee with someone else or ride in their car or go to a club by herself. He said, *"we do not control their lives but if we say something she cannot really do what she wants to. First from respect and secondly because it is not fair"*. He did not stop her social media access but he was suspicious of her as a partner. He denied controlling her money or stopping her talking to friends and family. He has not kept her a prisoner to stop her talking to her lawyers or putting pressure on her to stop her saying bad things about him in court. He said he is not a saint but the only thing he blames himself for is *"the fact that I loved [the mother] massively"*.
175. BC explained he had tattooed the mother's date of birth on his arm in October 2019, so before they had started their relationship. He had tattooed her name on his body in May 2021, so after the relationship is said to have finished. When his wife found out about the tattoo of the mother's date of birth she was not pleased but said to him *"it's your body you do what you want"*. He was asked about his alcohol intake and said that he drinks rarely and after 2 beers he will fall asleep. Alcohol does not change his personality. When he was being questioned about this neither the mother nor the father could contain their laughter. He said that when he had sex with her over New Year he was not worried she would allege rape again. He had not raped her before so had

nothing to be concerned about. Now there is no reason for the mother to be jealous as his wife is not here.

176. At the conclusion of his evidence I asked BC whether there was anything further he wanted to say. He gave a short speech. He told me he feels guilty *“for the fact that I loved her a lot”*. He begged me to consider that although he is not feeling guilty, and has no one to defend him, he would prefer to be the guilty person *“with one condition from my heart and soul which is that I wish the child A to go back to his parents, or at least one... I love [the mother] very much... I loved her and will love her for the rest of my life.”* The mother was crying at this point and he was emotional as he said it.
177. I found BC to be superficially pleasant and co-operative but, ultimately, a thoroughly dishonest witness. His focus is clearly on maintaining or reinstating his relationship with the mother. He remains heavily emotionally invested in that relationship. His evidence was largely self-serving, tailored to try to minimise what had happened and to shift the blame onto others. His views about consent were troubling. Like the mother he emphasised that the alleged rapes occurred in the context of an otherwise consensual relationship. As with the other parties, there were times when he appeared to be saying whatever he felt was necessary to achieve the return of A to the mother’s care.

Submissions

178. The local authority invite me to make the findings as set out in the schedule of allegations. They suggest that both parents are trying to minimise what happened between them, and A’s involvement. They suggest that the father has resiled from his accounts of BC mistreating A and of BC threatening him, and that this is because he is in fear of BC. The mother has minimised the incident in the park, now suggesting this was ‘playful’. They invite me to find the accounts given by the mother to the Police alleging rape by BC to be true. The 999 call and the mother’s distress on the body worn camera footage are compelling evidence. There is no confusion in the mother’s account between BC and BX. A was present and this would have been distressing for him. It is suggested that when BC came into the mother’s life he began to control every aspect of it. The mother was vulnerable and therefore highly susceptible. The local authority is suspicious that the mother may be working as a prostitute and they question how BC is maintaining his lifestyle if his only source of income is Universal Credit. The evidence from 1 June 2021 is very concerning. The recorded messages from the mother on that date are harrowing but when seen by the Police the mother was very closed. The local authority invite the court to make the finding sought of modern slavery.
179. Mr Storey QC and Mr Chippeck remind me of Dr Wright’s conclusions about the mother as set out above. They also remind me of the mother’s difficult history. They suggest that the decision to send the mother 200 miles to the north of England when she asked for help, and then to remove A when she returned, *“is not a good look”* when viewed in light of the history. Like the local authority, they invite close consideration

of the Police body camera footage of 30 June 2020, alongside the recording of the 999 call of the same date. Equally, they note the difficulty they (and the Court) face when the mother herself refuted in her oral evidence much that she had previously reported to the Police. They invite careful consideration of the cultural context in which both the mother and BC minimised lack of consent on the basis that they were in a relationship, noting that rape within marriage in the UK has only been illegal for a relatively short period of time. On behalf of the mother they question whether the s.31 threshold has been made out. The Court can see A in the body worn camera footage from 30 June 2020 that he is physically unharmed. Just because the mother has lied, whether to the Police or to the Court, cannot of itself justify a finding that the s.31 threshold has been crossed and / or the making of public law orders. The allegation that A has been physically harmed by BC is “*somewhat thin*”.

180. In relation to the mother’s reaction to some of the evidence both Ms Rahman and Mr Storey suggest that the court should be cautious in drawing any inferences. It may not be possible for the court to comprehend the complexity of emotions for someone in these parents’ positions.
181. Mr Momtaz QC and Mr Pidduck invite me to consider, in addition to the matters covered above in the ‘Legal Framework’ section, the need to guard against hindsight and outcome bias. As Theis J said in *Surrey CC v E*, [2013] EWHC Fam 2400, at paragraph 75:

“I should guard against ‘Hindsight Bias’ and ‘Outcome Bias’ which is described in The Department of Education’s Guidance on ‘Improving the Quality of Serious Case Review’ published in June 2013 as follows:

‘Hindsight bias occurs when actions that should have been taken in the time leading up to an incident seem obvious because all the facts become clear after the event. This tends towards a focus upon blaming staff and professionals closest in time to the incident. Outcome bias occurs when the outcome of the incident influences the way it is analysed. For example when an incident leads to a death it is considered very differently from an incident that leads to no harm, even when the type of incident is exactly the same. If people are judged one way when the outcome is poor and another way when the outcome is good, accountability becomes inconsistent and unfair.’”

182. They reminded me of the written evidence of Dr Mann as set out above and, in particular, that some of the father’s minimisation and denial of difficulties in his relationship with the mother may be linked to his mild learning difficulties and him being on the autistic spectrum. Like the other advocates they describe the Police body worn camera footage and the recording of the 999 call as compelling. Whilst not seeking to minimise the impact and seriousness of domestic abuse, the submission is made that even at its highest, the local authority’s case against the father is of two

isolated incidents of “*low level domestic abuse*” which do not form a pattern and are not alleged to be examples of a pattern of coercive or controlling behaviour. It is said that the impact upon A would have been minimal. It is said that there is no reliable evidence that the father has a drinking problem. They invite the court to prefer the father’s evidence to that of BC in respect of the accounts given of violence between them.

183. Mr Momtaz also invited me to be cautious when assessing the demeanour of witnesses not only when giving evidence but also in response to the evidence of others. As he reminded me, the father’s oral evidence was that he is not scared of BC or at risk from him, but this will be a matter for the court to consider.
184. On behalf of A, Mr Donaghey reminds me of the evidence in respect of the incidents as set out above. In relation to all of these incidents, where the accounts given initially differ to those given now it will be for the court to determine where the truth lies. In order to decide whether the mother is a modern slave, the court would need to consider whether she is actually working as a prostitute. To consider this I would need to look at the historical evidence, what the mother has said, and now the events of 1 June 2021. He reminds me that there can be coercion and control without a finding of modern slavery.
185. BC told me in submissions that he is fearful of being misunderstood when he said he knows ‘no’ is ‘yes’. He knew the mother very well and was in a relationship with her. He never suggested to the mother that she should become a prostitute. Yes, there were fiery verbal arguments, pushing between them and he grabbed her shoulders. But he was the one who was trying to ‘mellow down’ the fights and control the situation (so it did not get out of hand). He repeated from his evidence that everything he had done had been out of love for the mother and in response to the people around them who had tried to keep them apart. He told me again that he was really sorry for everything that had happened but “*the child should be returned to the mother*”. He is happy to be known as the guilty person in the case as long as the mother has her child back. He had not really understood modern slavery to be such an important part of the case against him.

Analysis

186. I have considerable sympathy for the mother. On all accounts, she had a disrupted childhood. Her parents separated and she left home at 14 to live with the father and started a sexual relationship with him. She was pregnant at 16 and a mother at 17. She lost her own mother when only 20. Dr Wright reports that she is suffering from severe anxiety and a post traumatic stress disorder. She moved to live in England in May 2019. She was a young vulnerable mother with no independent means of support who spoke no English. She has no friends, little by way of family support and says that she trusts

no-one. Almost immediately upon her arrival in England she was targeted by BC, an older predatory man, intent on establishing a sexual relationship with her.

187. I also have sympathy for the father. His cognitive abilities, as assessed by Dr Mann, are extremely limited. He may also be on the autistic spectrum. He was not able to achieve any educational qualifications. Like the mother he arrived in England with limited resources and support. He was no match for BC intellectually or physically, having seen them both give evidence in person.
188. I have made some observations above about the evidence of the parents, including some limited comments about the mother's presentation when giving evidence and when listening to the evidence of BC. I have very much borne in mind the warnings about conclusions drawn from demeanour both in the authorities and in submissions from the advocates. Generally, I found the oral evidence of each of the lay parties to be unreliable and to lack credibility.
189. I found the mother's accounts to the Police recorded on the body worn camera footage on 30 June 2020, and then her ABE interview on 2 July 2020, to be straightforward, credible and convincing. Indeed, in respect of both parents I found their contemporaneous accounts to the authorities, to the Police and social workers, much more convincing than their written and oral evidence to this court.
190. When BC met the family, shortly after they arrived in 2019, he decided almost immediately to pursue a sexual relationship with the mother. As he told her, he was bored with his wife and in his marriage. He told the mother almost at their first meeting that she was pretty and that he wanted to be in a relationship with her. He quickly made himself useful to the family, arranging official documents, offering transport and arranging accommodation. His much greater command of English was evident from the body worn camera footage of the discussion with the police officer before his arrest on 30 June. He pushed the father away from the home, challenging him about his alcohol intake and, when necessary, issuing physical threats. He 'befriended' the mother meeting with her in the park on an almost daily basis, messaging her, and even having her date of birth tattooed on his body. In part, she was no doubt flattered by the attention. As she told Dr Wright she was not happy in her relationship with the father and certainly his drinking caused issues for them.
191. The most detailed account given by the mother of the development of the relationship with BC was given in her Police ABE interview. Her description of how BC pursued his relationship with her was striking and convincing, first as a 'friend' and then pushing her for more. Equally, it was significant how he played on her fears, suggesting to her that she was not safe in her own home without his presence. By the end of 2019 the father had left to return to Romania so she was alone. She was financially vulnerable and increasingly dependent upon BC's financial support – he provided her with help with her rent and money for food and cigarettes. Initially she rebuffed his sexual

advances but eventually relented. Although their relationship was consensual, it was unbalanced. BC was the dominant partner and was able to exert physical and emotional control over the mother. I accept that she was confused about his intentions. She did not really consider that they were in a relationship because BC was also with his wife. He appeared intent upon continuing with his marriage alongside his relationship with her. BC's wife was clearly unhappy with this arrangement but, like the mother, was powerless to do much about it. BC pacified his wife by telling her that the mother was little more than a prostitute. There were arguments between the mother and BC's wife. When the mother challenged BC about her financial vulnerability he suggested to her that she should find ways to earn money, including through prostitution.

192. There is a similar description by the mother of her 'relationship' with BC as recorded by the Police in March 2020. She recognised that BC wanted a relationship but she was more reluctant. She told the Police he could protect her. She said he wanted to make sure that she lived with him for the rest of her life.
193. The father had, I find, a long-standing alcohol problem. I accept the accounts given by the mother to the experts and to the Police on this issue and this is consistent with the family history outlined by DE. His alcohol issues were no doubt exacerbated by the deterioration in his relationship with the mother and the growing relationship between the mother and BC. There were also physical and verbal arguments between BC and the father. The father would be more likely to attempt to challenge BC when he was drunk. I have no doubt that the incidents reported to the Police were just 'the tip of the iceberg'. As I have said, he was no match either intellectually or physically for BC. Disillusioned, and threatened, he would return periodically to Romania where he has some family support. It is noteworthy that he was in Romania both when the relationship between the mother and BC started and during the incidents on 29 and 30 June 2020.
194. As the mother told the Police in her ABE interview, she decided in about the middle of June 2020 that she no longer wanted to be with BC. His response was, I find, to rape her. This was not reluctant acquiescence or even unwilling submission. It was an exercise of power and control. A series of violent and abusive acts. She had told him she did not want to be with him so "*he took me*". I accept the version of events that she provided to the police on 2 July 2020. He told her that he wanted her to fall pregnant and that she would not be able to get rid of him. Although they were in a relationship she had told him she wanted that to end. She was not consenting to sex and he did not reasonably believe that she was. BC gave an indication of his views on consent in the course of his oral evidence, as I have described. He believed that the existence of their relationship gave him the right to force himself upon her. She had, in his view, lost the right to say no.
195. I accept the account given by the mother to the Police of the second incident of rape. It is noteworthy that they were not sharing a bed; he should have been sleeping on the

sofa. He went into her bedroom and raped her from behind in the early hours of the morning. She did not want to have sex with him. He grabbed her body with one arm and her hair with his other hand. She said, “*what are you doing?*”. He said, “*not to worry, it doesn’t matter, we’ve done it before*”. This was again a reflection of the power and control he was able to exercise over her and his views about the relevance, or rather the irrelevance, of her consent. She was not consenting and he did not reasonably believe that she was. It was again a violent and abusive act.

196. I also accept the account given by the mother to the Police of the third incident, a few days before the 30 June 2020. The incident was precipitated again by the mother telling BC that she did not want to be with him any longer. He told her to shut the door, he jumped on her and told her that she was never going to get rid of him and he would make her pregnant. He held her hands with one hand around her back and his other hand on her mouth so she did not scream. He undressed her and had sex with her, tearing her underwear. He told her she should not go into the bathroom so she would fall pregnant. She asked him why he had done it and he said it wasn’t any problem as she had had sex with her before. This was, again, rape. Another violent and abusive act. She did not consent and he did not reasonably believe that she was consenting. He was again exercising power and control over her. In his view she was not free to leave the relationship.
197. There was then the serious incident of violence on 29 June 2020. No doubt the argument resulted from the deteriorating state of their relationship. BC tried to choke the mother around her neck and she responded by hitting him on the head with a glass. The incident was not reported to the Police at the time. Had it not been for the incident a day later then it may never have been. I have very much formed the impression that the reported incidents and the incidents described in evidence represent only a part of the picture here. There were many incidents referred to in the papers but not developed in the evidence, such as on the 5 June 2020, 12 December 2020, 28 December 2020 and 12 January 2021. There are no doubt others with no reference points in the papers.
198. In my judgment, the incident on 30 June 2020 has to be seen in the context of the state of the relationship between the mother and BC at that time. The mother clearly wanted to leave the relationship and BC was determined to prevent her from doing so. As he professed to me in a rather impassioned speech at the conclusion of his evidence he loves her and wants to be with her.
199. I accept the account of that incident given by the mother to the Police officer as recorded on the body worn camera footage. That account was entirely convincing and credible. It was BC that arranged for BX to visit the mother’s home. He had suggested to BX that the mother might be available for prostitution. I reject BC’s evidence that the mother had invited BX to her home or that she had done so to make him jealous. When the mother did not respond positively to BX’s suggestion he called for BC. It must then have become clear to BX that the situation was not as he had been led to believe. He

reacted violently and threateningly as the mother had described and then left. I accept that BC was also violent towards the mother. Distressed and confused the mother called the Police. The extent of her upset is clear to see from the footage.

200. BC's actions were entirely consistent with his emotional manipulation of the mother. He had told her when seeking to begin their relationship that she was in danger from other men without his protection. He set BX up to visit. If she would not be with him then he would attempt to sell her to BX for financial reward. I do not think he actually believed the mother would agree to prostitute herself. I believe he wanted to reinforce to her the dangers she would face if she ended their relationship. He wanted her to understand that other men would see her as he did, and that for her own protection she needed to remain with him. It was, as he saw it, a 'win win' situation.
201. A was present in a small flat during many of the incidents that the mother has described. Indeed, on some of the descriptions he would have been next to the mother when she was being assaulted by BC. Even if in a different room he would have been exposed to hearing the incident and to his mother's distress. There was a significant risk of A being caught up in the incidents themselves and a risk of him suffering emotional harm from that exposure. A was described as present during the incidents on 6 August 2019, 25 March 2020, 16 May 2020 and 30 May 2020. He would have been in the home on many other occasions when incidents occurred. If he was at school, for example on occasions when the mother was raped, he would have been aware of her distress when he returned.
202. The mother confirmed in her statement of 28 May 2021 that she was told by the nursery that A was scared of BC and that they did not want him to pick A up from nursery any longer. I find this was what she was told. He could have been fearful because BC was aggressive to him or simply because he had witnessed or heard the incidents between BC his mother
203. I do not know what happened to bring the mother back from the north of England on 4 July 2020. She probably did find the conditions to be unsatisfactory and she wanted to return home. A probably was unsettled and unhappy as well. It is clear from the body worn camera footage of 5 July that it was the mother who telephoned BC and it was him that arranged for her to be collected from the refuge. That is what she told the Police. It is also clear that the Police's decision to remove A came as a complete shock to her. She told the Police officer that she would not co-operate with them until A was returned to her care. She has largely kept to her word.
204. I do not think it fair to criticise either the Police or the local authority for the decision to place the mother and A in the north of England. On the mother's account to the Police they were in danger and needed to be physically removed from the area as a matter of urgency. Equally, I do not think it fair to criticise the Police for their decision to remove A from the mother's care. Shortly after her arrival at the refuge she had contacted BC and asked him to make arrangement to bring them home. To leave A with the mother

would have meant exposing him to further risk of harm from incidents such as had happened on 29 and 30 June 2020, as well as the risk that he would be present in the house when the mother was raped again as she had been 3 times in the fortnight or so before the 30 June.

205. Sadly, the mother has demonstrated little or no understanding of why A was removed from her care. As has been said by Dr Wright, and as is clear from the social work evidence, the mother finds it difficult to see past the need for A's immediate return to her care. He was not, she believes, in any immediate danger. She was providing him with a home and food. A's removal from her care has undermined any trust that she may have with professionals. BC's rape of her, his physical violence towards her and his emotional manipulation are not 'a big tragedy', not big enough to justify A's removal. Her determination to secure his return is in many ways admirable, but it has led her in her evidence to this court to attempt to minimise the incidents relied upon by the local authority. I also suspect it has led her to give a false account of her continuing relationship with BC, but it is not necessary for me to make findings about that for the reasons I set out below. As Dr Wright says, she is focussed on her own need to have A as her sole companion.
206. The mother appears to be surprised that professionals across different areas of work communicate with each other. When asked about her most recent medical notes she said that she had thought they would be confidential. The mother has called the Police on a number of occasions when in danger but has then withdrawn her allegations. Sadly, that is not an unusual pattern of behaviour.
207. The situation is not without hope. The mother has an experienced and empathetic legal team. With their help she filed a witness statement where she admitted that A was reported by his nursery to be scared of BC, she admitted that BC wanted to control her, that he had chased her and pushed her in the park during the March 2020 incident and that there were three occasions of non-consensual sex. It was brave of the mother to tell me in her oral evidence that she is pregnant. It was also brave of her to maintain her allegations of rape, in large part, and her account of the incident on 30 June 2020. There is a foundation on which the mother can begin to build trust with professionals.
208. The focus of this hearing has been upon the schedule of allegations filed by the local authority which considers matters up to A's removal on 5 June 2020. It is not necessary for me to make findings about events since that date. There have clearly continued to be violent incidents between BC and the father. The part each has played in each incident is largely immaterial. It would be unsafe for any child to be witness to such events. They would be at risk of being 'caught in the crossfire' as well as the risk that they would be emotionally harmed by witnessing these events and / or their aftermath.
209. I have no clear view as to what has happened since July 2020 in so far as the relationship between the mother and BC is concerned. Both the mother and BC assert that the

relationship largely ended when A was removed, although both have to accept that they must have had sex in the early part of 2021 because the mother was pregnant in March 2021.

210. DE is reported to have given an account to Ms Boca that the mother introduced BC to her as her boyfriend on 4 April 2021. That is vehemently denied by the mother. DE's account has not been tested in oral evidence. She is likely to be a witness to the welfare hearing that will follow because she is putting herself forward as a carer for A. I will then be in a position to determine whether she is telling the truth.
211. The mother was very vague about her current pregnancy. When she fell pregnant, and the identity of the unborn child's father, is likely to become clearer over time. My immediate concern remains, as I said to the mother, that she has not sought medical advice about her pregnancy and therefore she and the unborn baby may be in some danger.
212. The mother initially denied that she had contacted her brother on 1 June 2021 but now admits it was her when confronted with the recorded audio messages. She can give no real explanation why she did so. The suggestion is that she was in danger but felt unable to contact the Police. The recordings strongly suggest that the mother remains in contact with BC and under his control, although the mother adamantly denies this. The Police were concerned that she was working as a prostitute although again the mother denies this. These are all matters that I may need to consider and make findings upon at the welfare hearing to follow.
213. It may be that the mother will want to take the opportunity to reflect upon all these future evidential issues (as set out at paragraphs 209 to 212 above) with her legal team following this judgment.
214. I then turn specifically to consider the allegations made by the local authority in their schedule. I shall set out each allegation followed by my findings, on the balance of probabilities.

A has been exposed to violence and/ or the risk of violence whilst in the care of his Mother and/or Father. This would have caused him emotional harm and placed him at risk of being physically harmed when in the vicinity.

I find, as set out in more detail above, that A was exposed to violence and / or the risk of violence whilst in the care of the mother and / or the father because of the incidents of violence that took place between BC and the mother, BC and the father and the mother and the father.

Violence perpetrated by Father

a. *On a date on or around 6 August 2019 the mother was assaulted by the father in the family home. On this occasion the father told the mother to go to her room or he would punch her in the face. He then pushed her in the hallway. He threatened to take A on this occasion. A was in the home at the time.*

This accords with the description given by the mother to the Police at the time which I accept to be a truthful account. This was an argument about the mother's growing relationship with BC. I do not accept the mother's or the father's subsequent minimisation of this incident. A was in the home at the time and was exposed to their violence.

b. *On a date on or around 16 May 2020 the father came to the family home and was verbally abusive to the mother. He was intoxicated at the time. The mother took the front door keys to prevent the father from locking her in. The father then grabbed her arm and twisted it in order to take the keys. This caused the mother pain and she released the keys. A was in the home at the time and on the sofa next to the mother during the assault. The incident would have been distressing to him and he was at risk of being physically harmed.*

Again, this accords with the description given by the mother to the Police at the time which I accept to be a truthful account. Again, this was an argument about the mother's intention to meet with BC and the father's misguided attempt to try to prevent her from doing so. I accept that A was at risk of suffering physical and emotional harm as a result of this incident.

Rough handling / violence / threat of violence by BC

c. *On a date in April 2020 BC handled A roughly when he grabbed him in an aggressive manner.*

This allegation arises from what the father was recorded as having told the Police on 4 April 2020. The father now denies ever having said this. I accept Mr Storey's submission that the evidence supporting this allegation is 'somewhat thin'. There was no detail or context given to the Police and this is now denied by both the father and BC. Accordingly, I decline to make the finding sought.

d. *On a date on or around 9 April 2020 BC called the father on his sister's phone and spoke to the father. During this conversation he threatened to beat the father to death.*

Again, there is very little detail or context given to this specific allegation. Both the father and BC denied in their oral evidence that the father had been threatened. I understand that DE was in Romania at the time and the father was in England so it is difficult to see how this could have happened as described. However, I am in no doubt

that the father has been physically threatened by BC both in person and through messages. I accept the account given by the father in his statement of 28 May 2021 and prefer that account to what he said to me in his oral evidence.

e. On a date in March 2020 BC assaulted the mother when he pushed her to the floor and took a telephone he had loaned her. The mother was very emotional at the time and appeared scared.

This was the incident which took place at the local park on 25 March 2020. The allegation matches the accounts given at the time by the mother, the father and the third party witness. I find that those accounts are true. I do not accept the mother's more recent account that this was a playful incident between herself and BC.

f. BC has forced the mother to have non-consensual sexual intercourse with him on three occasions:

i. On a date on or around early to mid June 2020 BC came to the mother's home address... (Details of the rape redacted for published judgment). He said he wanted to make her pregnant. (H462-470)

As set out above, I find this to be true as alleged.

ii. On a date on or around mid-June 2020 the mother was sleeping and BC was in the home. She woke to find him behind her as she lay on her side... (Details of the rape redacted for published judgment).

As set out above, I find this to be true as alleged.

iii. On a date on or around 26 or 28 June 2020 BC came to the mother's home while A was at nursery. BC jumped on her, she fell off the sofa and he undressed her. She tried to push him away with her feet on his chest... (Details of the rape redacted for published judgment). He said he wanted to give her a child.

As set out above, I find this to be true as alleged.

g. On a date unknown BC grabbed the mother around the throat and was choking her. He pushed her onto a sofa and hit her on the leg. As she was being choked she grabbed a glass from a coffee table and hit this over his head.

This was the incident on 29 June 2020. I find that this incident occurred as contemporaneously described by the mother. It involved the mother being choked by BC around the throat and her hitting him over the head with a glass. She hit her leg on the table in the room in the course of the incident.

- h. BC has also been coercive and controlling of the mother as follows:*
- i. On dates unknown the mother had consensual sexual intercourse with BC and he would pay her a sum in the region of £10-15 a day.*
 - ii. On a date or dates unknown BC has been forcing the mother to become a prostitute.*

I do find that BC was coercive and controlling of the mother as I have described above. I would delete the particulars given. The coercion and control was wider than is particularised. It was in the context of his wish to enter into and then maintain a relationship with the mother. As I have found, BC did suggest to the mother that she might become a prostitute. This was in the context of their discussions about money.

30 June Allegations

- 2. On or around 30 June 2020 the mother presented to the Police and made serious allegations.*
- a. The mother was crying and distressed when the Police attended her home on 30 June 2020*
 - b. When recounting events on 1 July 2020 she was shaking and extremely distressed.*
 - c. She said she was fearful of the people she had made allegations against.*
 - d. She expressed fear for her life and indicated if she returned to her home in Kent she would be forced to have sexual intercourse against her will.*
 - e. The serious allegations of assault (hereafter referred to as the modern day slavery and assault allegations) were:*
 - i. On 30 June 2020 two men, namely BC and one other man, came to her home.*
 - ii. BC threatened her: stating she had 10 days to leave the country and that he was going to kill her and he would beat her up. This was because he wanted her to become a prostitute and she refused.*
 - iii. BC spat in her face*
 - iv. BC physically assaulted her causing bruising*
 - v. BC attempted to strangle her*
 - vi. the unknown man spat in her face and assaulted her by punching her in the head.*
 - vii. A was with her at the time of assault.*

The findings that I make about this incident are as follows:

On 30 June 2020 BC arranged for another man BX to visit the mother at home. BC suggested to BX that the mother might be prepared to have sex with him for reward.

When the mother refused to have sex with BX he called BC. BX was violent and threatening to the mother and then left. BC:

- (a) Made this arrangement so that the mother would feel threatened for her safety.
- (b) Did not believe that the mother would prostitute herself as he had suggested. He did this to persuade the mother to continue her relationship with him.
- (c) Carried out this plan as part of his coercive control of the mother.
- (d) Spat at the mother and threatened to hit her.

The mother called the Police and was crying and distressed when the Police attended. She was in fear that if she remained at the property she would be forced to have sex against her will.

A was present at the property during the incident and when the Police attended. He was exposed to the risk of physical and emotional harm by witnessing the incident and emotional harm from seeing his mother's distress and BC's arrest by the Police.

3. *The Mother has since retracted the allegations [about 30 June 2020] and says the allegations were made due to jealousy.*

The mother did retract the allegations as alleged.

4. *Either the allegations [on 30 June 2020] are true and the mother has been subjected to serious assaults and/or is a victim of rape and / or serious assaults and/or modern slavery and that places the mother and A at risk of real harm.*

The allegations are true. The mother has been subjected to serious assaults and was raped by BC. Exposing A to such an environment placed him at risk of serious harm. I will consider below the issue of modern slavery.

5. *Or the allegations [on 30 June 2020] are false and:*

- a. *Mother has been dishonest with police and social services*
- b. *Her dishonesty involved the making of serious allegations which meant Adrian would also be considered by professionals to be at risk along with his Mother,*
- c. *Adrian was moved to [the north of England] in an emergency and then moved back to Kent again in a short space of time.*
- d. *Mother continued with the dishonesty and moved hundreds of miles away (and back) in the midst of a public health emergency.*
- e. *The move would have been disruptive and confusing to Adrian and caused him emotional harm.*

These are no longer relevant as I have found the allegations to be true.

Poor mental health

6. *On 7 July 2020 the mother said she wished to kill herself. The mother's poor mental health and difficulties in emotional regulation places A at risk.*

There is no evidence that the mother has poor mental health such as to place A at risk of significant harm. Her reaction on 7 July was an understandable response to having A removed from her care. I do not, therefore, make the finding sought.

215. The local authority's pleaded case on modern slavery focusses solely on the events of 30 June 2020. I must be careful not to allow that allegation to be widened in my considerations. I am conscious that in his submissions to me BC said he had not really appreciated this would form an important part of the case against him. That view is understandable given the limited reference to modern slavery in the schedule of allegations as set out by the local authority.

216. The essence of forced or compulsory labour under UN Convention 29 is work or service which is exacted from any person under the menace of any penalty. As the Guidance says:

“For a person to be a victim of forced or compulsory labour there must have been 2 basic components:

- *Means – threat of penalty – for example, threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability*

- *Service – as a result of the means, an individual provides a service for benefit, for example, begging, sexual services, manual labour, or domestic service.”*

217. I accept that the events of 30 June 2020 satisfy the means element. There was, on that occasion, a considerable abuse of power exercised by BC over the mother who was vulnerable. There was also the threat and use of force and the use of coercion.

218. I am not, however, satisfied that the mother provided a service. As Mr Donaghey submitted, the service element requires the mother to have done something as a result of the violence and coercion she had been subjected to. Had she provided BX with a sexual service, as he was requesting, then the service element would have been met. However, she refused to do so.

219. As I have stated above I am not going to consider whether, in wider terms, the relationship between BC and the mother crosses the boundary from coercion and control into modern slavery. This wider point was not pleaded against BC and it would not be fair to him to broaden significantly the scope of the schedule of allegations at this stage.

220. That said, the events of 30 June 2020 placed the mother *at risk of* modern slavery. BC arranged for BX to attend the mother's home with the suggestion that the mother would be willing to provide him with sexual services for reward. Had she done so, the service element of forced and compulsory labour would then have been met. I therefore do make a finding that the events of 30 June 2020 placed the mother at risk of modern slavery. Whether events since 5 July 2020 have crossed over into modern slavery may be a matter for determination at a later date. If the mother is working as a prostitute, orchestrated by BC, as the Police and local authority suspect, then she may well be a victim of modern slavery.
221. The findings that I have made undoubtedly cross the s.31 threshold. On the relevant date, 5 July 2020, A was likely to suffer significant physical and emotional harm. He had been exposed to domestic violence between his parents. It is well recognised, as set out above, that domestic abuse impacts not only upon the victim but also upon a child who witnesses the abuse or is aware of it having occurred. He had been exposed to arguments and violent incidents between the father and BC. Most significantly, he had been exposed to the coercion and control and the sexual and physical violence perpetrated by BC upon the mother, and the aftermath of the incidents of violence. That violence was escalating in the weeks leading up to the incident on 30 June 2020, as I have described. A can be seen on the body worn camera footage of 30 June 2020 walking in and out of the rooms and aware of his mother's distress and the presence of Police officers in his home. Had A remained in the home after the 5 July 2020 there was a significant risk that he would be caught up in further incidents. He was likely to suffer significant physical harm in any such incident, being 'caught in the crossfire', and was also likely to suffer significant emotional harm by being present and witnessing such events taking place.

Conclusions

222. I have made the findings as set out above. The s.31 threshold is undoubtedly crossed.
223. I repeat, I have sympathy for both of these parents. Each was vulnerable and ill-equipped to deal with BC. The mother has been the victim of significant domestic abuse, coercion and control, and rape.
224. The situation is not without hope. I urge the mother to co-operate with professionals and to provide a full account of what has happened to her since A's removal.
225. I also urge the mother to seek urgent medical assistance in relation to her pregnancy for her sake and also for her unborn child.
226. This judgment will need to be sent to the experts in this case, Dr Wright and Ms Fantaza. They must be invited to file addendum reports.

227. This case will need to be timetabled to a final welfare hearing. I would hope that it would be possible to have such a hearing before the end of the year so that long term welfare decisions can now be made for A.
228. That is my judgment.