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CASE NUMBER: [2023] EWFC 180 (B)

IN THE FAMILY COURT IN CARLISLE

IN THE MATTER OF SECTION 8 OF THE CHILDREN ACT 1989

AND IN THE MATTER OF EMP (A CHILD)

BETWEEN:

DG

Applicant

And

KB

First Respondent

and

EMP

(by his Children's Guardian "CG2")

Second Respondent

Before: His Honour Judge C Baker

HEARING DATES:

17th, 18th, 19th and 20th May and 4th July

Judgment: 21st September 2023

- 1. This published judgment has been anonymised. As is common practice, random initials have been chosen for all the relevant participants and some of the details have been redacted, in particular specific details concerning the allegation of*

rape. The parties and professionals have been provided with an unredacted version.

2. EMP's mother is KB and his father is DG. EMP has not yet reached his teenage years.
3. EMP is KB's only child. DG has two other children (X, born in the mid-2000s and Y born in the mid-2010s).
4. On 30th April 2019 DG made an application for a section 8 order in relation to EMP. He wanted to spend time with his son.
5. These proceedings, for reasons that will be touched upon below, have taken a considerable amount of time. However, the primary issues can be simply stated:
 - a. KB alleges that in various ways DG has been abusive to her and, to some extent, EMP. She makes a wide range of allegations against DG, which when taken cumulatively she asserts establish a pattern of coercive and controlling behaviour. Additionally, she alleges that DG raped her on an occasion in 2017;
 - b. DG denies many of the allegations made by KB, asserting that in essence KB's allegations are exaggerated or fabricated. He denies the allegation of rape; and
 - c. DG asserts that in fact KB has engaged in a series of behaviours that have soured and frustrated his relationship with his son, including fabricating allegations about him within these proceedings.
6. This matter was transferred to me following a decision of the High Court to allow an appeal made by KB. I first gave directions in this matter in November 2022. Those directions included the obtaining of outstanding evidence and listing the matter for a finding of fact hearing. That hearing took place on 17th, 18th, 19th and 20th May and 4th July 2023. Thereafter, by agreement the parties filed and served written submissions and further responses if they wished. This is my judgment consequent upon the finding of fact exercise. My judgment in the matter was delayed by an intervening adverse personal event the basic details of which I communicated to the parties. I apologise to the parties for the delay and thank them for their patience.

Representation and Procedure

7. DG has represented himself throughout all hearings that have taken place before me.

8. KB has been represented by Dr Charlotte Proudman, Counsel, for the majority of this hearing. She was instructed on a direct access basis. Unfortunately, KB was unable to fund Dr Proudman's preparation of written submissions after evidence was completed on 4th July 2023 and therefore the written submissions prepared by KB were self-penned.
9. EMP has a Children's Guardian – "CG2". His Solicitor is Ms Sarah de Maine and Mr Patrick Gilmore, Counsel, has represented EMP's interests at all relevant times throughout this hearing.
10. The mother had the benefit of 'Special Measures' throughout the hearings undertaken before me.
11. During the fact-finding hearing Mr Gilmore took an inquisitorial approach to his role, advancing cross-examination and arguments that reflected each parties' case as well as investigating issues on behalf of the child on the instructions of the Guardian. When appropriate and with the agreement of the parties Mr Gilmore asked questions before questions put on behalf of DG, thus avoiding repetition.
12. Unfortunately, because this case was issued some time ago, it was not possible for the court to appoint a Qualified Legal Representative to ask questions on DG's behalf pursuant to the provisions of the Domestic Abuse Act 2021. Therefore, DG submitted written questions for KB which were asked by me.

Background

13. Prior to the commencement of this hearing, I was conscious that the court was being asked to determine a large number of allegations which covered a considerable time period. To assist my understanding I prepared my own chronology cross-referenced with the documents in the court bundle. I provided the parties with copies of that initial chronology prior to the hearing to allow for them to make any observations as to its' contents. I have updated that chronology as the hearing and evidence progressed. It contains a large amount of detail as to the background and evidence in this matter and I have included it in this judgment. It allows me to be brief when setting out the history of this matter which I hope adequately places the details contained within the chronology in context.
14. DG is not of English ancestry. He had a relationship previously with the mother of his first child, X. She is also the mother of his third child, Y. Both children do not live in this jurisdiction, where DG himself lives. They feature in the background to this matter because there have been the equivalent of Family Court proceedings ongoing for some considerable time in that jurisdiction regarding those children.

Eventually, the papers in those proceedings were disclosed within these proceedings and were relevant, a matter which I will return to later.

15. KB and DG began a relationship in 2011 and KB became pregnant with EMP very shortly after their physical relationship began. KB and DG never lived together full time. Initially KB lived and worked in another jurisdiction but in November 2013 she moved to the England with EMP, where she remained living and working. Accordingly, the Family Court proceedings concerning EMP have taken place in England.
16. KB and DG’s relationship, although initially romantic quickly hit difficulties and the first set of proceedings concerning EMP took place in 2014. Those proceedings concluded without any order and by agreement. It is now clear that to some degree an on/off relationship between KB and DG continued until at least late 2016 although as will become clear that amounted to occasions of sexual intercourse as opposed to an exclusive emotional commitment towards each other. KB continued to see EMP although this was usually for short periods and usually in the company of KB.
17. For a period of time in 2015 DG and X’s mother resumed a sexual relationship, giving rise to the birth of Y in 2016.
18. In 2017 the parties continued to be on speaking terms and indeed much of the time DG spent with EMP was at KB’s home. There was an occasion in early 2017 when DG was visiting KB’s home when KB alleges that she went upstairs to have a shower whilst EMP and DG were downstairs. She asserts that DG was waiting for her when she got out of the shower and has sex against her will. DG asserts that there were occasions when they were having sex in 2017 even though they were not in a ‘relationship’ and whilst he does not remember a specific incident he did not at any point have sex with KB without her consent.
19. It is agreed that some contact continued but in about April 2018 contact ceased, the reasons for which are not wholly agreed. In April 2019 DG issued an application for a Child Arrangements Order.

Chronology

20. The chronology set out below attempts to encapsulate the most significant events. The references are to the Electronic Bundle pages unless otherwise stated.

<u>Date</u>	<u>Event</u>	<u>Reference</u>
1970s	DG born.	75

1980s	KB born.	28
2005	DG and X's mother start relationship.	6399
2000s	X born	104
2008	DG and X's mother separate	6399
Early 2010s	KB and DG meet online.	6607
Early 2010s	KB and DG meet in person. KB. The parties never formally live together but do spend time in each other's property and weekend etc together.	Evidence
Early 2010s	<p>Shortly after KB tells DG she is pregnant they meet to discuss situation. KB asserts that DG wanted her to have an abortion (DG agrees this was discussed) and when she said that she could not have an abortion he said words to the effect of 'rolling her up in a carpet and throwing her in' a river. DG says this was a joke.</p> <p>KB subsequently attended an abortion clinic but did not proceed. KB says DG forced her to attend in essence consequent upon, for example, the 'carpet' threat.</p>	392 & 398
	EMP born.	B3
Early 2010s	<ul style="list-style-type: none"> • KB alleges DG gave her the 'silent treatment' during and at times after the pregnancy. • KB alleges DG made her hide when friends visited him and she was pregnant • KB alleges that during maternity if watching a film together DG would not let her slouch on sofa as he would get annoyed and shout at her whilst watching a film. DG agrees that he would not be happy if KB fell asleep during films but asserts that KB is exaggerating strength of his response and intention. • KB alleges DG calls her pathetic for using buggy for EMP and not carrying him. • KB alleges that DG called her 'retard' and 'mongo' regularly • KB alleges that DG would laugh if EMP hurt himself and say 'good' if EMP were ill. • DG uploaded an image of KB asleep, to her own Facebook profile, with the comment 'I have fallen asleep after a glass of wine. I am a total shambles.' • KB alleges that DG attends birth registration to ensure that he was on the birth certificate and have 'parental rights'. 	393 - 401

	<ul style="list-style-type: none"> • KB alleges that DG told her that £30 per week was sufficient to raise a child notwithstanding his ability to pay more. • KB alleges DG told her to ‘get used to’ being alone with EMP. • KB alleges that DG would often order food at restaurants for her and alter her order. 	
Early 2010s	Facebook page showing photo of KB in bed and Profile picture changed to Hodor [a physically large male character from <i>Game of Thrones</i> with limited intellectual capabilities] (13 Sep 13). DG did this as a joke.	416 and Oral Evidence
2013	DG identifies this date as being the end of KB and DG’s relationship.	CAFCASS Safeguarding letter dated 11 August 2014 – not in bundle
2014	KB identifies this date as being the end of DG and KB’s relationship.	CAFCASS Safeguarding letter dated 11 August 2014
2014	KB alleges that in circumstances where DG had not been in contact with EMP for a while, DG sent a Facebook message saying that he would be taking EMP and X on holiday together, when EMP had not spent any extended time with DG. When she refused, DG was annoyed and threatened court proceedings.	401
July 2014	Court proceedings (CA14P00424) issued. Agreement reached. Ultimately no order made.	475
July 2014 to December 2014	DG and X’s mother have a sexual relationship.	6400
11 August 2014	<p>CAFCASS Safeguarding letter:</p> <ul style="list-style-type: none"> • DG: “Parties had been in an on-off relationship between 2012 and September 2013... never lived together... saw EMP in the company of KB...” • DG reports no safeguarding concerns re KB (no drugs, drink etc). • DG says KB’s attitude to contact changed in January 2014 • KB confirms DG spent time with EMP on regular basis but only overnight in sole care 4 or 5 nights since December 2013. • Not disagreeing with contact but needs to build up gradually. • Has concerns about relationship with X – smacking and 	

	<p>denigrating X’s mother “she has witnessed DG smacking X, which normally involves open palm smack on the bottom, but has on occasions involved a smack across the side of the head or face which left reddening (“never any bruises”). She is against smacking altogether and doesn’t wish EMP to be afraid of his father like his step-brother [X] is.”</p> <ul style="list-style-type: none"> • KB has no concerns re DG’s mental health, substances or domestic violence. • “Believes that DG would be an excellent father if ‘he would soften the edges of his parenting techniques’. 	
17 August 2014	DG Message from DG to KB: "I've already told you I'm not paying anything while you limit my contact with him"	417
1 December 2014	KB writes letter to court regarding application for contact. She reports that EMP is upset when he has to go with DG when X is not present. Complains about DG not contributing sufficiently financially through Child Maintenance Service (CMS). Observes that Social Services were contacted by an unrelated third-party expressing concerns about DGs conduct re: X. KB states “He [DG] confirmed that he is a ‘hard’ parent with X, and that ‘play fighting’ may cross the line at times. He has in the past smacked X, and this is not the behaviour I want for our EMP...”	Produced in evidence.
March 2015 to November 2015	DG and X’s mother resume relationship with each other.	6400
27 July 2015	KB and DG text exchange. DG says "You're by far one of the laziest people I've ever met. It's all too much hand EMP over and stop being such a martyr... I've never met anyone who struggles so much with so little."	446
01 August 2015	Picture of EMP eating dinner in hall as was watching TV and not eating dinner - at DG's home. DG says EMP was 'on the naughty step'.	404, 445 and 456
21 August 2015	Police Log of incident when police were called by DG at contact handover. “When KB placed EMP into the rear of the DG's car, her son EMP started to get upset. DG wished to leave with his son EMP however KB refused to let him do so and removed EMP and placed him back into her vehicle. DG asked her to put EMP back into his car and advised that if she failed to do so he would phone the Police. KB refused to do so and DG duly contacted the Police and reported the matter to them. Police attended and established that no crimes had been committed. It was also discovered that no formal custody order was in place. EMP was not distressed whilst in the custody of his mother KB and it was decided that EMP was going to return home with her. DG advised that he was going to	6648

	<p>“speak with his solicitor.”</p>	
<p>11 February 2016</p>	<p>Section 11 report re: X. Report written by JW, Social Worker. X wishes contact with DG to be supervised by grandmother because he is scared of DG because DG gets angry with him and shouts at him.</p>	<p>6476 - 6480</p>
<p>6 May 2016</p>	<p>Record of ‘Viber’ messages sent between DG and KB starts and continues until 12 November 2016 – over 25,000 individual messages.</p> <p>KB and DG speak to each other in derogatory terms (although clearly not often directly unpleasantly intended terms) through this ‘snapshot’ referring to each other as ‘mongo’ and ‘spastic’. For example:</p> <ul style="list-style-type: none"> • KB calling or implying DG is a ‘spastic’ or some variation thereof – pp 6143, 3544, 3867, 3859. • KB calling or implying DG is a ‘mongo’ – pp 1183, 1266, 1294, 1406, 1612, 1822, 2007, 2050, 2459, 2478, 3107, 3174, 3183, 3219, 3378, 3379, 3727, 4627, 6052, 6145. • DG calling or implying KB is a ‘spastic’ – pp 590, 865, 1372, 2357, 3199, 3870, 3547, 3285, 2687, 4666. • DG calling or implying KB is a ‘mongo’ – pp 632, 764, 856, 857, 862, 864, 930, 1055, 1096, 1111, 1115, 1148, 1152, 1184, 1209, 1296, 1313, 1323, 1327, 1373, 1387, 1413, 1440, 1512, 1636, 1673, 1740, 1763, 1780, 1787, 1818, 1822, 1830, 1904, 2016, 2026, 2034, 2049, 2050, 2056, 2064, 2065, 2086, 2139, 2168, 2202, 2216, 2268, 2274, 2301, 2353, 2454, 2480, 2484, 2499, 2552, 2616, 2673, 2675, 2687, 2736, 3024, 3138, 3169, 3181, 3200, 3234, 3244, 3284, 3289, 3334, 3335, 3524, 3546, 3598, 3728, 3750, 3751, 3867, 3881, 3887, 3981, 4023, 4117, 4285, 4392, 4393, 4651, 4665, 4796, 5088, 5231, 5236, 5574, 5983, 6043, 6055, 6077, 6108, 6129, 6161, 6273, 6280. <p>The messages are also notable for the following matters that are plainly apparent to the objective reader:</p> <ul style="list-style-type: none"> • During the period of these messages KB and DG on occasions have sex at times when DG visits (e.g. 605, 798, 1005, 1129, 1175, 1459, 1461, 1478, 2019, 2281, 4723, 4802, 4889, 5162) • DG did not consider that he and KB were ‘together’ and indeed did not want to be (789-793). • KB was looking for more emotional attachment (2514 – 2515, 3696 – 3697, 3738). • KB did not regard the sexual aspect of their continued interaction to be sensible or positive, often complaining that she wanted more emotional intimacy and that sex was 	<p>563</p>

	<p>confusing, often asserting that they should not have sex again (e.g. 1478, 1595, 1720 2794)</p> <ul style="list-style-type: none"> • On occasions DG pursues his request that they continue to have sex when they see each other in a way which reads as persistent in the face of KB’s observations that it should not or will not happen (e.g. 2783 – 2788, 2794 – 2795, 5276, 6018) • Some of the later (available) exchanges reveal that KB expresses concerns about the way DG speaks to her: <ul style="list-style-type: none"> ○ I've asked for weeks for it not to happen with us but you pushed and pushed (5321) ○ But you wear me down Push push push it (5388) ○ 'im totally sick of it. So back off me. Leave me alone and just talk about EMP' (6013) ○ ' I do not want to be your friend. It's as simple as that. At one point. I wanted to be with you forever. You hurt me And broke me. And I can't ever let that happen again' (6014) ○ 'I want you out of my life! Not out of EMP's but out of mine' (6218) ○ 'Bur your so bad for me. You nit pick and have a go constantly. I'm never good enough or doing it right and to be honest I can do without it. I've never ever been in the company of anyone so critical of me' 'you batter all of th self worth I have out of me. So please, stop trying to make yourself feel better by running to me in between being with [X’s mother] 'Leabe me alone' (6220). • Although DG is the primary source of requests for or suggestions of sex there are, particularly early on the exchanges, occasions when KB starts or participates with sexualised exchanges (e.g. 940-942, 105 and 1130). 	
2016	Y born (child of X’s mother and DG). Paternity originally denied by X’s mother but subsequently established.	6400
October 2016	Contact between DG and X ceases.	6491
November 2016	<p>Contact Report by NS, Family Resource Worker in the other jurisdictions proceedings regarding contact between DG and X:</p> <ul style="list-style-type: none"> • X is ‘50/50’ about contact with DG. He shares some interests but does not like it when his father smacks him. • DG says he is being scapegoated re: smacking as everyone smacks X not just him. • During contact DG reported to continually prod, poke and on occasions pinch X and be overly physical with him, in the writers view being oblivious to X’s complaints. • DG swears at X. On occasions gets angry with him when copying DGs behaviour. • X and DG licked each other. 	6481

	<ul style="list-style-type: none"> Contact centre declines to support further contact as result of what they heard. 	
Early 2017	KB alleges rape took place (see statements below).	
28 September 2017	Text message from DG to KB "Ha ha. You're such a mongo" [from the context this is not said in 'jest']	419
16 January 2018	Text message exchange between DG and KB. DG: Silent treatments are a punishment, I just don't want to fight with you since you appeared to be itching for a scrap on Saturday KB: Cool beans DG: I'm not there for you to use as a punch bag because you're feeling low or whatever KB: I'm not here for you to kick back and have a snooze whilst I'm sorting EMP out either.	420
21 January 2018	Website response to advert for room in Cumbria by DG for room advertised by KB's childminder.	418
March 2018	Psychological Report on DG (other jurisdictions proceedings): <ul style="list-style-type: none"> X wished to see his father (not on his own) and was not happy that contact had stopped. Spoke positively about his father but also "I wish he would stop hitting me so we can see each other again." DG loving and caring, appropriately motivated. DG has lack of insight into problems which arise and needs to modify approach. DG had little awareness of how others may view things. DGs over-readiness to shout, be angry or be strict is likely to be a factor in X's expressions of fear of DG. Needs to set aside physical chastisement as punishment and be more patient with X. Shows evidence of good parenting capacity, has undertaken Triple-P parenting course. Contact with X should re-start on supervised basis but move to unsupervised. 	6488
April 2018	Contact between DG and EMP ceases.	38
23 April 2018	Text: DG says two solicitors' letters have been sent re: contact with EMP. KB alleges this was a lie and therefore gaslighting by DG. DG says he genuinely thought the letters were sent.	442
02 November 2018	Affidavit by KB in other jurisdictions proceedings. Relates: (i) incident involving giving chilli to child and laughing	6510

	<p>at the result</p> <p>(ii) would bite EMP's fingers until he cried</p> <p>(iii) loud and almost aggressive with EMP not gentle</p> <p>(iv) DG stands on his fingers and laughs when EMP falls over</p> <p>(v) contact continued fortnightly Nov 2013 to August 2015 - rarely unsupervised. EMP does not like to be alone with anyone else (except childminder)</p> <p>(vi) went to court when DG wanted to take EMP abroad</p> <p>(vii) August 2016 [in fact 21 Aug 2015] - DG called police at contact handover</p> <p>(viii) Relates reports from nurse and scout master about inappropriate treatment by DG of X. Says she stopped unsupervised contact altogether in end of 2016</p> <p>(ix) In April 2018 DG stopped contact and has not been in touch to ask for contact.</p>	
January 2019	Postcard from DG. From funeral of relative in Norway including picture of a coffin.	Copy supplied during hearing.
April 2019	Application - DG applies for Child Arrangement Order to son.	11
11 June 2019	Cafcass Safeguarding letter	473
June 2019	First Hearing Dispute Resolution Appointment before Legal Adviser. Section 7 report ordered.	50
September 2019	Section 7 report by CG1. Parents have very different views of parenting. EMP is seen at home. "I want to see my dad".	479
September 2019	Directions - Lay Justices – other jurisdictions proceedings noted and disclosure order made 'possible safeguarding issues' - indirect contact agreed by telephone and Skype - addendum section 7 report ordered.	53
10 October 2019	Family Therapy progress report (other jurisdiction's Proceedings). Contact between X and DG reported to be going well although reluctance from X's mother.	6514 - 6516
17 October 2019	School record - "Cafcass visit [with schoolteacher present, school teacher reports] "EMP confirmed he wants to see Dad more. He would like mum to be with him. He would like someone with him for the first 6 or 7 times... [told Cafcass] EMP is very sensitive and that he will struggle in an environment he is not used to or with people he doesn't know."	297
04 November 2019	Family Therapy Report (other jurisdictions proceedings). Contact with X is positive but X's mother reluctant and uncooperative.	6520

12 November 2019	GP letter re DG. Anxiety, stress and low mood reported.	489
21 November 2019	Affidavit of FF (Xs' Maternal Grandmother) in other jurisdictions proceedings. Alleges DG being overly physical with X, using physical chastisement with X and asserts that DGs behaviour is harmful to X.	6522
05 December 2019	Section 7 report by Cafcass Officer (who later became the Children's Guardian "CG1"). Recommends unsupervised contact between DG and EMP starting at 2 hours, twice per month and progressing thereafter.	491
December 2019	Directions - Lay Justices - contact not agreed - conclusions of section 7 report not agreed - direct contact order once every 3 weeks commencing 11 January 2020, 2 hours once every 3 weeks - listed for Final Hearing in March 2020.	57
14 February 2020	Letter from KB to court (KB's first statement in these proceedings). Observes that she has not had time to consider documents appropriately because of late provision at previous hearings.	170
14 February 2020	Statement from KB. States, <i>inter alia</i> : <ul style="list-style-type: none"> (i) In the other jurisdictions proceedings DG only has supervised contact for 4 hours a month (ii) 'short, long distance relationship... weekends... maternity leave... holidays' (iii) DG was very controlling... dictated time spent together... little support with new baby (iv) DG not made financial contribution since 2014 (v) chose food when ate out (vi) insisted on EMP eating things he did not like (vii) DG told KB to have abortion then did not speak to KB for majority of 6 months (viii) DG booked holiday with EMP that KB did not agree... DG stopped contact until Court in 2014 (ix) in 2017 DG asked for overnight contact, KB did not agree because of ongoing the other jurisdictions case. DG stopped contact from April 2018 until solicitors letter in 2019 (x) DG allegation in safeguarding letter that KB is 'bipolar and disconnected from reality' is wrong and defamatory... KB did not 'cast aspersions on his character' to Cafcass (xi) did not stop contact because he went on medication - supported him during the other jurisdictions proceedings in 2016 (xii) EMP asked to speak to his dad... spoke on phone.... 	172 - 180

	<p>EMP asked DG if want to speak to mummy... DG said no and hang up phone... EMP sad and confused... (KB thinks DG upset because she had provided affidavit in the other jurisdictions proceedings)</p> <p>(xiii) alleges 'standing on fingers, physical punishments' used by DG</p> <p>(xiv) Cafcass have not included my concerns in report</p> <p>(xv) DG makes false allegations against me</p> <p>(xvi) DG laughs when EMP falls over and quips 'good' when he is ill and aggressive when not answered quickly enough</p> <p>(xvii) too rough with older children</p> <p>(xviii) takes too many pictures of EMP because he like to show off</p> <p>(xix) posting extreme views of mothers on social media</p> <p>(xx) DG enquired about a spare room in Cumbria which was, in effect, about him following KB</p> <p>(xxi) April 2018 received letter re Mediation without explanation and KB complained about the upset is caused but DG was abusive by text</p> <p>(xxii) only had supervised contact with oldest son but had been sending pictures to those proceedings of contact with EMP without mentioning claiming to be having unsupervised contact with EMP</p> <p>(xxiii) X had asked why not see EMP, showed false text message to him</p> <p>(xxiv) made affidavit for ther other jurisdictions proceedings in November 2018</p> <p>(xxv) Feb 2019 - sent postcard to EMP about DGs uncles funeral attending. KB says not age appropriate</p> <p>(xxvi) we have met DG on two occasions since court hearing... came to our house... it suited better to meet at home... EMP happy to see his dad... made comment about refusing a drink in front of EMP to the effect that KB usually drank a lot... sends 'humorous' texts as if we are friends...</p> <p>(xxvii) request for school photos without asking about progress shows his desire to present perfect picture of himself</p> <p>(xxviii) was difficult and demanding about Christmas gift delivery</p> <p>(xxix) EMP enjoys his time spent with his dad... not expressed desire for more</p> <p>(xxx) until it is clear as to the reason why a judge in another jurisdiction does not deem it appropriate... to have unsupervised contact... must be some risk... wish to keep status quo.</p>	
<p>28 February 2020</p>	<p>Statement of DG:</p> <p>(i) Believes contact to be of good quality</p>	<p>182 - 187</p>

	<ul style="list-style-type: none"> (ii) when attended home, EMP wanted to sit on couch with me (iii) did tell Cafcass of the other jurisdictions proceedings (iv) denies being controlling in relationship (v) did discuss abortion but respected decision (vi) do pay child maintenance - went to court - no order made against me (vii) in 2017 did not stop contact but KB said go through solicitors, could not afford solicitor so I attended mediation - KB not willing (viii) did used to engage in rough play but since attended family therapy, parenting progs and psych assessment... gained insight (ix) did not laugh when EMP hurt or make light of being ill (x) did use physical chastisement previously with older children, would no longer do this (xi) would not make EMP eat or do anything uncomfortable (xii) other jurisdictions proceedings delayed by the M in those proceedings (xiii) not have extreme views - am member of Fathers for Justice - accepts should not have made reference on social media to 'wee mans mum' and wont again (xxxi) would like overnight contact and holidays with EMP. 	
March 2020	Hearing - Lay Justices - Order - Contact once every 3 weeks in community for 3 hours with mother's presence being removed after one more contact. KB wanted contact to be in her presence for 6 months. Review hearing listed on 15 July 2020. Reasons (B58 to B62) indicate complaint by KB of father pulling EMP's arm hair.	60
17 March 2020	Text Exchange: DG: I'm here. KB: As I said on Thursday, EMP doesn't want to come alone to this contact. He hasn't changed his mind. DG: Please send him out and stop this nonsense. KB: I won't send him out when he doesn't want to come. DG: Don't do this KB KB: EMP does not want to go alone with you. I offered a solution but you refused that. He hasn't changed his mind. He's not coming out. DG: That's a piece of nonsense. DG: please send him out. DG: I've waited 15 mins and I presume that you really are going to do this. KB: As I've said, he does not want to come alone. DG: I'm sorry you are doing this.	205
15 July 2020	Hearing - Lay Justices - contact has not taken place. KB asserts because of Covid 19 pandemic. DG disagrees. Skype contact	68 - 71

	reported to be enjoyable. Court orders fortnightly direct contact in community for 3 hours each time. Final Hearing listed on 16 September 2020. It appears contact did not take place as KB appealed and order was stayed pending appeal.	
August 2020	Screen shot of 'unknown male' during video contact. DG says it is tradesman and someone known to EMP (Mark) in August 2020.	444
04 September 2020	Statement by DG - Responding to KB's appeal - One period of contact went well. EMP was interactive and there was no boisterous play - denies coercive control - denies convo with EMP was inappropriate -asserts appeal is frivolous.	191 - 194
September 2020	Appeal hearing before HHJ Forrester. Appeal dismissed. Contact reinstated. September hearing vacated and listed on 24th November 2020. Order for contact: 2 supported sessions of 3 hours. On 18.9.2020 by M's brother, DG and on 3.10.2020 by HK or CC. From 17.10.2020 contact for 3 hours alternate Saturdays from 10am, collected from M's home. Video contact to continue. FH on 16.9.2020 vacated and re-listed in November 2020.	72
15 September 2020	Police Log: visit to KB at home. "KB is not being controlled or coerced in any way, what she describes as DG not sticking to child care arrangements, sporadic contact with his son and irregular payments of money are civil issues." NFA	6566
September 2020	Facebook posts by DG "I discovered that my ex has been stalking me on Facebook, so I thought I would use the opportunity to say a friendly hello and thanks for stopping by. If anyone else on my friend's list wants to wish her well, please leave a nice message for her in the comments." Some replies.	443
15 October 2020	Police Log: KB attends Police Station asking for advice. DASH risk assessment. NFA as KB "did not disclose anything that is concerning". In answer to relevant questions the following is recorded: <i>"Are you very frightened?"</i> No <i>What are you afraid of? Is it further injury or violence (Please give an indication of what you think abuser(s) might do and wo whom)</i> No <i>Has the abuser(s) ever threatened to hurt or kill the children/dependant?</i> No <i>Has the abuser(s) ever threatened to kill you or someone else and you believed them?</i> No <i>Has the abuser(s) ever attempted to strangle/choke/suffocate/drown you?</i> No	6568 - 6572

	<p><i>Is there any other person that has threatened you or that you are afraid of? (if yes, consider extended family if honour based violence, Please specify who)</i></p> <p>No</p> <p><i>Do you know if the abuse(s) has hurt anyone else (children/siblings/elderly relative/stranger, for example. Consider HBV. Please specify who and what)</i></p> <p>No</p> <p><i>Are there any financial issues? For example, are you dependent on the abuser(s) for money/have they recently lost their job/other financial issues?</i></p> <p>No</p> <p><i>Has the abuser(s) ever hurt children/dependants?</i></p> <p>Information received in relation to DG assaulting his oldest son by kicking him.</p>	
16 October 2020	School record: "During a PSHE lesson about 'Overcoming Challenges'... EMP told the class that he wanted to challenge himself so that he is not afraid of his Dad on his own. He said that he was worried that he may kidnap him as he has not seen him in two years. He told the class that mum is going to court to sort it out."	290
19 October 2019	School record of conversation with mum... says police are going to be speaking to EMP about his dad pulling hairs on his arms and legs and dismissing it as horseplay" School discusses supporting EMP as it is not like him to talk about his dad so obviously on his mind.	298
21 October 2020	Application by DG for enforcement. Asserts KB refused to hand EMP over for contact on 17 October 2020. Asserts KB speaking to EMP during video contact prompting him.	74 - 81
21 October 2020	HHJ Forrester transfers case to District Judge level.	88
22 October 2020	School recording in aftermath of aborted 'unsupported' weekend contact. KB says EMP is worried dad may not bring him back as he talks about going on holiday to Norway etc. KB says DG still pulling at hairs on his arms and legs and EMP does not like it.	299
16 November 2020	School record - EMP okay about seeing forthcoming weekend as 'HK' would be there. Convo with KB. DG has made an application for enforcement and it's becoming stressful. DG not agreeing to being accompanied.	299
November 2020	Hearing before DJ - Recorded that "mother is not opposed to contact in principle but states that it is too soon for the child for unsupported contact and EMP is very frightened of his father... father disagrees... contact to be supported by HK." Contact	89

	reinstated in HK presence.	
08 December 2020	Statement by DG - asserts difficulties created by KB re: unsupported contact taking place.	200 -207
22 December 2020	<p>Statement by KB:</p> <ul style="list-style-type: none"> (i) Asserts EMP did not want to see DG alone (ii) asserts observation that DG said in text 'sorry I was doing this' is a threat (iii) denies parental alienation - EMP was frightened and did not want to go (iv) has always facilitated supported contact (v) have had numerous convos with EMP explaining why his father wants to see him (vi) EMP remains frightened by what may occur (vii) Asserts stipulations made about during video calls is DG continuing to 'control what EMP and I do in our own home'. (viii) DG inciting friends and family to comment on social media - told EMP about sister - DG has a court order in another jurisdiction that restricts this information be shared (not correct) (ix) I cannot comply with Court order when son frightened - cause must be investigated. 	208 - 211
28 January 2021	EMP wrote at school, when asked to identify something that is a 'challenge' - "seeing my dad on my own"	291
05 February 2021	<p>School Record EMP became very upset during an RE discussion about conquering fear with love. A member of staff took EMP to one side, and he said that his only fear/worry is seeing Dad.</p> <p>He said that he sees Dad twice a month, but it is something he is scared of. He mentioned a time when the police were called when he didn't want to visit and he didn't want to go and cried the rest of the day. He also said that once he was so scared of seeing Dad he tried to hide between the back seats of the car. He also recalled a time when he was in a car with Dad and his stepbrother and Dad shouted for no reason. Feels safe at home with mummy.... wrote card to mum independently "My mane (sic) fear right know (sic) is seeing my dad because of the thing's (sic) you told my (sic) and the thing I remember I just want to tell you I am scard (sic) of my dad : ("</p>	292 - 295 and 218
08 February 2021	School report - Email from Dad asking for details of what EMP has said at school. Email reply relates 5 Feb interaction with EMP. Dad replies saying police last called when EMP too young to remember and he would have been 3 ½ when he was last in a car with his brother. Sends school links to two videos of last contact.	300

March 2021	Hearing before DJ - Records mother appealing HHJ Forrester. Mother agrees video contact and contact supported by maternal uncle or HK. R 16.4 Guardian appointed.	B93
March 2021	Application by mother to alter appointed Guardian. Application dismissed. Reasons recorded on order (DJ).	94
25 March 2021	School record - EMP writes that he is scared of seeing his dad and now the Court are saying I have to see him even if I don't want to. Note of discussion in after school club - EMP says he does not want to see his dad because he called the police on him... discussion about video calls... dad thinks mum is around... [dad] likes to get his own way...	301 and 320
26 March 2021	School record - KB discusses stress of court proceedings with school.	302
16 April 2021	Note taken by CG1 of conversation with KB. Records: 'She talked about an incident when she said DG had forced her to have sex, later saying it was consensual. She stated that she had told me about his controlling behaviour when we met first and I agreed but said that I followed this up and she had not mentioned the above'	Supplied in evidence
22 April 2021	School Concern Form completed by teacher – “When asked about Easter EMP said he went to see his dad... wasn't very happy going but pretended he was and that his mum wasn't allowed to see him when he saw dad. I reassured him that mum wouldn't intentionally want him to be unhappy and that she loved him.”	324
June 2021	Re-timetabling order (DDJ) as EMP has not been seen by Guardian.	97
21 June 2021	Child Welfare Report (other jurisdictions proceedings). X expressing view that he wants to progress contact with his father but by 'baby steps'.	6529
01 July 2021	Cafcass Analysis by CG1. “Contact continues to take place face to face on a fortnightly basis initially, if he is willing, supported by HK. In the interim a referral will be made to Carlisle contact centre and other jurisdictions contact centre to support contact. In this way for two months contact can take place fortnightly with the first being in Carlisle and the second being in in the other jurisdiction. Whilst this may feel like a backward step this allows for EMP to see that there are others there able to support it. The couple are unable to agree a family member or friend who is willing to provide support beyond KB's friend HK. This will allow for the progression of four contacts.” Thereafter recommends progressing to unsupervised contact. “This case has been before the	502 - 516

	<p>court for a disproportionate length of time given that there are no safeguarding issues in relation to EMP spending time with his father and the recommendations for continuing arrangements have not changed in that progression to unsupervised contact remains appropriate.”</p> <p>The report references “KB has alleged domestic abuse within her relationship with DG and has stated that she does not feel this was considered sufficiently in the first report. At point 21 in the Section 7 report filed on 10/09/2019 the issue of controlling behaviour was noted, by myself, and not seen as a barrier to contact. Whilst I note that I am unable to establish the veracity of Ms KB’s allegations, described to me, in relation to DG, if she feels that DG’s behaviour has been threatening or controlling this will have an impact on her emotional wellbeing and sense of safety in relation to DG.”</p>	
July 2021	Hearing before HHJ Dodd. Recorded mother concerned that not all of the other jurisdictions papers are before the Court. Issues recorded as 'whether the child should have unsupervised contact ... [and] the level'. Fortnightly contact ordered supported by HK. Further order for those papers.	106 - 107
3 August 2021	KB contacts ‘Women Out West’ (DA support organisation). Informs them of the rape allegation (no details recorded).	Supplied during Evidence
31 August 2021	<p>Women Out West initial assessment documents. Recorded:</p> <p><i>“Have you experienced rape / sexual violence / abuse within the past 12 months? Who, what, when, where, why, how? Has this been reported to social services?”</i></p> <p>Not within the past 12 months but KB spoke about consent being an issue that her ex did not understand within the relationship.</p> <p><i>Have you experience domestic violence / verbal / physical abuse within past 12 months Who, what, when, where, why, how? If yes and by partner, also complete a MARAC checklist. Has this been reported to social services?”</i></p> <p>DG continues to try to control through the family courts for example phone contact allowed he states it must be a video call and mum must not be in the room and has to be when he wants it if he has to change it KB is expected to adhere to his demands.”</p>	Supplied during Evidence
02 September 2021	DG statement. Issues with contact. EMP becoming upset and going early. Think KB talking negatively to him. Alleged sabotaging behaviours by KB. Says behaviour borders on EMP needing to be moved to his care... not really want... just wants quality relationship.	213 - 217
06 September	School record - EMP discusses fall whilst with dad - says Dad was	302 & 325

2021	hugging him goodbye and he had then pushed him on the floor. Welling up. KB says she was unaware and HK was present. HK reported that EMP had fallen off picnic bench when saying goodbye. Could not see both of Dad's hands.	
18 October 2021	DG statement - reporting further difficulties with contact.	239 - 240
18 October 2021	<p>KB statement:</p> <ul style="list-style-type: none"> (i) "I have informed the CAFCASS Officer (and those previously involved) of DG's controlling behaviours. These concerns have been dismissed on several occasions. I was asked during a previous telephone hearing to describe the abuse, whilst DG was present on the hearing telephone call. I have been given no confidential opportunity to raise these concerns as EMP was present when CAFCASS came to our house, and DG was on the phone when asked by a previous Judge." (ii) DG has controlled me for a decade. DG would give me 'silent treatment' as punishment. (iii) Posted degrading photos on social media and related them to me. This is doxing. Refers to drinking comment (above). Would order food for me. (iv) "when we spent nights together, would place his hands on my clavicle, and move them towards my throat to 'see how high and how long I could tolerate this for'. I have a phobia about things on my neck, I do not like it being touched. DG thought it funny to place his hands on my neck whilst lying in bed until I was terrified. This is controlling, coercive and violent behaviour." (v) In 2017, prior to him ceasing all contact with EMP, DG "sexually abused" me... (details incident para 17 and 18) [what she in fact describes is an act of rape in which she alleges DG has sex with her when she came out of the shower in circumstances where she said no]. (vi) alleges gaslighting by claiming falsely that solicitor's letters have been sent (vii) DG hid income to pay less KBS (viii) continued to pull hairs from EMP arms and legs (ix) EMP has become more reluctant to have contact - raised in school and concerned DG may call police. 	247 - 252
01 November 2021	<p>Cafcass Analysis by CG1:</p> <p>"I note that KB refers again to the issue of domestically abusive behaviour and coercively controlling behaviour by DG. This was addressed in my case analysis of 02/07/2021 and I reflect on this</p>	519 - 526

	<p>below. Both parents allege controlling behaviour of the other and the evidence before the court in the form of text messages would, in my opinion indicate, that it is KB who seeks to control the contact. In relation to her assertion in paragraph 6 that DG has used the court processes to cause stress, it should be noted that it is KB who has prolonged the court processes through her failure to adhere to the Orders as made.”</p> <p>“KB states that she has had no confidential opportunity to raise her concerns about the alleged domestic abuse. I would note that her statement has added further allegations which have never been raised during these proceedings I spoke to KB on the telephone at 7pm on 28 April 2021 and I had expressly requested a time when we could speak when EMP was not present offering daytime or evening appointments, after EMP was in bed.</p> <p>KB suggested the above arrangement as one of two and this was agreed. My understanding during that conversation was that EMP was not present and I gave Ms KB every opportunity to describe the abuse, which she did and this was addressed at paragraph 5 in my report of 02/07/2021. Whilst I am unable to comment on the veracity of the allegations I state once again, that this should not have an impact on the arrangements for EMP spending time with his father.”</p>	
01 December 2021	Text message from DG to KB suggesting "Thought I would like to do present opening at yours"	423
December 2021	Facebook exchange with third party DG posts "The wee man's mum was deliberately difficult yesterday when I was trying to arrange delivering his presents. She kept moving the goalposts until I gave up. He will get them in January now."	424
20 December 2021	Hearing before HHJ Dodd (later subject to successful appeal). KB applies for the case to be 're-tracked' pursuant to PD12J (i.e. that there should be a finding of fact hearing concerning at least the allegation of rape). Application denied. Contact, progressively increasing, ordered.	111
30 December 2021	Police Log - KB reports "My ex-partner has been controlling from 2011 and sexually assaulted me in 2017"	6577
08 January 2022	Vulnerable Adult report (Police). Rape allegation by KB.	6581
08 January 2022	Police Initial Contact and Assessment Booklet. KB alleges incident of rape when getting out of shower between January and April 2017.	6597
30 January 2022	KB ABE Interview (summary in judgment below).	6608 - 6609 (also Video of

		ABE interview)
05 February 2022	Text: DG to KB: asking for proof that EMP has Covid	434
14 Feb 2022	DG text to X "If you find anything incriminating on my Facebook please don't pass it on."	430
19 February 2022	DG Facebook post "The wee man was made suitably miserable by his mum before contact then she sabotaged it by waving him over to her car after fifteen minutes and driving off with him."	428
March 2022	KB statement in response to enforcement application.	253 - 264
Feb/March 2022	Facebook post by DG complaining of not seeing EMP.	433
Feb/March 2022	Facebook post with picture "This is as close to the wee man as I got today."	438
11 March 2022	School record - KB relating to the school that police had placed EMP on vulnerable persons list. This has not been verified.	305
19 March 2022	DG sends message to KBs normal phone instead of 'SafePhone' supplied by DA service and previously agreed for use viz-a-viz texts between DG and KB.	436
01 April 2022	Text: DG to KB: asking for proof that EMP has tonsillitis	435
06 April 2022	DG statement regarding enforcement application. States court should consider EMP living with him because of disruption in contact.	266 - 276
11 April 2022	Child Welfare Report (Other jurisdiction's Proceedings). Reporter expresses surprise at tone and nature of language used by DG. X (now 14) does not want contact with his father to carry on. The reporter is of the view that, in essence, contact between X and his father is too stressful for X and given his age and his ability to speak to X via social media, it would be better for there to be no order. In relation to Y, who has no relationship with her biological father, should have supervised contact as Y has no real understanding of her biological parentage.	6541
19 April 2022	KB statement in response to enforcement application: (i) DG took photo of EMP and I in our car. (ii) "Despite raising domestic abuse at each and every hearing, the court has ordered contact, unsupervised, and continues to put me in a position of vulnerability	277 - 281

	<p>by enforcing handovers take place. As EMP primary caregiver, I am forced to encourage him to attend contact with a man who sexually assaulted me, and to reassure EMP that his father is a kind, loving and caring man. This is torture."</p> <p>(iii) "[I] ...continue to be harassed by the Applicant, to the extent that the Police are involved. This harassment takes the form of the Applicant taking photos of me in my vehicle and uploading them online."</p>	
01 May 2022	DG send message to KBs normal phone instead of Safephone - KB texts 'you have been told not to use this phone'	436
05 May 2022	School record - KB relating contact at weekend. KB says DG taking photos – KB says EMP did not want to go for 4 hours but DG reported to say 4 hours or nothing so KB left - EMP shaking and felt sick – KB recorded as being 'very obviously stressed'.	307
05 May 2022	School record - conversation with CG1 - EMP withdrawing at school despite previous secure relationship with teacher.	307
05 May 2022	Cafcass Analysis by CG1 (issue of enforcement application).	530
7 May 2022	Text to KB from FF (DG's partner) asking for advice because they have had a 'big argument'. Not pursued.	439
20 th May 2022	DG interviewed by police about allegations of rape. Denies having ever had sex with KB without her consent.	Video
09 June 2022	Cafcass Analysis by CG1 (issue of enforcement application).	532
21 July 2022	Text messages: DG to KB "You should be utterly ashamed of yourself, but you're such a narcissist that you won't understand that you are the problem. I won't be down because you are a troublemaker and you don't give a toss about EMP's relationship with his dad."	431
02 August 2022	Judgment of High Court allowing Appeal – known as CM v IP [2022] EWHC 2755 (Fam)	6793
04 August 2022	DG send message DG sends message to KBs normal phone instead of Safephone. KB asks to stop using this phone and blocks number.	436
01 September 2022	DG sends email saying will not pay costs of appeal until after enforcement costs decided and then pay balance.	437
01 September 2022	Domestic Abuse Report (Police). KB reports messages re contact.	6589
08 September	Email re: contact centre - gives KB's personal number rather than	440

2022	Safephone number	
17 September 2022	KB reports DG to police for harassment by phone.	6647
November 2022	Directions before HHJ C Baker - Fact Finding hearing ordered and other directions made, including other jurisdiction's proceedings disclosure request. Supported contact centre for 1 hour every fortnight.	126
09 November 2022	School record - KB reports contact taking place at contact centre in and EMP is emotionally drained after contact. School says EMP not talking about dad since September and EMP seems much more settled and emotionally resilient (gives example). KB said EMP picks up on her emotions, checks on her but not as much now but still does it.	310
15 November 2022	School record - deletes comment from DG on school Facebook page as mentions EMP by name which is against school policy.	310
05 January 2023	Statement from HK (Family friend) – sets out his perspective on the contact he supervised: <ul style="list-style-type: none"> (i) DG often late (ii) have to persuade EMP to participate (iii) sometimes cut short at EMP's request (iv) DG has described KB as greedy (eating multiple pizzas) in front of EMP (v) DG often talks about X, EMP says half-brother - DG remonstrates as does not like term 'half-brother' - DG talks about holidays and family and remind EMP of good time with X (vi) DG talks of EMP going into army when EMP says he does not want to (vii) relates not being able to see what happened when EMP fell off picnic table (viii) KB very stressed due to court proceedings (ix) EMP anxious prior to contact and extremely reluctant to participate (x) EMP has told me he is genuinely frightened DG will hurt him if they are alone. 	333
06 January 2023	Statement from DB (KB's friend) - Flat mate when in hospital accommodation and remain friends - KB good parent to EMP - Witnessed lack of support by DG - "Most upsettingly: I have heard first hand KB's description of the sexual abuse she suffered from, in her own home, where she lives with EMP, at the hands of DG. The effect on KB was devastating, and continues to be, as the findings of the police investigation are still pending. KB is a victim of domestic abuse."	337

<p>16 January 2023</p>	<p>Statement from KB (erroneously dated 2022):</p> <ul style="list-style-type: none"> (i) statement prepared without sight of police or some other jurisdiction disclosure (ii) "DG has over the past decade, exerted verbal abuse towards me, has humiliated me in public forums and places, gaslit me, he has used non-fatal strangulation as a game when seeing how long he could leave his hands around my neck before I would panic too much, he raped me in 2017 in my home with my son present downstairs." (iii) continued campaign of abuse through courts claiming parental alienation (iv) 2011 - if no abortion, would roll me in carpet and throw me in the river (v) silent treatment and told to hide in bedroom when friends came (vi) verbal abuse about weight, looks and inadequacies during pregnancy (vii) inadequate financial support and ceased in 2014 (viii) verbal abuse; taking of photographs without permission; uploading images onto social media; defamatory posts identifying me on social media; humiliation in public places; leaving telephone messages on our house phone; and the unrelenting legal proceedings. DG has called Police to motor way Services to speak to me as I would not hand over our son who was extremely upset on the day. I am still 'told' by DG to just 'hand him over and go' or 'just open the car door and kick him out' (ix) 'games' whereby he would place his hands on my scapula and move them higher up my neck until I panicked, (he laughed and found this highly amusing) (x) incident of rape in 2017 (xi) Christmas 2022 - dominance by sending EMP a large gaming chair that does not fit in our home (xii) DG told me I have ignored solicitors' letters, however, upon contacting the firm he was using at the time, no letters had been issued (xiii) DG has registered EMP on an ancestry register, due to DG's maternal family living out of the jurisdiction. However, DG has recorded EMP's mother as someone else, absolutely eliminating me as his mother. Not only is this extremely upsetting, it is further gaslighting (xiv) contact not a positive experience for EMP 	<p>340</p>
<p>16 January 2023</p>	<p>(Erroneously dated 2022) KB statement re: enforcement application concerning contact in October 2020.</p>	<p>347</p>
<p>23 January</p>	<p>DG statement:</p>	<p>358</p>

2023	<ul style="list-style-type: none"> (i) KB has been colluding with SA in the other jurisdiction proceedings as there are references from Cafcass report (ii) makes allegations about the report written (iii) carpet comment was on-line, pre parties meeting and both joked about it (iv) no threats made about termination (v) only called the police once at handover (vi) accusation over gaming chair is absurd (vii) alleges gifts not relayed to EMP (viii) asserts that there is an obvious difference in EMP wishes and feelings over time indicating influence (ix) previously unaware of any error on the ancestry register says texts were not threatening (x) comments on police disclosure (xi) responds to HK's statement - pizza discussion as part of wider discussion with EMP, explains hand incident and army comments were in jest and have never claimed to have seen active service (xii) comments on school records (xiii) alleges KB phones police whilst EMP could hear and unnecessarily (xiv) alleges joint trip with DG to Science Centre in Feb 2020. 	
February 2023	Directions - Fact finding hearing listed for 17 to 20th April 2023 before HHJ Baker.	138
16 February 2023	Application by KB to change child's surname.	143
February 2023	First Tier Tribunal Decision (CMS) - Appeal allowed. Unearned income variation to £55k for tax year 2019/2020 for DG.	447
28 February 2023	<p>KB statement:</p> <ul style="list-style-type: none"> (i) during the relationship punished by silent treatment (ii) 2011-2013 very on/off relationship (iii) first mention court proceedings when not allow EMP to go to Spain (iv) off duty nurse made referral to SS - DG being aggressive to X, thereafter EMP + DG only in my company (v) in 2017 DG raped me - kept contact to minimum (vi) between 2017 and 2019 - no contact from DG (vii) paras 24 to 26: 2012 to 2013 would put hands on me, compressing neck. At his home. (viii) paras 29 – 35: slapped my buttocks leaving a mark - act of dominance 	386

	<ul style="list-style-type: none"> (ix) paras 36 to 40: whips DG with riding crop (x) paras 41 to 46: DG found it amusing to flick EMP's penis when changing him, would verbally abuse me and tell me I was oversensitive if complained (xi) paras 47 to 59: DG raped KB - EMP downstairs - sent text messages after. In April 2017 we went on Centre Parcs break - made sure in room with EMP - made sexual advances. Boxed it off in my mind (xii) paras 60 to 66: threat to roll up in carpet and put in river (xiii) para 67 to 70: chilli cheese given to child incident (xiv) paras 71 to 74: bit EMP's fingers until cried (xv) paras 75 to 78: rough play with older son, including biting [in 2012] (xvi) paras 79 to 85: shouting at KB if fall asleep during films (xvii) paras 86 - 90: pulling hairs from EMP's arms etc (xviii) paras 91 to 96: DG pushing EMP over (xviii) see xvi above [Feb2019] (xix) paras 102 to 109: allegation of pushing EMP off picnic table (xx) paras 110 to 117: see xv above (xxi) paras 118 to 121: took buggy so had to carry EMP - called KB pathetic - sneered at me saying I was awful and pathetic (xxii) para 122 to 126: called me 'mongo' 'retard' and changed Facebook profile name to Hodor. Insulted weight (xxiii) para 127 to 129: laughed at EMP if hurt (xxiv) paras 130 to 134: DG uploaded pictures and change profile picture to Facebook account without permission (xxv) paras 135 to 142: forced me to attend initial appointment at abortion clinic. DG did not attend any antenatal appointments (xxvi) para 143 to 146: silent treatment during pregnancy (xxvii) para 147 to 150: made me hide in bedroom when friends visited (xxviii) paras 151 to 156: attended registration of birth (xxix) paras 157-160: underpaid maintenance (xxx) paras 161 to 164: told KB to get used to being on her own with EMP (xxxi) paras 165 to 169: chose food for me (xxxii) paras 170 to 175: April Facebook message saying he was taking EMP on holiday having not been in contact before (xxxiii) paras 176 to 183: withheld payments since April 2014 (xxxiv) paras 184 to 190: 2014 - DG calls police during handover (xxxv) para 191 to 198: uses court proceedings to pursue KB 	
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	<ul style="list-style-type: none"> (xxxvi) paras 199 to 203: DG forces EMP to eat dinner in hallway because he is watching TV (xxxvii) paras 204 to 207: DG lied about solicitor’s letter (xxxviii) paras 208 to 214: 2018 - looking for accommodation in the county having previously sought employment at place of work (xxxix) paras 215 to 219 silent treatment used as punishment (xl) paras 220 to 228: raises parental alienation from 2019 (xli) paras 229 to 233: suggests that he should come to KB's home to open Christmas presents (xlii) paras 234 to 241: sniggering in Court during 21st December hearing (xliii) paras 242 to 246: DG hand phone to stranger during video contact (xliv) paras 247 to 251: EMP reports seeing a woman in bed during video call (xlv) paras 252 to 257: DG tell older son not to share anything with KB (xlvi) paras 258 to 267: DG demands proof that EMP is unwell - Feb 2022 (xlvii) paras 268 to 275: DG not paid costs order from appeal (xlviii) paras 276 to 280: May 2022 - DG’s partner contacts KB asking for advice (xlix) paras 287 to 291: DG not using 'safe' number and gives KB's personal number to outside agencies (l) paras 292 to 295: not paying KBS (li) paras 296 to 301 - incorrect family tree putting X and Y’s mother as EMP’s mother on ancestry website (lii) para 303 to 307: false declaration of income for purposes of KBS - Feb 2023 (liii) paras 308 to 312: lying to EMP about the past. 	
<p>14 March 2023</p>	<p>DG Statement:</p> <ul style="list-style-type: none"> (i) denies the majority of the allegations and asserts (ii) KB has temper and was concerned suffering with post natal depression (iii) KB gave permission for Spanish holiday then withdrew it (iv) regularly shared a bed but limitations on entering home imposed in July 2020 (i.e. not 2017) (v) once did leave a handprint on bottom during sex at KBs consent and did use riding crop during sex but consensually (vi) KB reciprocated inappropriate name calling (vii) says text re silent treatment is out of context (viii) says EMP put on naughty step to finish breakfast – not inappropriate (ix) the room enquiry was nothing to do with KB and did not want to antagonise her 	<p>450</p>

	<p>(x) says photo of unknown male during video contact was tradesman in August 2020 and EMP had met him before</p> <p>(xi) says he had Covid during first appeal hearing</p> <p>(xii) website error is not of his making and he was unaware until KB pointed it out</p> <p>(liv) photos taken as evidence of attendance at contact.</p>	
06 April 2023	Hearing - Transparency Order made - Embargoed for review at conclusion of proceedings by reason of criminal investigation.	
undated	Statement by CG1 - stepping down from case.	537
17 – 20 May 2023	Court hears evidence and adjourns part heard. Makes orders for forensic examination of mobile phones belonging to KB in the possession of the police.	166
4 th July 2023	Resumed finding of fact hearing where KB and DG recalled in light of the disclosure of the ‘Viber’ messages.	
1 st August 2023	Written submission received on behalf of the Children’s Guardian.	
29 th August 2023	Written submission received from DG.	
29 th August 2023	Written submissions received from KB.	
11 th September 2023	Response Submission from DG. All the parties were given the opportunity to make further submissions in writing after the initial written submissions. The Guardian also made short response submissions.	

Evidence

21. The Court bundle now stands at 6808 pages. I have read them all. In addition, as referred to in the chronology above, some additional documents were produced during the hearing which are mentioned in the above chronology.
22. KB was also the subject of a video recorded police interview (ABE Video Interview) which I have watched several times. DG was also video interviewed by the police and I have watched that interview several times.
23. I heard live evidence from:

- a. HK – a friend who supervised some of DG’s contact with EMP.
- b. DM – a longstanding friend of KB
- c. KB – the mother
- d. DG – the father

The Legal Framework

24. Prior to the commencement of this hearing Dr Proudman supplied me with a note on the law. The parties’ written submission also contained reference to case law. I have read and am grateful for them all.
25. In considering the factual disputes in this matter I have had particular regard to the following matters:
 - a. The burden of proof lies with the party who seeks to assert that a disputed fact occurred.
 - b. That burden must be fulfilled to the civil standard of proof. That is to say on the balance of probabilities. If I determine that something is more likely than not to have happened, then that fact is established. If I determine that something is more likely not to have happened, then the fact is not established. It is not open to me to conclude that something ‘may’ have happened and mere suspicion does not establish a fact.
 - c. In some circumstances the ‘burden’ of proof may provide the answer in that a conclusion that a fact is equally as likely as it is unlikely – the 50/50 scenario - means that the person asserting the fact has not proved that it took place and therefore it did not happen.
 - d. The person responding to the allegation being asserted against them does not need to ‘prove’ that it did not happen although of course their response to any allegation is relevant to my overall evaluation of the evidence as is the exploration of alternative scenarios.
 - e. It is dangerous to speculate and findings of fact must be based on evidence – although in family proceedings ‘evidence’ can mean a wide variety of things including oral testimony of someone who was present to proper inferences drawn from circumstances and surrounding established facts as well as corroborative evidence.
 - f. A court can and indeed should take into account and weigh both the ‘micro’ and the ‘macro’ – that is to say the individual detailed evidential building blocks relating to a fact being determined *and* the wider picture relating to the general factors, background and context. The interrelationship between all the evidence available to the court must be considered and weighed carefully.
 - g. Oral testimony is important however a judge must always be careful to ensure that full account is taken of all the circumstances. The Court must consider

what corroborative or indeed contradictory evidence exists that relates to the fact being asserted.

- h. Oral testimony can be misleading – a truthful person may be a ‘bad’ witness in terms of, for example, their ability to speak coherently and certainly, calm their nerves, the ease with which they are confused or the illogicality of their thought processes. Conversely a dishonest person may be a good witness. On a more complex level, ‘dishonesty’ in the context of relating past events must be carefully considered. Someone can relate something that is wholly untrue whilst entirely believing it to be factually correct. Human memory is fallible – the brain does not make a video recording that is indelibly stored forevermore, rather it recalls snap shots that are dependent for their accuracy not only upon the circumstances and influences that applied at the time but can also be altered convincingly by subsequent events, perceptions and emotions. Those memories will still be ‘true’ to the person relating them despite the fact that they may bear little or no resemblance to what actually happened.
 - i. Likewise, I remind myself that the considerations related at (h) above also mean that I must guard against ‘trivial persuasion’ i.e. the notion that evidence related in meticulous detail is in some way more reliable because of that detail. It is not necessarily so.
 - j. With respect to dishonesty, a conclusion that a witness has lied about a particular event does not automatically mean that everything they say is tainted by that dishonesty. A more intricate consideration of the reasons for and motivations behind dishonesty (deliberate or mistaken) must be considered when evaluating the effect of a ‘lie’ on the veracity of their other evidence (*R v Lucas* [1998] QB 720 and *AB v CD & Anor* [2021] EWHC 819 (Fam)).
 - k. Inherent probabilities may assist but do not change the legal standard of proof. Indeed general inherent probabilities in allegations of rape are particularly problematic as the ‘likelihood’ of either rape or a false allegation of rape is difficult to identify meaningfully – see for example the analysis of the available data contained in Chapter 1 section C of *Radcliffe, Gudjonson, Heaton-Armstrong and Wolchover (eds.); Witness Testimony in Sexual Cases - Evidential, Investigative and Scientific Perspectives, Oxford University Press, 2016 pp20 – 24.*
26. In circumstances where allegations of both domestic abuse in the form of coercion and rape are alleged, I have reminded myself of the following:
- a. The court must consider carefully patterns of behaviour, rather than looking at individual incidents in isolation;

- b. '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;
- c. '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;
- d. If a pattern is identified, it must be evaluated objectively but in the context of the whole picture. If a pattern of behaviour falls within the definition of coercive and/or controlling behaviour the intention of the alleged perpetrator is immaterial;
- e. As Peter Jackson LJ's comments in *Re L (Relocation: Second Appeal)* [2017] EWCA Civ 2121 (para 61), cited with approval in *Re H-N* at para 32 to the general effect that:

"... not all directive, assertive, stubborn, or selfish behaviour, will be 'abuse' in the context of proceedings concerning the welfare of a child..."
- f. I have taken account of the observations and references highlighted by Knowles J and cited with approval by the Court of Appeal in *Re A v B and C* [2023] EWCA Civ 360 (paras 11 and 12) concerning stereotypical approaches to allegations of sexual assault.

The Structure of this Judgment

27. I have decided to deal with the evidence that I heard thematically, that is to say a consideration of the issues that I consider relevant and ultimately enable me to reach conclusions of fact. During the many hours of consideration I have given this case I have at various times approached the issues from different angles. Judgments are by their very nature linear documents that have to start and end somewhere. Such a format inevitably leads to the impression that the facts have only been analysed in the order in which they appear. However, in this case I have been careful to undertake my analysis taking into account all relevant matters and from varying 'starting points' before reaching a conclusion as to the facts under consideration.

EMP

28. It is a risk during finding of fact hearings that the child becomes lost in adult disputes despite the fact that the whole purpose of a finding of fact hearing is to

reach determinations in service of the welfare of the child who is the subject of the application. Accordingly, I think it appropriate to start with a short pen picture of EMP and to deal with those matters that *directly* affect EMP first.

29. In that regard, I found the evidence of HK enlightening. He was an honest and reasonably objective witness. He was trying his best to mediate a difficult situation whereby he had volunteered to accompany EMP's time with his father on an entirely voluntary basis for several months.
30. He described EMP to me. He told me that EMP is a lovely little boy. He is funny with a cracking sense of humour. He loves to tell jokes. He loves reading and is crazy about Pokémon. He is generally outgoing, active and interacts well with other children. He is a sensitive young man. He is eager to please. He is generally happy and smiling.
31. He was generally happy to see his father although anxious and very worried about spending time with his father on his own. HK had seen him in tears at the prospect of being on his own with his dad and considered his fear at the prospect genuine.
32. His school describes EMP in very similar terms to HK: sensitive, intelligent and curious and there are references in the school records to him generally being happy. In an uncontentious statement provided by the Head of EMP's school, he is described as "... kind and caring. He is very sensitive and likes to please. He likes structure and can struggle when things are outside his comfort zone. Generally, he is a boy that is happy and likes to share his interests and things that he has enjoyed. When he is unhappy, it is very clear as he will either become visibility upset or withdraws into himself."
33. DM describes him as 'inquisitive, sensitive and balanced'.
34. None of the above descriptions contradict anything either parent has told me about EMP. There is nothing within the papers to suggest that in general terms EMP's mother, as his primary carer, has provided him with anything other than an excellent level of care whereby he has been her focus and priority since he was born.

DG's Conduct - EMP (and X)

35. As it transpired during evidence there was little substantive dispute between the parties as to many of the complaints KB made about DG's behaviour towards EMP.

36. During evidence DG did not dispute that there were times when he pulled EMP's leg hair and caused him pain.
37. The incident referred to during the contact supervised by HK when EMP fell off a bench and cut his hand was as a consequence of DG pushing EMP, although it was, according to him, part of a game and the consequences exaggerated by KB.
38. It is reasonable to observe that KB has been consistent about expressing concerns regarding DG's approach to EMP. In 2014 she told Cafcass that she would wish him to 'soften his approach' and was clearly aware of some of the issues that had been raised with respect to interactions with X, including over aggressive play fighting and physical chastisement, issues which she repeated in her letter to the court during those first proceedings.
39. In later statements she related that when EMP was a baby he would 'flick' his penis when involved in changing or bathing him and said things like 'What's the golden rule? Always guard your tool'. I have little doubt this was precisely the sort of thing DG would do and say, considering it funny and being oblivious to how others, and in particular KB, may view it. I make it clear, I entirely accept that there was nothing sexual but few parents would, it seems to me, consider it appropriate behaviour.
40. In her affidavit given within the other jurisdictions proceedings (November 2018), she related complaints about DG's approach to children (feeding a friend's child chilli, standing on EMP's fingers and biting them when he was younger). She has described DG being physical with EMP in her company: pushing him over and laughing; putting him in a head lock.
41. DG told me in evidence that he sometimes would put EMP's fingers in his mouth in a playful way 'a nibble' that he did not remember being too hard or causing EMP pain at any point. In reference to X and DG biting each other (referred to in the other jurisdiction's proceedings), he observed that was something they did "playing silly buggers". DG was critical of social worker's (NS) observations of his contact with X (see chronology) but closer examination did not reveal any factual disputes but differences in interpretation and judgment. In essence, DG considered that NS had exaggerated her descriptions of some of his behaviour when spending time with X as "he loved playing rough."
42. He told me there were times with EMP when he would put his foot over his hand as a game. He may have accidentally stepped on his hand at some point but it was not intentional. He had pushed EMP but never to the point of him being upset or hurt. He denied receiving any pleasure from inflicting pain.

43. DG said and gave the impression of someone who considered that in essence his style of parenting was one whereby his aim was to ‘toughen up’ his children and build resilience.
44. I must bear in mind that I have not heard live evidence from any of the professionals who have reported in the other jurisdiction’s proceedings. I very deliberately have given no weight to any allegations made by maternal family members within those proceedings.
45. Nevertheless, what is striking about the father’s relationship with X and indeed the issues that were raised *by professionals and X* is that they contain sufficient similarities to be relevant to my overall assessment of this issue. In summary, DG was overly physical with X in a way that caused some observers to be alarmed. More importantly, doubts expressed by X about spending time with his father originated in X’s own experiences of his father.
46. Whilst he was giving evidence I formed the view that DG was unusually insensitive to the consequences of his actions on others, including EMP. From an objective perspective even DG’s own description of some of the, as he called them ‘shenanigans’, he engaged in with both children were obviously, to my mind, pushing the boundaries of acceptable parenting. For example, I struggle with the suggestion that pulling a child’s leg hairs is a legitimate exercise in resilience building and I was bemused by DG’s apparent inability to reflect on the fact that it was an action which was likely to imbue in a child a sense of dislike (of his father) and injustice. DG showed no indication that he had seriously thought about how EMP might feel about him as a consequence.
47. During this part of the live evidence, I did not have in mind the psychological assessment that was undertaken in the other jurisdiction’s proceedings but when preparing this judgment I reread the report prepared by Professor Thomas, Psychologist, (7th March 2018) within those proceedings. Professor Thomas opines:

“... there are respects in which [DG] does show lack of insight into why previous problems arose. From that point of view I found my interview with him somewhat frustrating. He has a strong focus on wanting the world to understand his reasoning for why a particular approach was used by him, and in doing so he shows little understanding of why problems at times arose... [DG’s] focus was not on other aspects of the situation of which a favourable view could not be taken. He had poor awareness of the fact that X was speaking about being scared of him, that it was harming him and indeed prejudicing his relationship with him, that he was too ready to chastise and that he was not showing good and balanced control of his own

emotional responses and his anger. In particular, he showed very poor awareness of other people's thoughts and responses and of making accommodations to how people might view things."

48. None of the above is to detract from the fact that Professor Thomas' overall opinion of DG was at that time positive.
49. However, some 5 years later and with the fact of the steps taken during those proceedings (e.g. Triple P Parenting course) DG still presented as similarly lacking in insight when it came to some of his behaviours.
50. There is a further comment made by Professor Thomas that resonates now:

"... [DG] is not the primary carer for X. He is the non-resident parent. Whilst he needs to set appropriate adult boundaries, he must do so within that role. Part of the role requires him to adopt the spirit of what [another professional] has rightly raised, to defer to disciplinary approaches that are consistent with [X's mother] and agreeable to her. Parents will have different approaches to discipline even in families which are not separated, but they need to work within a mutually agreeable context, and in that respect it is [X's mother] as primary carer who holds the key prerogatives."

51. In my view this is a concept that DG still shows little appreciation of.
52. Further, If EMP grows up in a home where his primary carer does not engage in rough horse play, push him, pull his leg hair or laugh at him when he falls over, an attuned parent has some cognisance of the likely reaction a child will have when their primary carer does not engage in such activities. Additionally, a sensible person considers how the primary carer might react to such activities.
53. I came to their view that DG had not given proper consideration to KB's complaints about his treatment of EMP, which were largely objectively justified. It does not seem to me that difficult for an adult to choose to mollify their behaviour so that they do not act as described. DG spoke about these issues as if they were a point of principal i.e. he would toughen up *his* son despite knowing that EMP's mother would not approve.

EMP's wishes and feelings

54. Whilst considering this case from the perspective of those matters that directly affect EMP I will turn now to analyse EMP's expressed views. DG accuses KB of 'Parental Alienation' about which I will also reach conclusions below.

55. I am acutely conscious that the term parental alienation is controversial and debates around the issue often speak in terms of it being a ‘theory’ or ‘science’. As the higher courts have made clear it refers to something that is neither of those things and in fact is not a particularly useful short-hand for the necessity in some case to examine the *factual* matrix that underpins a child’s expressed wishes and feelings.
56. Neither party disputes that *at present* (i) EMP’s views about spending time with his father are generally negative and (ii) that the contact that was taking place at the contact centre was a miserable and unenjoyable experience for EMP and indeed DG. In fact, at the conclusion of the first part of this fact-finding exercise I indicated that I considered it inappropriate for contact at a contact centre to continue until such time as the factual issues had been determined as it did not seem to be benefitting anybody, especially EMP. Both parents agreed and I suspended contact so that it could be reconsidered more holistically at the conclusion of this exercise.
57. When CG1 visited EMP at home in preparation for her first report dated 9th September 2019 EMP told her that he wanted to see his dad [485].
58. EMP’s expressed wishes are recorded by both the school and CG1 on 17th October 2019. The schoolteacher recorded:
- “EMP confirmed he wants to see Dad more. He would like mum to be with him. He would like someone with him for the first 6 or 7 times...”
59. CG1 reports his wishes and feelings in very similar terms and indeed EMP wrote a letter to the judges’ which reads:
- “Dear Judge,
I would like to see my daddy more.
I would like to see him with my mummy.
Maybe after 6 or 7 times I would be ready to see him on my own.
EMP”
60. The next time EMP’s wishes are related by a non-parent is a year later (19th October 2020) in school where the record indicates:
- “During a PSHE lesson about 'Overcoming Challenges'... EMP told the class that he wanted to challenge himself so that he is not afraid of his Dad on his own. He said that he was worried that he may kidnap him as he has not seen him in two years. He told the class that mum is going to court to sort it out.”

61. This observation is after KB had visited the police on 15th October 2020 and also reported that EMP was concerned about seeing his father because he feared his father would not return him home [6558].
62. I pause to observe that this particular fear was not rational. DG has never, in relation to any of his children, failed to return the children home or retained them inappropriately and it is a fear that could have been dealt with by appropriate reassurance. KB opines to the school that the thought may have come from DG talking about trips out of the country and holidays during the limited contact DG had with his son. HK confirmed that this was something DG would speak about. Both KB and DG could easily have reassured EMP that at that time this was not going to happen.
63. In November 2020 EMP told the school that he was happy seeing his dad because ‘HK’ would be present.
64. In late January and early February 2021 EMP (see chronology) relates to the school that seeing his dad on his own is a ‘challenge’ and he is scared of his dad because his dad had called the police. The only time DG has called the police is the occasion when EMP was 3 years old at a hand-over in August 2015, which I comment on in more detail below.
65. In April 2021 EMP told school that he saw his father at Easter and ‘pretended’ to be happy about it.
66. In September 2021 EMP discussed the fall whilst with DG and HK at school. He says Dad was hugging him goodbye and he had then pushed him on the floor. EMP was ‘welling up’. When discussed with KB, she says she was unaware and HK was present. HK reported that EMP had fallen off picnic bench when saying goodbye. Could not see both of Dad's hands. As discussed above, DG did push EMP.
67. This incident is of some interest. DG points out in his supplemental submissions “he had a small cut on his hand, which was not noticed by KB and she didn’t know about it until two days later when the school told her.” The mother, in fact, asserts that she did see the injury but did not know how it had been caused. It is a point made to demonstrate that the incident cannot have been particularly serious in terms of any injury – which if I may say I think *misses the point* that in the context of previous complaints and observations about DG’s rough behaviour towards his children, it is the effect on EMP and the way he thinks about his father, not the fact that he was not significantly physically hurt. Additionally, DG is correct, EMP did not tell his mother that his father had caused the cut (whom, I

have no doubt, would have immediately been alarmed and complained) but did tell his school. It can be readily inferred from the school records that EMP's distress was unlikely to have been because of the physical injury but his confusion and upset that his father had acted in a manner which was so alien to him.

68. I also found HK's evidence (related in the chronology above) convincing and very likely to be accurate.
69. As set out in the chronology, there are further discussions concerning EMP in May and November 2022. In November 2022 the school observe that EMP seems more settled. In the discussion on 9th November 2022 KB acknowledges to the school that EMP picks up on her emotions and checks on her.
70. It can be seen therefore that what emerges from EMP's expressed wishes and feelings is quite a complex picture. He was initially wanting to see his father but largely unfounded fears (kidnap, the police) quickly take hold. However, his father also continues to engage, to a limited extent, in overly physical behaviour and I have already commented at length above on DG's attitude to the same.
71. I have concluded that *some* of EMP's reluctance to spend time with his father on his own stemmed from his father's approach to discipline and what his father considered 'fun'. As set out above, DG's approach to parenting being so radically different to that practiced by his primary carer it is very likely that the part of the picture EMP has in his head of his father is negative. His father is someone who at times treats him in a way that EMP is likely to have found so alien and disconcerting that it is likely to have instilled in him a feeling of trepidation. It is notable that even when EMP was saying he wanted to see his father he wanted someone present with him. I have little doubt that he thought this would dampen his father's more extreme behaviours.
72. If the adult relationships had been better, I have little doubt that some of the fears expressed by EMP could have been addressed. Certainly, EMP had no rational reason to be scared that his father would kidnap him and fears about the police could also have been assuaged without much difficulty. I find it difficult to accept that an incident that occurred once when he was [a young child] of age needed to retain the significance it appears to have had 5 ½ years later unless 'kept alive' for him. I have little doubt that KB has relayed to EMP her own feelings about that incident and in non-specific terms DG in general.
73. Likewise, if DG was a more attuned parent (in the way discussed above) he could and would have curbed his more extreme behaviours. It is difficult, for example, to characterise a parent pulling the hairs out of a child's legs as anything other

than objectively abusive behaviour, even if it is abuse at the lower end of the spectrum.

74. Accordingly, *some* of EMP expressed wishes and feelings are rational in that they are routed in EMP's direct experience of his father and *some* I have little doubt are as a result of the negative views of his primary carer.
75. That of course is not the end of the issue.
76. Having concluded that *some* of EMP's wishes and feeling have as their source KB's view of DG, the remaining question concerns the rationality of KB's opinion of and reaction to DG.

Financial Issues

77. Courts have in the past tended to separate the issue of finances and children. Any suggestion of a link between paying child maintenance or other financial contributions and any 'right' to a relationship with a child has often been eschewed or indeed, simply ignored. Likewise, arguments that link the non-payment of adequate maintenance to some loss in any 'right' to time spent with a child have been equally disregarded. The legal principle that issues relating to child contact and child support are entirely separate is longstanding (see e.g. *R v Halifax Justices ex parte Woolverton* (1981) 2 FLR 369: court should not order remission of arrears of child maintenance as a penalty for failure to allow access) and has been reaffirmed in various contexts (see e.g. *Re H (Parental Responsibility: Maintenance)* [1996] 1 FLR 867: failure to pay child support does not disqualify father from having parental responsibility order).
78. However, the advent of a greater understanding of the concept of coercive control in the context of disputes about the care of a child does, in my view, cast such considerations in a different light. Indeed, in this matter KB asserts that DG's alleged failure to pay adequate child maintenance (and comply with the costs order made by the High Court following the appeal decision) are an aspect DG's alleged attempts at coercion which is part of the wider picture of her assertions about his behaviour. An understanding of the role that finances potentially play in issues surrounding the upbringing of children, possible power imbalances and potential economic abuse that can ensue or be in some way exploited by the other parent is undoubtedly receiving greater acknowledgment – see for example [*Independent review of the Child Maintenance Service \(CMS\) response to domestic abuse*](#) by Dr Samantha Callan, leading to [proposed changes](#) to the Child Maintenance Service.

79. So, whilst I of course do not seek to draw a direct link that implies something as simplistic as ‘paying for contact’ through child support (or visa versa) in the appropriate case a more nuanced consideration of the circumstances around which disputes about finances have occurred and the action of each parent may require examination.
80. Furthermore, adult actions have adult consequences that give rise to legal and moral responsibilities in particular where the risks of those actions are known. Whatever one’s view about what is often now referred to as ‘recreational’ or casual sex (and for what it is worth I do not mean to imply *any* moral judgment or disapproval whatsoever with respect to consenting adults having sexual relations with each other either casually or within a relationship) the risks associated with individuals of the opposite sex engaging in sexual intercourse are only too well known. The risk of pregnancy can be mitigated by either individual taking precautions, but no precautions are guaranteed to be successful. Absent evidence of deception (and there is no such assertion in this matter) both adults are aware of the potential consequences.
81. The consequences of an unplanned pregnancy (either because of recklessness or accident) are potentially life long. In this matter (as is often but not exclusively the case) it is the mother who had little choice but to take on the primary responsibility of those consequences. Such responsibility involves much joy and I have no doubt at all, having heard KB’s evidence, that KB has no regrets concerning EMP’s birth as she clearly loves her son unconditionally and without regret. Neither is there evidence to suggest that the role was assumed unwillingly. Nevertheless, the advent of a child requires enormous sacrifices, changes and commitments that were borne primarily by KB, is being clear that it was never DG’s intention to care for EMP on a day-to-day basis by, for example, living with KB or assuming, after birth, a shared care arrangement.
82. The case law that eschews the suggestion of a link between child support and a relationship with the child of course reflects the reality of both the law with respect to child maintenance i.e. the ‘liability’ arises at birth irrespective of whether the parent liable has a relationship with the child, and the reality of a hard but irrefutable fact of life i.e. actions have consequences and those consequences may involve a commitment that is long-term and exists irrespective of the ‘reward’ one receives in return for that commitment.
83. In *this* matter a number of facts are undisputed:
- a. DG and KB did not plan for KB to become pregnant.

- b. DG and KB never jointly planned to live together and there was never any dispute that KB is and has always been EMP's primary carer.
 - c. However it was obtained (a disputed issue I shall refer to later) both parents have Parental Responsibility for EMP.
84. The legal and moral (by which I mean child-welfare based) obligation to EMP existed from the time EMP was born as it does for every parent, whether that parenthood came about by design or accident. There is no suggestion anywhere in the papers that KB has done anything other than meet that obligation.
85. KB asserts that DG has not met that obligation and further that he has used it as a way to exert pressure upon her.
86. Certainly, there is evidence within the bundle from text communications that DG made an erroneous link between paying money towards EMP's upkeep and the amount of time he spent with EMP: 17th August 2014: "I've already told you I'm not paying anything while you limit my contact with him."
87. When there is text discussion about the issue on 16th June 2016 [2113] where money is raised (and KB's lack of it and the fact that she has to pay back her dad for childcare costs because "He already subs part of what you don't pay") and KB says to DG "the reality is that you stopped paying childcare over two years ago which equates to a huge sum of money which I have paid for you." DG's responses are notable in that:
- a. He does not dispute the assertion;
 - b. He seeks to accuse KB of making 'digs' and making 'stupid comments' to 'ruin the mood'; and
 - c. Observes 'No, it's always on your terms. KB rules always.'
88. Earlier, on 16th May 2016 [1061], DG tells KB that he is going to spend a relatively substantial sum of money on a course instead of going on holiday. KB observes that he could instead 'start paying back for EMP and that he could 'take on some of your responsibility'. Again, DG does not dispute the assertion or engage with the point that KB is making but accuses her of making 'digs'.
89. Whilst KB complains that DG does not fulfil his responsibilities when it comes to child support payments, there is no evidence within the written documentation of KB reversing the situation i.e. making payment of child maintenance a condition of seeing EMP.

90. DG's evidence on this issue was unimpressive. He agreed that in the early days he 'may well' have said something like £30 per week was sufficient contribution from him to EMP's upkeep. He did not dispute that he had later agreed to pay half the child-care costs for EMP but was 'pretty sure' he had paid more than just 4 months' worth. It was frankly obvious from his responses that he had stopped paying after the issue of him taking EMP on holiday (the progenitor of the 2014 set of proceedings) had become an issue.
91. After voluntary arrangements failed KB sought payment through the CMS. That has led to considerable dispute concerning DG's declarations of income and the assessment undertaken by the KBS. DG asserted (and I accept) that at one point the deductions being made left him in a precarious financial situation. Of course, it has to be borne in mind that DG has responsibilities to two other children as well.
92. However, what came across in his evidence in a way which was entirely consistent with the text evidence was his belief that his responsibility to pay maintenance for EMP was as a matter of principle indivisible from any actual or perceived restriction imposed by KB on his time with EMP. I came to the view that he was motivated to limit his liability and therefore on the balance of probabilities is likely to have sought to minimise his declared income to the CMS to some extent, although it is not possible for me to calculate the degree of any discrepancy in the absence of detailed financial information.
93. I am also entirely satisfied that there were considerable periods of time prior to the involvement of the CMS when DG did not meet his reasonable (and affordable) responsibilities with regard to paying sufficient maintenance for EMP. Whilst I have no doubt that there have been times (for various reasons, including legal costs) when DG has suffered financial difficulties, I detected from him no indication whatsoever that he had ever made any attempt to prioritise his financial responsibilities to EMP and am quite satisfied the opposite is true. As the text discussion referred to above shows and as was apparent from the tenor of his evidence, there were clearly times when different choices could have been made that would have allowed for either greater contributions or the satisfaction for previously given commitments.
94. DG's evidence on the issue of maintenance for EMP displayed a lack of empathy with respect to the consequence of his recalcitrance with respect to meeting his financial responsibilities. At no point did he appear to consider the issue from KB or EMP's perspective. Whilst this was doubtless partly as a function of the fact that he believes that KB has acted unreasonably with respect to his relationship with EMP this is not a situation where it has ever been suggested that KB would

spend any maintenance money ‘inappropriately’ or ultimately for anything other than EMP’s benefit.

95. I remind myself that experience suggests that whilst as a matter of law an attitude that links the payment of maintenance to the ‘reward’ of contact is not appropriate, such observations are common socially in particular amongst non-resident parents and that there is a superficial if erroneous attraction to the logic underpinning that approach. Consideration of whether DG’s actions viz-a-viz this issue amount to actual or attempted financial abuse in the context of coercive control must be assessed in light of the wider evidence.
96. At the conclusion of the appeal the High Court judge made a costs order against DG in the region of £5,000. DG has not paid those costs, something that KB raised with him and about which he was cross examined.
97. On 1st September 2022 DG wrote in an email to KB “I don’t have the money to pay the costs *in one go* and, since the current enforcement costs are of a similar value, I will wait for the enforcement hearing and pay the balance instead” (my italics). The ‘in one go’ implies an ability to pay something.
98. That is a stance he has maintained throughout these proceedings since the adverse costs order was made. Without taking enforcement steps, KB is unable to compel DG to pay the costs.
99. As the chronology shows, DG has issued two enforcement applications. One such application fell by the wayside as a consequence of the appeal decision (i.e. it was an application to enforce an order that had been successfully appealed) and has been formally dismissed. The other relates to an earlier order (11th September 2020) that has not yet been determined. Of course, the reason it has not been determined is because the issues in this finding of fact hearing are inextricably linked to any non-compliance with previous orders. Put briefly, any findings I make in this hearing will of course inform the reasonableness or otherwise of any alleged failure to comply with previous child arrangements orders.
100. Whilst I understand the logic of DG’s approach, it does not withstand closer scrutiny as it relies upon speculation about the outcome of a future event (i.e. the enforcement application and any costs determination consequent upon that outcome) about which there can be no certainty. He should, in my view, have paid it (in ‘one go’ or not) or at least as much of it as he is able well before now, especially in light of the delay in determining the enforcement application by reason of the finding of fact hearing being undertaken.

101. Whether DG's approach to this issue is another example of financial control or misguided expediency remains to be determined in the context of the other issues in the case.

The Relationship

102. KB makes a number of allegations about DG's behaviour during their relationship which she asserts forms a pattern of behaviour that can lead to a conclusion that DG exercised coercive control of her.
103. Sometimes several individually minor incidents when viewed as a whole reveal a pattern of behaviour, something to which I will return later in this judgment. However, a judge determining such issues must also be careful not to confuse conflict with coercion or control. No meaningful relationship, however well suited (and this one was not), escapes without disagreement, argument or conflict. No child, whether raised by parents who remain together or separated can (or necessarily should) be spared all adult conflict. It is of course a matter of context and degree.
104. There were a number of allegations made by KB which, whether taken individually or as part of the overall picture could not objectively be considered as behaviour that was part of 'a range of acts designed to render an individual subordinate and to corrode their sense of personal autonomy' notwithstanding the fact that there was little factual disagreement about them.
105. Further, and whilst this may at first blush appear to be criticism, I hope that later in this judgment it will become clear that it is not in fact meant as such, there were times when I was left with the very clear view that KB was simply unable to be objective with respect to much of DG's past behaviour and wholly believed that the most negative possible interpretation was the only permissible one. There were a number of occasions when I was left with the very strong sense that KB had retrospectively evaluated some action undertaken by DG and formed as negative a view about it as possible. I will examine why I have concluded that has happened later in this judgment.

Consideration of a termination

106. KB alleges that DG tried to *force* her to have a termination when she became pregnant with EMP. It is agreed that DG did suggest an abortion when they discussed the matter. Given that EMP was unplanned and consequent upon a very short physical relationship it is no surprise at all that the possibility was suggested. Whilst it is my personal view and a matter of law that it is always ultimately the mother's choice, I see no reason why a prospective father cannot make the suggestion and is a difficult conversation many couples have had to negotiate.

107. KB alleges that shortly after the conversation in a pub, DG, whilst stood near the river said words to the effect that if she did not have an abortion he would roll her up and throw her in the river. DG does not dispute that was said, but asserts it was a joke said in terms of “what do you think I’ll do, roll you up and thrown you in the river?”
108. KB did in fact visit an abortion clinic, on her own, but did not proceed with the termination. She told me that she only went because DG wanted her to go.
109. Having seen DG at length, I am quite satisfied that it was just the sort of observation he would make and that it was not meant as a threat at the time. Neither do I believe that KB took it as one when it was said. It is clear that KB did not like the fact that DG had suggested a termination. It is something that is mentioned in the text messages [5400 – 5404, 25.9.16]:

KB: Did you want [X’s mother] to get rid of Y like you wanted Me to get rid of EMP?

DG: I didn't know for sure she was pregnant until she was five months. She was back with her partner.

KB: That's not an answer

DG: I'm not getting dragged into a fight about abortion.

KB: So EMP is the only one you didn't want.

DG: It won't matter what I say. I love EMP as much as X and I will love this little girl just as much as them. I don't want to have another fight because you want to get upset about something.

KB: But only two out of three were wanted

DG: You're just trying to pick a fight out of thin air.

KB: Hardly. I asked a simple question and now I have the answer.

DG: You've got whatever is swimming around in your head.

KB: You didn't ask her to get rid of either baby. It's Crystal clear

DG: I didn't even know she was pregnant and she has denied it was mine up until now! It's nothing of the sort, you're trying to upset yourself.

KB: I'm not upset. Your messed up bulldozing your way through life and women has nothing to do with me.

110. In my view, DG did, to use KB’s words at the time, “ask her” to have an abortion.

DG being on the birth certificate

111. KB alleges “DG continually asked when I had arranged to register EMP’s birth and insisted he would be attending. At the time, I thought he was caring and wanted to be involved in EMP’s life. I did not realise that by putting his own name on the birth certificate, DG would have parental responsibility for EMP. Importantly I was not aware that I could not include DG on the birth certificate if

he was not present... This was a powerful move by DG to ensure he had parental responsibility as he has done, it enable him to claim 'parental rights' over EMP in the first Cafcass report... DG insisted on attending to ensure that he could enforce his perceived 'rights'..."

112. In evidence KB did not tell me of any substantive pressure being placed on her by DG to attend at the registration.
113. I have little doubt that KB's perspective on this issue is seen through the lens of retrospective negativity consequent on events that have happened subsequently. Any father, if he is willing to attend, is able to be registered as a child's parent. The fact that parents disagree at a later date and that in such circumstances the fact of being on the birth certificate imbues the father with some *minor* advantage does not by reverse logic show that the event was calculated at the time.
114. The reality is that absent parental responsibility DG would have been able to make an application to court at any time by reason of being the child's biological father and the absence of parental responsibility would have little practical difference. For example, the presence or absence of parental responsibly makes no difference to the legal responsibility to pay child support.
115. In any event, if DG had not had parental responsibility for EMP he would have undoubtedly been given it by the court during the 2014 proceedings had he needed to apply for it, as at that time he unarguably met the (easily attained) qualifying criteria by reason of (a) being the child's biological father and (b) having contact with him.
116. Having detailed above those aspects of KB's assertions that I do not consider can objectively be considered as contributing to the general assertion that DG was abusive to KB, I turn now to those aspects that require more detailed analysis.

DG's attitude to KB and the Relationship

117. KB makes a number of allegations about DG's conduct during and after their relationship.
118. KB asserts that there were periods of time when DG would either disappear or not speak to her. Further, she alleges he acted in ways that distanced himself from her, for example shortly after EMP's birth making her hide upstairs when his friends came round if she was at his house. In a general sense DG denies those assertions.
119. There is *some* contemporaneous evidence to support KB's accounts.

120. In the text exchanges (2635) KB, in the context of a discussion about the possibility of DG returning to a relationship with X's mother, says "You spent nine months not telling people I was having your [child]." DG's reply is "A totally different situation which you are well aware of."
121. Clearly DG and X's mother resumed a relationship in 2015 for about 6 months.
122. There are references in the text messages to 'silent treatment' although when read in context they relate to short periods of a lack of text communication.
123. In January 2018 there is the following text exchange:
- DG: Silent treatments are a punishment, I just don't want to fight with you since you appeared to be itching for a scrap on Saturday
KB: Cool beans
DG: I'm not there for you to use as a punch bag because you're feeling low or whatever
KB: I'm not here for you to kick back and have a snooze whilst I'm sorting EMP out either.
124. However, I formed the view during evidence that (i) the text was in fact mis-typed as from the context it is clear DG meant to say "Silent treatments are *not* a punishment..." and (ii) clearly refers to a relatively short period of time given the reference to having met on Saturday.
125. It is also clear that from approximately April 2018 to April 2019 DG saw very little of EMP and was largely absent until he made an application to this court. There had clearly been a dispute between KB and DG in early 2018 because they could not reach agreement about the nature of DG's time with EMP. KB accuses DG of 'gaslighting' her by telling her that his solicitor had sent two letters (which turned out not to be true) about EMP to her. I am satisfied this was on the balance of probabilities a deliberate lie in order to try to impress upon KB his desire to see EMP in a way he found acceptable – i.e. not with KB present, something that appears to have been a consistent feature in 2016 and some of 2017 and for longer.
126. On balance I was persuaded that there was probably at least one occasion, I suspect very early on in the relationship, when DG did ask KB to go upstairs when his friend came round. I think it is also likely that DG did say to KB that she should get used to spending time on her own. DG's working arrangements meant that he was working away during the week and it seems clear in retrospect that there was no real intention that he would change his life to enable the couple to

live together. I think it very likely that he did say to KB that she should get used to being alone because that was factually correct.

127. The following incidents happened (as detailed in the chronology above), by which I mean there is little *factual* dispute about them taking place but their interpretation, meaning and effect are the subject of disagreement:
- a. DG would get annoyed with and shouted at the mother when she fell asleep whilst watching films;
 - b. accessed and uploaded derogatory or uncomplimentary comments/images on the mother's social media account;
 - c. Made derogatory comments about the mother on his social media in circumstances where, at least, mutual acquaintances could view them;
 - d. Called the police on 21st August 2015 during a contact handover;
128. DG told me in evidence that it was annoying when the couple were spending time together watching something and KB fell asleep. He denied excessive shouting but I am satisfied he would in all likelihood raise his voice to wake KB up. KB explained that this was at a time when she was caring for a very young EMP (effectively on her own most of the time) and of course she was tired. I came to the view that DG's actions were probably thoughtless and about meeting his own desire to watch a film whereas some thought might have enabled him to appreciate from KB's point of view why his demands that she stay awake were probably misguided. However, I am also quite sure that such disagreements could be seen on sofa's up and down the country.
129. The mother also alleges that DG spoke to her in derogatory terms. As well as the examples of using derogatory terms in the text messages (as set out in the chronology) the mother also asserts occasions when he said things to her in person, made comments about her weight and called her pathetic (for example, when using a buggy).
130. The text messages are revealing in respect of the issue of how KB and DG spoke to each other. As set out in the chronology, as a bare fact it is correct to say that there are times when KB uses similarly derogatory terms towards DG (mongo, spaz etc). There are clearly times when it is said in jest and has become, to some extent as Mr Gilmore suggests in his written submissions "the way the parents communicated with each other".
131. However, the incidents of it being DG's 'go-to' insult, in jest or otherwise, are *far* more prevalent.

132. After any sort of sexual relationship had undoubtedly ended, there is text message evidence of DG being directly insulting to KB e.g. 28th September 2017. No texts have been produced in evidence that show the mother speaking to the father in such terms even at times when they have clearly not been on positive terms with each other.
133. During evidence when challenged about the above criticisms of his behaviour DG presented as unempathetic to the mother's perception of repeatedly being referred to in such terms.
134. I was left in little doubt that there were times during the relationship and after when DG use such terms not in jest or as part of their usual communication.

Social Media

135. We live in a world where social media has taken on considerable importance in people's lives. It is a significant part of everyday interaction. I do not think it is an exaggeration to say that for many it is the primary way in which they communicate with friends and family. The result is that saying something on social media is like standing in a room full of people who know that person and saying it to each and every one of them. In a way it is even more significant because what has been said remains for everyone to see either because it remains posted or because someone can screen-shot it.
136. The family court is regularly faced with the problem of disputes about children being played out in public or semi-public view in a way that is harmful to both the adults concerned and the children.
137. Altering someone else's social media profile without their permission is wrong. The consequences and reach are unpredictable. I understand entirely why KB was highly disconcerted by DG doing this. DG did not seem to grasp its' inappropriateness, again in essence considering it a joke.
138. Likewise, DG had posted things, that could be seen by friends, that make reference to EMP (not directly but easily identifiable) that brought into at least semi-public domain not only the adult dispute but also the child concerned. Again, the reach is unknowable, as are the consequences. Parents of other children may see them as may the children themselves. Before anything can be done about it, EMP himself could get to hear or see them, only to his emotional detriment.
139. During his evidence DG expressed some remorse and understanding of some similar observations made to him when being asked questions. What happened subsequently was enlightening.

140. First, however, it is necessary to put this part of the evidence in context.
141. In one of DG's statements he had exhibited a number of posts from Dr Proudman on the website formally known as Twitter. They were accompanied with commentary making it clear that, in summary, DG considered that Dr Proudman was a misandrist.
142. At an earlier hearing I indicated to DG that unless he was asserting that Dr Proudman had posted anything that breached her professional obligations viz-a-viz this case (which she had not) then I would not engage in satellite issues that were of no relevance to the issues in the fact-finding exercise.
143. Notwithstanding those observations during the finding of fact hearing Dr Proudman started to ask questions about the issue on the basis that DG accusing her of being a misandrist was relevant to DG's attitude to women in general. I prevented cross-examination on this point not least because as noted above it related to satellite issues of little relevance and probative value.
144. For reasons I will explain later, the finding of fact hearing involved a period during which the matter was part-heard. During that time DG decided to post comments on Dr Proudman's Facebook page.
145. In those comments DG, whose name is not anonymised, makes a number of comments about Dr Proudman. For the purposes of this judgment I am not concerned with those although the stupidity of engaging or trying to engage on social media with an advocate for another party *in the middle of an ongoing case* should be obvious. I should observe that Dr Proudman does not at any time engage with any of DG's comments or comment upon these proceedings at any point and indeed told me that in fact her Facebook page simply regurgitates posts from her other social media accounts and therefore she was unaware until someone else pointed them out that DG had posted on that particular platform.
146. However, the comments extend to DG posting the following:
- “False accusations in a family court against men require no proof. Toxic feminists like Dr Proudman or organisations like Women's Aid push the persecution of men and encourage women to lie and make false accusations just to get their way. Z and KB, you know who you are.”
147. Z is the initial of X's mother and KB is the initial of EMP's mother. Given that DG's name is not anonymised it is reasonably foreseeable that anybody who knows any of relevant adults or children may well know who they are as well.

148. Further comments from DG on Dr Proudman's Facebook page, include:

“Are you saying that our mutual acquaintance should be prevented from seeing our son? I cannot wait to discuss this with you next week.”

“You're joking right!? You!!! Demanded my medical records to try and convince a judge that I was a risk, only to find that I'd only been to the doctor for joint problems! You then had the cheek to criticise me for suggesting that our mutual acquaintance might have had post natal depression when our child was born. You are a MASSIVE hypocrite!

149. It is clear, and DG agreed, that the reference to 'our mutual friend' is KB and the matters referred to are events that have occurred during this case.

150. I would add that I have seen no evidence of any social media posting being made by KB that are negative towards DG.

151. Whilst I accept that the events set out above relate to differing time periods where the parties' interaction and communication was against differing backgrounds, DG's propensity to use social media as some sort of battle ground, irrespective of the effect of doing so on KB and EMP, is well demonstrated.

DG calling the police

152. As related in the chronology above, there was one occasion when a handover at a service station did not go well. KB was concerned that EMP was upset and DG wanted her to put him in his car. He called the police when this did not happen. The police log for this incident is related in the chronology in full.

153. Parents often call the police when they have disagreements concerning contact between themselves and their children. Having seen it so often it is easy to become inured to such events and to view it as one of those things that happens when adults argue about children. It rarely leads to anything positive. Even when there is a court order, the police are not responsible, save in very specific circumstances, for enforcing orders and do little more than ensure that whomever has de facto 'possession' of the child is not mistreating the child.

154. In this case there was no court order at the time. It was a pointless exercise and an abdication of parental responsibility. None of the adults and certainly the child in this matter had previous substantive contact with the police and when KB told me in evidence that she found it frightening I have little doubt that she was telling the truth.

155. Having said that, I do not wish to over stress my criticism of DG for this *single* event. Experience suggests it is a common misconception that the police can help in such circumstances but the folly of that misconception is revealed by asking the simple question “what do you expect the police to do?” The police are not in my experience in the habit of forcibly transferring an children from one parents’ care to another when that child has committed no criminal offence and neither has either parent.
156. Of course, my task in this hearing is to consider this event in the context of the other evidence which I shall do below.

Text messages

157. It was apparent during the first part of the finding of fact hearing that KB had given the police a number of her mobile telephones (4 to be precise). They had not been analysed by the police. During her complaint to the police in which she alleged DG had raped her she asserted that shortly after the alleged incident there had been a text exchange referring to the incident in which he allegedly said words to the effect of ‘you loved it. You wanted it to happen too’ and when she said ‘no’ he replied ‘but it was consensual.’
158. The relevance of such an exchange is obvious. Cumbria Police very helpfully brought the mobile phones to court during the first part of the finding of fact hearing at my request. Unfortunately, for various technical reasons (broken phones/screen, no chargers etc) it was not possible to gain access to them.
159. I made an order providing for the phones to be examined by Cyfor. During 2016 and 2017 both parties told me that the majority of their text exchanges took place on an app called Viber although later more standard ‘texting’ took place. Indeed, the result of the Cyfor analysis were numerous text exchanges the vast majority of which were on that app. They covered the period May to November 2016. That of course did not include any texts from 2017 and therefore the exact contents of a text exchange which references the alleged rape have never been confirmed.
160. However, the text exchanges were revealing in themselves.
161. I have included considerable amount of detail about the text messages in the chronology above. I have read them all several times.
162. They paint a clear picture of the relationship at that time:
 - a. They continued to have a sexual relationship in 2016 although did not consider themselves to be ‘in’ a relationship. Sometimes, when DG came to see EMP

(which was almost universally in KB's company) they would engage in sexual activity.

- b. DG often suggests that they should have sex when he visits.
 - c. Sometimes, but far less often than DG, KB makes suggestions about sexual activity before DG mentions it.
 - d. KB often rejects the suggestion of having sex, and suggests that them having sex is a bad idea and expresses dissatisfaction at the emotional consequences for her of it happening. DG ignores and does not engage with KB's resistance to his advances. He persists in his suggestions and requests that they should or will have sex in the face of quite clearly expressed resistance on KB's part.
 - e. There is a very strong sense of KB wanting more emotional fulfilment from DG.
 - f. KB complains on a number of occasions that DG is too critical of her and acts in ways that are detrimental to her self-esteem.
163. When asked about these texts in evidence DG was not able to coherently explain why he did not engage with KB in the texts when she was clearly pointing out why, from her perspective, she did not want them to continue having sex. If one were to reduce the tenor of the texts to priorities, it would be fair to say that one of DG's main priorities was for them to continue to have what he regarded as (and this is my phrase) 'no strings attached' sex.
164. It is to be remembered that these text message come after:
- a. A relatively short initial relationship.
 - b. Court proceedings concerning DG's contact with EMP;
 - c. DG returning to some sort of relationship with X's mother, leading to X's mother becoming pregnant with DG's third child whilst she was in a relationship with someone else;
 - d. DG called the police in August 2015 when there was an issue at contact handover; and
 - e. A resumption of sexual activity between DG and KB.
165. Mr Gilmore, on the Guardian's behalf, describes the relationship as 'toxic'. Clearly the background to that point provides fertile issues for toxicity. Notwithstanding that these were two consenting adults, the objective picture at this time reveals what I consider to be a significant imbalance in the parents'

relative positions. KB is caring for their child effectively as a single parent in circumstances where financial and emotional support from DG is largely contingent on him being happy with the arrangements for him spending time with EMP. DG is repeatedly told that in effect, their relationship whereby they only have sex but nothing else was not what KB wanted and he repeatedly ignores or minimises KB telling him that the nature of their relationship was having a detrimental affect on her wellbeing. Further, he pursues the continuation of sexual activity with little demonstration of empathy or concern for the effect of that pursuit has on KB.

Other activity during the relationship

166. KB asserts three matters which she says are relevant to the allegations in this matter that concern in essence sexual or potentially sexual activity during periods when the parents were either in a relationship or were have consensual sex. They are:
- a. During 2012 and 2013 there were occasions whilst in bed together when DG would place his hands on her clavicle and move them slowly upwards, compressing her neck and gradually getting higher until she panicked and removed his hands;
 - b. Whilst pregnant and whilst at her mother's house DG slapped her on the bottom so hard it left a handprint and was painful. Later on he was dismissive of her telling him it was painful and said she 'bruised like a peach' and she 'loved it';
 - c. During 2012 DG used a riding crop to whDG KB, sometimes taking her by surprise when she was wearing jeans and sometimes as a part of their sexual activity. He would leave marks and consider it funny.
167. DG's written response denies the first allegation. He asserts that there was an incident when he did leave a handprint on KB's bottom but this was a consensual act during sex that was at KB's instigation. Likewise, the use of a riding crop during sex was consensual.
168. In evidence DG did say that there were occasions when he had put his hands on KB and gradually moved them further and further up KB's body towards her neck to see how high he could get until KB could tolerate it no further. He described it as a game whereby his aim was to be playfully irritating rather than anything sexual and he denied receiving any pleasure from causing her to panic. He said she would just bat his hand away and say get off. He denied ever putting his hands around her throat and indeed that is not what KB alleges.

169. The allegation concerning DG putting his hands on her neck was first mentioned in the statement dated 21st October 2021 in the following terms:

“DG, when we spent nights together, would place his hands on my clavicle, and move them towards my throat to ‘see how high and how long I could tolerate this for’. I have a phobia about things on my neck, I do not like it being touched. DG thought it funny to place his hands on my neck whilst lying in bed until I was terrified. This is controlling, coercive and violent behaviour.”

170. The last sentence is a matter for me to deal with in the context of all the other evidence. What is now clear is that the basic constituents of the *action* undertaken by DG are not in fact in dispute.

171. DG said in evidence that slapping KB on the bottom would be ‘the kind of thing he would do’ but said he did not remember leaving a bruise.

172. Likewise, the incidents involving the slap on the bottom and the use of a riding crop are not in dispute. They were not mentioned by KB until her statement dated 28th February 2023. However, again the fact that those basic *actions* took place are not in dispute. Their interpretation and meaning is.

173. Accordingly, the primary question with respect to all three allegations becomes – were they not mentioned earlier because they were in fact, as DG asserts, unremarkable at the time but have subsequently been given a retrospective negative or exaggerated meaning or were they, as KB asserts, part of a pattern of abusive behaviour?

The Allegation of Rape

174. KB alleges that in early 2017 DG was at her home spending time with EMP. She went upstairs for a shower and came out of the shower to find DG waiting for her. He then proceeded to have sex with her on her bed against her wishes.

175. KB has described the alleged incident on a number of occasions:

- a. The first recording of such an allegation being related is in fact to CG1 who made a note ‘She talked about an incident when she said DG had forced her to have sex, later saying it was consensual.’ This was on 16th April 2021.
- b. To Women Out West (Domestic Abuse Charity) that in answer to the questions ‘have you experienced rape/sexual violence/abuse within the last 12 months’ the recorded response is “Not within the last 12 months but KB spoke about consent being an issue that her ex did not understand within the relationship.”

- c. KB's statement 18th October 2021: He forced himself on me as I came out of the shower and was getting dressed. DG told me "you love this. You feel nice and tight" and asked "have you been practicing?" I begged DG to stop, told him this was not what I wanted, and he continued until he reached climax. DG followed this incident up a few days later with a 'Viber' telephone text message stating that what had happened 'was consensual'. This confirms my belief that DG understands and knows that it was not consensual."
- d. 30th December 2021: KB telephone police "my ex partner... sexually assaulted me in 2017."
- e. 8th January 2022: Vulnerable Adult Report to the Police: "KB is reporting that sometime in 2017 (roughly between Feb and April) she has been getting out of the shower and the suspect who was her partner at the time, has pushed her onto the bed. He has started kissing her and she has told him she did not want it. He has the used his penis to penetrate her without her consent."
- f. Also on 8th January the 'Initial Contact and Assessment Booklet' contains a 'First Account' [6600 – 6602].
- g. 30th January 2022: Video recorded interview of KB. Unfortunately there is no verbatim transcript of that video so below is my summary of the salient details [*I have redacted some of the detail of the published judgment so as to obscure elements of the account so as to minimise unnecessary distress to the parties and any reader*]:
 - i. DG visiting to see EMP. Going out with EMP so went upstairs for a shower. Using en suite shower.
 - ii. Came out of shower with no clothes on.
 - iii. DG was in the bedroom when KB came out of the shower.
 - iv. [Redacted]
 - v. [Redacted]
 - vi. [Redacted]
 - vii. I said you can't do this, EMP is downstairs.
 - viii. He said he had given EMP his Kindle. He won't know.
 - ix. He said [Redacted].
 - x. Remember thinking just get off me.
 - xi. [Redacted]
 - xii. [Redacted]
 - xiii. [Redacted] It was only a few minutes. He carried on as if nothing unusual had happened.

- xiv. I could have tried to push him off. I wanted and didn't want EMP to come up and not come up. If he'd come up he probably would have stopped. But I don't want him walking in on or seeing that.
- xv. Pushed me down as though this is what you would do.
- xvi. [Redacted]
- xvii. [Redacted]
- xviii. [Redacted]
- xix. Did not say anything to me he has come in the bedroom – did not say anything. Did not hear him come in the bedroom.
- xx. I said words to the effect of 'what are you doing'. I did try to get my towel, but he didn't let me get it. It was on the back of the door, which swings into the en suite.
- xxi. The [redacted] comment was so coarse.
- xxii. I asked him to stop. Said you can't do this. We can't do this. He sort of said well you love this, this is what you want. I was not sure if he meant sex or be together. I said to him I don't want it.
- xxiii. There was not a lot of conversation because there was not long.
- xxiv. I should have done something. I did not do anything apart from tell him.
- xxv. I should have tried to push him off.
- xxvi. I don't know why I didn't.
- xxvii. He's broken me. I'm quite a smart person. Good jobs, nice friends. Always looked after myself. Been independent. He's kinda broken that confidence or that assurance that I'm okay. I've bottled this away for years. There is all the family court stuff and for EMP sake. There was always consequences if you did something he didn't want you to do. The silent treatment. If I'd have done anything about it he'd come after EMP. So I boxed it away.
- xxviii. Seen him in court all day. Can't get him out of my head now. I don't know why I have got to tell my son he's a good guy. I can't do it. I know they not connected but I can't deal with the stress of being in his company. My only hope he does feel bad for what he has done.
- xxix. I got dressed. We were taking EMP out. I did see him a couple of times after that as well.
- xxx. EMP and I put a movie on. [Redacted].
- xxxi. Later text conversation in which he said 'you loved it. This is what you want to happen' and I said No it's not and he replied something like 'it was consensual though' I didn't say anything about it after.
- xxxii. I did not say no I don't want sex but I did say stop it, you gotta get off and EMP is downstairs. I said everything that meant I did not want sex.
- xxxiii. Relationship ended in 2013. He'd stay in spare room. Sometime his eldest boy was with him and they would stay in the spare room.

- xxxiv. He petitioned the court. Did not see him for months. No order but contact started.
- xxxv. Then in 2016 his contact with his eldest boy stopped because social services were involved. From that point on I was always with him because I could not find out what was going on.
- xxxvi. Seen him most months between 2016 and 2017.
- xxxvii. We split up round about November [2013] when I moved to Cumbria – probably still sleeping together at Christmas time.
- xxxviii. Been no sexual relationship between 2013 and 2017. Had seen him but were not having sex. We were not a couple.
- xxxix. Why could not get towel? He's in the way. Got to pull the door to get the towel.

h. In her family statement dated 28th February 2023 KB states:

“In 2015 the Applicant sexually assaulted me. He attend my home to see our child and I went upstairs to have a shower. I exited the shower and the Respondent (sic) entered the room and pushed me into the bedroom and onto the bed.

[Redacted]

He forced penetration without consent and said [Redacted] I asked and begged him to stop, but he continued until he finished.

On this occasion, I did not consent to sex with DG.

DG continued to bombard me with flirtatious messages after this encounter and kept on telling me that ‘I loved orgasms’ and that he had saved me from being a lonely old cat woman.

I asked him to stop contacting me and he stated “Oh it was consensual, you have to be careful what you say about this” referring to the above incident.

DG noted a few days later by Viber message that it was consensual which re-enforced to me that he knew it wasn't.

Through this encounter, I asked him to stop as EMP was downstairs. He told me he had given EMP his Kindle... I remember wishing that the battery would run out so that EMP would be shouting on me and DG would have to stop then.

This encounter played on my mind for years, as I knew I had not consented to sex with DG. I knew however that to report DG at this time to the police he would end up in him becoming very angry and aggressive in his pursuit of EMP and I.

...

I dealt with this encounter by boxing it off in my mind and by attempting to put physical distance between myself and DG. I did not have him back in our home.

We had a weekend break to Centre Parcs booked round the time of DG's birthday in April 2017, during the break DG tried again to make sexual advances on me. I made sure I was sharing a bedroom with EMP and I went

to bed at the same time as EMP. I should have cancelled this trip but EMP was looking forward to it and I had paid for it to allow EMP to celebrate his father's 40th birthday.”

- i. In evidence KB told me that:
 - i. Her statements were true. None of the parties decided to ask the mother *detailed* questions about the incident itself although in general terms KB maintained the accounts set out above (I will examine inconsistencies in the above accounts below).
 - ii. That she had felt violated and vulnerable as a result of the incident. She described herself as being embarrassed about what had happened, questioning herself about why she had let it happen and was unable to bring herself to tell people because she felt that she had failed.
 - iii. During the first part of the fact finding hearing she told me adamantly that the relationship had not been sexual in 2016 or 2017. However, when the text messages showed this not to be correct, KB said she was very bad with dates and the emotional turmoil of events that had occurred had contributed to her confusion with respect to dates.
 - iv. She also told me that there was an occasion when she had ‘spoken’ to a support agency about this incident in 2018 via their ‘chat’ facility.

176. DG has responded to the allegation:

- a. On 20th May 2022 DG was interviewed under caution by the police. He tells them:
 - i. No one could force KB to do anything that she did not want to do.
 - ii. It was not uncommon for us to have sex after she got out of the shower.
 - iii. We had a sexual relationship since December 2015.
 - iv. Do not recall particular day – we were having sex on a regular basis. Not a standout incident.
 - v. We had a bit of a toxic relationship prior to that. She found out I had been back with my ex. Her words were “If [D’s mother] can have some so can I.”
 - vi. End March 2017 we said it was unhealthy, this is when it ended. We went to Centre Parc in April for my birthday. I did say to her “Come on, its my Birthday” and she said “no, it’s not happening”. That was the extent of her refusal and I would say ‘okay’. I was a bit disappointed it was my birthday. But we had a great time.
 - vii. I have at some times said to her things she has said in her statement [the course sexualised comments alleged to have been made during the incident] but this was during consensual sex.

- viii. EMP has at times caught us at it and we pretended something else was happening.
 - ix. Was visiting at KBs house regularly at that time and spending time with EMP.
 - x. Never at any point said she wanted me to stop.
 - xi. Confirm KB's bedroom layout.
 - xii. Says that allegations are a mix of other events.
 - xiii. Alleges that KB considers everything abuse.
 - xiv. Says that if there are text messages, they would have been in a different context. He has looked for them but could not find them.
 - xv. Last time had sex was probably March 2017. We had a discussion about the fact that we should not be doing this.
 - xvi. Before lockdown her and I took EMP to the science centre together and had a good time. After that time it got worse and KB was 'upping the ante' as she was getting less of what she wanted.
 - xvii. Do not speak to her at all now and have to use Safephone. She does not respond to messages about contact so I send message to her normal phone when she takes a long time to reply.
- b. In his statement of 14th March 2023 he denies the allegation.
 - c. In evidence DG repeated his denial. He denied that KB had ever asked/told him to stop during sex and that he would have respected her wish if she had. He acknowledged that there *may* be a text message that mentions consent in some way but the context would have been different.

177. It was clear from DM's evidence that KB had told him of her allegation. However, it also appeared that her relating of the incident post-dated some of the other occasions when KB had informed others of the allegations and so it was not a contemporaneous account. Whilst I have little doubt that DM's evidence was largely honest, and I have no doubt that *he* believed that KB was telling him the truth, it was not of particular assistance to me in this regard.

Analysis of the account given by KB

178. There are only minor inconsistencies in the accounts that KB gives.
179. I am quite satisfied that the description of DG as her partner in Police Vulnerable Adult Report is an error by the writer as it is clear that KB describes DG as her former partner on all other occasions.
180. In his written submissions DG asserts "The statement she gave also says that the incident happened whilst she was getting dressed and not that she was ambushed whilst trying to get her towel from behind the shower room door." I cannot find any reference to KB saying she was getting dressed (the initial account says, at

6600, “I came out of the en-suite and next to this is the bedroom door which DG has walked through. I wasn’t dressed and DG has pushed me onto the bed...”).

181. DG asserts that the fact of EMP being present in the house would have not been a preventative measure when it came to consensual sex previously. Indeed, there is text message evidence to support this contention [e.g 903]. I agree with him, as he asserts in his written submissions that parents finding way to be intimate despite children being in the house “... is a fairly normal thing for parents of a young child to do and, while I have no recollection of the specific incident she described, her quoting me as saying “it’s ok, he’s downstairs with his kindle”, is entirely plausible and was just one way we could get away with having sex while he was awake.”
182. I am not particularly assisted by this observation. It is entirely dependent upon the mindset of the individual concerned. If an individual does not wish to engage in sexual activity, pointing out that a child is in the house is a potential ‘excuse’ which is convenient at the time as a way of justifying saying ‘no’. If the incident occurred as KB alleges then it was during the day, they were about to go out and EMP was only downstairs (as opposed to in bed or otherwise engrossed) and sex was being initiated in the bedroom (as opposed to behind a potentially locked shower room door) in circumstances where EMP could walk into the bedroom at any time (as indeed, on KB’s account, DG had) KB could have made the comment and then consented to sex notwithstanding her misgivings.

The timing and context of the allegation

183. It is the wider context and timing of the allegation that gives rise to the most anxious area of consideration.
184. As can be seen from the chronology, KB had ample and repeated opportunities to make an allegation of rape against DG prior to and within these proceedings. The following list may not be exhaustive:
 - a. In the Affidavit to the other jurisdictions Court made in November 2018;
 - b. In an Acknowledgement of Service (the form respondents are asked to complete when they receive an application);
 - c. During the Safeguarding enquiries leading to the Safeguarding letter (28th May 2019) – where it is reported “KB raises no concerns regarding... domestic abuse” [475]
 - d. In her February 2020 family court statement;
 - e. To the police in September 2020 [6566];
 - f. To the police in October 2020 [6568] where questions designed to elicit allegations of domestic abuse are all answered in the negative;

- g. In her December 2020 family court statement.
185. They of course represent the occasions when KB was engaged in some activity incidental to making a ‘stand-alone’ report of DG’s alleged behaviour, there of course being an ongoing opportunity to make the allegation within or outside of the family court proceedings.
186. I have not included in the above list conversations with CG1. I am aware that KB alleges that no proper opportunity was given to her to speak to CG1 in private (i.e. when EMP not present) and that CG1 has disputed this. I have not heard direct evidence from CG1 on this precise point but note that in any event the note from 16th April 2021 established that CG1 was told by KB of the allegation on that date. I shall comment later regarding what CG1 *did* with that information.
187. In addition, there were a number of court hearings that had taken place between April 2019 and April 2021. Again, I am aware that KB comments that she felt inhibited in relaying past events (including during a telephone hearing) knowing that DG was present and in circumstances that felt rushed and oppressive to her.
188. Further, the *timing* of the allegation requires careful consideration. Taking (as I do) the first verifiable occasion that KB made the allegation as April 2021, it can be seen that the family court proceedings were not generally going as KB would have wished.
189. Whilst KB’s wishes were not, prior to April 2021, for there to be no contact between DG and EMP it is clear that she wished for that contact to be considerably restricted (short duration and supervised). CG1 had recommended unsupervised contact (of a limited duration) and the order of December 2019 records that the recommendation is not agreed. In March 2020 the Lay Justices order contact to take place once every three weeks with mother’s presence to be removed after one more contact. Contact did, I understand it take place at the mother’s home (an issue to which I will return later) but never progressed ostensibly because of the Covid 19 pandemic. In July 2020 the Lay Justices ordered fortnightly direct contact for 3 hours in the community (unsupervised) and a review hearing. KB appealed this decision.
190. That appeal was dismissed in September 2020 by HHJ Forrester. In November 2020 it is recorded that KB considers that it is too soon for contact to be ‘unsupported’. Contact is reinstated but in HK’s presence. In March 2021 the order records that KB is appealing HHJ Forrester’s decision and an application is made to change the Guardian.

191. It is clear from the tenor of KB's statement that she felt very strongly that her concerns about DG and the nature of the contact being considered for EMP were being ignored generally.
192. Against that context a very serious and 'new' allegation could be an attempt to exert control on a situation that was not progressing as EMP's mother wished.
193. Further, in the period after DG made his application to court and before contact was supported by HK, contact between EMP and his father had taken place at the mother's home with her consent. KB had invited DG to see EMP at her home as opposed to be unsupervised. Indeed, one of KB's allegations is that on one such occasion when the 'family' went out for a meal DG made a joke about her drinking [179]. For obvious reasons DG asserts that such behaviour is inconsistent with his alleged previous behaviour.
194. KB told the police and the court that she and DG did not have sexual relations in 2016. I described her as telling me this adamantly earlier in the judgment as she was pressed on the point at a time in the first hearing when it was known that efforts were going to be made to obtain the mobile phones that she had given to the police. That of course turned out to be incorrect, as the text messages clearly show. One interpretation of that denial is that KB was aware that they were continuing to have consensual sex proximate to the time she identified as the alleged rape which could make it look less likely that the event had occurred. Further, of course, it means that DG was telling me (and the police) the truth about the continuation of sexual relations post their original separation.
195. There is the context of the relationship in general. In any moral sense DG did not, even by his own account, treat KB very well. It is clear from the text messages that she wished him to be a partner and a father to EMP. She wanted more from him than he was at almost any stage in the relationship giving her. As some of the text exchanges I have cited above (and there are others) show, potentially powerful emotions were at play in circumstances where DG was not supporting KB (or EMP) particularly convincingly, absent for periods of time, conducted an affair with the mother of his previous child, fathered another child, participates in a confusing and to some degree exploitative sexual relationship with KB and then issues court proceedings when (in her view) his relationship with EMP is not progressing in exactly the way he wishes. Whilst 'revenge' may not be a primary motive, it is a possibility I have borne in mind.
196. Finally, the recall of an act between two people with no witnesses related years later is always going to be subject to interpretation which is heavily influenced by that witness' mindset and attitude. This case involves numerous incidents which

objectively happened. There are very few factual disputes between the parties. What is so often in dispute is interpretation and motivation. I have already commented in this judgment on some issues where I remain satisfied that the *motivation and meaning* inferred by KB with respect to some of DG's actions cannot objectively be considered accurate. The parents had sex and continued to do so after their 'relationship' was over. There were times when they had sex after KB had a shower. DG confirms in his police interview that he had made a crude comment of the type alleged by KB but he says it was during a consensual act. I have little doubt the parties had engaged in sex when EMP was somewhere in the house. KB's ambivalence to that continuing sexual relationship is plain from the text messages. Is this a situation where retrospective recall has imbued the event in KB's mind with inaccurate recollections contributed to by regret, shame, and negative emotions?

197. All of the above considerations are powerful arguments against a finding that events occurred as KB asserts.
198. DG also argues that the lack of the text messages concerning consent is in some way probative of the falsity of the allegation. I am not particularly persuaded that it assists me beyond bearing in mind that it is evidence that I do not have in detail or context as opposed to being evidence that they never existed. KB tells the police that she cannot find the messages as "I have since changed phones and can't retrieve the messages" [6600]. KB did provide the police with 4 phones and none of them cover 2017. Doubtless somewhere there is such a phone (there being no evidence of messages being deleted on *these* phones). Nevertheless, in his oral evidence DG told me that there may indeed be a text message mentioning consent but that would have been in a different context. I have concluded that in all probability there was some sort of an exchange in which consent was mentioned but in the absence of the original texts it is impossible for me to understand the context beyond noting that the issue was raised at some point.
199. The concept that victims of sexual offences do not all act in a uniform manner is well understood as is the proposition that a delay in making an allegation does not equate to the allegation being false. At the inception of my involvement in this matter the obvious point as to the timing of the allegation and opportunities to have related it earlier were uppermost in my mind, in particular in light of the fact that the 'Dash' recording (15th October 2020 – see chronology) made by the police indicates that KB was asked a series of questions designed to elicit confirmation of previous abuse. However, I have also reminded myself that it is within my own direct professional experience that victims of genuine sexual assault may deny having been victims until able to reflect, internalise and confront what has happened to them, sometimes for complex but very human reasons. The key to

any assessment is the context and wider evidence in circumstances where an act alleged to have taken place behind closed doors involving only two participants is nearly always going to be difficult to determine.

200. KB makes a large number of allegations about DG. There are few that DG asserts as being a bare lie. Indeed, the most substantive factual issue that *could* be considered a direct lie is the mother's denial of the sexual relationship continuing into 2016/2017. I shall return to that later.
201. However, almost every other allegation made by KB has at its core a basis of truth and is not fabricated or fanciful, as can be seen from this judgment. Indeed, DG's assertions that something 'did not happen at all' are scarce.
202. As related above, this also applies to allegations that were 'late' in the proceedings, such as DG putting his hands on KBs clavicles, sexual or potentially sexual activity (e.g. riding crop) and even elements of DG's attitude and behaviour concerning his children's genitalia.
203. However, as I have observed, some of KB's observations about DG's behaviour are laced with a retrospective negativity. The question I allude to above is, why?
204. I listened to all of KB's evidence with great care. One of the matters I had in mind when doing so was to consider whether this was a situation where a parent's motivations were routed in or contributed to by a sense of revenge or resentment of the type borne out of past slights and disappointments – it being clear from my reading of the papers beforehand that KB might have, from her perspective, cause to be so motivated. There is nothing within the written or oral evidence that points to that being a factor in KB's thinking.
205. Analysing the situation from a different perspective includes consideration of whether the mother's negative view of DG is consistent with her having been the victim of an event that would cause an individual to lose objectivity viz-a-viz events that would in other circumstances not give rise to markedly adverse reaction or comment? When viewed from this perspective it can easily be observed that such an explanation would possibly account for what I initially perceived to be a lack of objectivity on KB's part.
206. As Mr Gilmore submitted "There can be no doubt, and indeed the mother repeated it several times, that one of her primary motivators within this case is the protection of EMP in particular from any aggression or harm from DG." I agree with that observation and of course it chimes directly with the observation above, that one possible reason for making a serious but ultimately untrue allegation is

that KB did not feel that the court ‘system’ was sufficiently protecting EMP. However, I have also borne in mind that KB’s stance for the majority of the case with respect to contact was not to resist all forms of contact between EMP and his father. As can be seen from the chronology, her concern was in fact any move towards contact taking place in the absence of either herself or another adult. That motivation led to a situation whereby even after the alleged rape KB cast herself as the supervisor – going to Centre Parc with DG and allowing DG to come to her home to see EMP at the start of these proceedings rather than permit unsupervised contact.

207. Of course, victims of various types of domestic abuse remain connected to and sometimes in a relationship with their abusers even if that ‘relationship’ is tenuous and of necessity. There is little stronger motivation for putting oneself potentially in harm’s way than considering that your child needs protecting.
208. I have also thought carefully about the issue of delay in the context of the mother’s evidence. Unsurprisingly KB was asked on a number of occasions why it took her so long to make the allegation of rape in circumstances where she had many opportunities to mention it within the proceedings. KB has filed many self-penned statements in which she shows herself to be articulate and competent when writing and KB’s assertions about not being able to tell the Cafcass Officer or announce it in court ignore the fact that the simplest option would have been for her to have included the allegations in writing.
209. KB said in the police interview and told me in evidence the following reasons, in summary:
 - a. She was ashamed;
 - b. It has taken time for her to come to terms with what happened;
 - c. She felt that she was a competent, professional and successful woman who had ‘allowed’ this to happen to her;
 - d. She had let EMP down;
 - e. That she did not want to say what had happened because she thought DG would ‘come after EMP’ and pursue her for doing so;
 - f. She has ‘boxed off’ what had happened to her in her mind, considering it in essence too difficult to face what she remembered happening.
210. Shame is a powerful motivating factor and of all the issues that are capable of promoting feelings of shame, sex is both socially and psychologically highly significant. Ultimately, I asked myself this question – is it possible that the above motivation explains the delay in the mother in this case reporting a rape?

211. The above observation also interacts with the mother's account of the relationship and specifically her denial that the parties were on occasions having sex in 2016/2017. To my mind it matters little whether in fact they were or were not having sex at this time to my evaluation of the incident itself as the existence or otherwise of a 'casual' sexual relationship can be viewed from different perspectives. A longer gap between consensual sex and non-consensual sex might be thought to be a demonstration of how much less likely it would be that the alleged victim would consent. Conversely, such a casual sexual relationship might make it more likely that the alleged perpetrator assumed consent because of the generality and frequency of the activity.
212. However, in *this* case the text messages reveal the complexity of that sexual relationship whereby there is clear evidence of the parents not having the same motivations and view of the sexual relationship. Those text messages reveal there were many times when DG pursued the continuation of the sexual relationship and KB said no. There are of course also (much less frequent) times when KB suggests sexual activity (DG does not say 'no' at any point), as set out above.
213. In evidence KB's recall of dates was very poor. There were several occasions when she inaccurately identified the year or time when something occurred. Those inaccuracies related to potentially important events (e.g. when she first spoke to 'Women Out West' about her allegations) to less significant events. These proceedings have been extant for over 4 years, and she was giving evidence about events that pre-date the start of these proceedings.
214. All of the above questions point to the importance of my evaluation of the evidence and in particular the mother and father. I am acutely conscious of all that I have set out above about the risks inherent in relying upon demeanour and 'the way' a witness gives evidence. Nevertheless, I am paid to judge and in doing so I have to bring to bear my experience, which includes involvement in family proceedings for over 25 years, to evaluate all of the above possibilities in the context of the evidence I have heard.
215. In his submission Mr Gilmore tells me:

"Although the Guardian is unable to form a concluded view as to this specific finding [of rape] that is because there is such a considerable amount of evidence before the Court in favour of both parties' positions. Despite that however the Guardian on observing the mother's evidence in respect of the rape findings in particular, did find it to be compelling. The mother appeared genuine in her evidence and as would be expected of someone who had experienced such a traumatic life event, found it extremely difficult to answer those particular questions."

216. I agree with that assessment. Whilst watching the mother in evidence, in court and in her police interview I was struck by her presentation. She displayed what I evaluated as being genuine emotion rather than fabricated or ‘acted’ distress which was acute and convincing particularly when encroaching on this alleged event.
217. DG asserts in his submissions that KB’s police interview is “not terribly convincing” and that she was “more interested in telling the police about these proceedings than she was in talking about the alleged rape...”
218. I do not agree. I found the mother’s presentation in the police interview to be entirely consistent with someone relating events that she believed to be true and answering as best she could the questions she was asked by the interviewing officer.
219. DG points out that in her statements, KB asserts that she ‘begged’ him to stop whereas her account in police interview and evidence was less emphatic. I do not consider that this difference in emphasis undermines KBs account in the context of potentially recalling an emotionally traumatic incident years after the event.
220. I also found KBs explanations for delay and confusion as to dates, on balance, believable although I suspect that the later issue (i.e. the date when they stopped having sex) was partly contributed to by a psychological need on KB’s part to distance herself from an activity which she has grown to regret and regards as a demonstration of what she considers to be a ‘weakness’ or foolishness on her part, potential motivation that I have also considered when determining the allegation of rape itself.
221. Given DG’s evidence (in court and police interview) that what KB had related was in fact a concatenation of other consensual encounters I was careful to pay close attention to KB’s account. I considered carefully whilst listening to KBs evidence whether there were any indications that KB had in fact simply transposed other encounters to one incident and thereby fabricated an account by sticking close to the truth (thus allowing her to maintain consistency) but ultimately being dishonest about this specific incident. I remain convinced that what KB told me was what she believed had happened. She maintained a largely consistent account through several instances of re-telling without evidence of internal story-creep or deviation.
222. Further I found KB’s account, in particular in her police interview, of her feelings and thoughts after the event to be particularly compelling. Whilst watching the interview I made a note to the effect that either KB was a very good actress who

had studied and learnt the emotional ramifications of such an event extremely convincingly or she was telling the police her truth. I have little difficulty, having seen her now in evidence as well, in concluding that the latter option is the more likely.

223. Thus far I have chosen my words when relaying my impression of KB's evidence carefully, in that I have expressed myself as being satisfied that KB believed what she was telling me had happened.
224. That of course leaves a remaining possibility – that although KB genuinely believes that DG raped her, that is not in fact what happened and other factors have transformed in KB's mind an incident which fell short of non-consensual sex by reason of negativity, regret, shame or other outside influence on her memories.

DG's Evidence

225. In that regard I turn to DG's evidence and indeed the wider evidence in particular of the text messages that we now have.
226. It must be observed that DG's evidence was not replete with lies. As I have already observed most factual disputes related to interpretation rather than outright denial. He was undoubtedly anxious to impress upon me that his approach to life in general was jovial and humour laden. This extended at times to him reacting to situations in ways which might, by an objective observer, be considered crass or inappropriate. In the police interview his demeanour does not match the seriousness of the event and in court there were times when he laughed inappropriately. Of course I am conscious that both situations involve considerable stress and accordingly I do not consider this aspect of his character to carry great weight in my determination.
227. However, other elements of his evidence did trouble me. He presented as someone who was lacking in empathy. I have related above observations on some of the events that occurred during the relationship (behaviour towards both children, social media, the text exchanges) all of which demonstrate a marked inability or failure on DG's part to consider how his actions may be perceived by or affect the recipient. I was largely unimpressed by his tendency to excuse thoughtless or tone-deaf responses to him being jokey and light-hearted.
228. In particular, the text messages were enlightening on the subject of sex and the parties' relationship in 2016. I will not repeat what I have set out above but taken as a whole they reveal that DG was ultimately unresponsive to her emotional needs and at times persistent when it came to the topic of the continuation the parents' sexual relationship.

229. This was in stark contrast to what KB wanted, which can be exemplified by an exchange that took place in May 2016 where DG can be seen to say ‘its also not the first time you’ve said it and for us to then be fucking half an hour later’. Some of KB’s responses include comments such as, ‘I said I didn’t want to’ and then later notes ‘I want the exact opposite of that’ ‘I want to spend time with you’ ‘to snuggle up to ‘you’ ‘to have nice evenings with you and EMP’ ‘to have more babies’ ‘to be a mum to more’ ‘to not be a single parent’.
230. During one part of his cross-examination Mr Gilmore asked DG to explain why he simply ignored KB’s comments about the sex being confusing and ‘bad’ for her wellbeing and is persistent in his pursuit of its’ continuation. DG described himself as probably not being ‘empathetic enough’. I have formed the very clear view that DG saw sex with KB as a functional activity which he preferred to maintain without the complication of what might be defined by either parent as a ‘relationship’.
231. During Mr Gilmore’s cross examination of DG there was a point at which Mr Gilmore took DG through a sequence of texts [2280 onwards – 22nd June 2016] that show DG repeatedly rebuffing KB’s assertion that they will not be having sex when he visits to see EMP and, in essence, not taking ‘no’ for an answer.
232. At the conclusion of DG’s evidence I was left with a strong sense of someone whose attitude to his relationship with KB in 2016 was about satisfying his wishes. Whether that be a desire for ‘no strings’ sex or a desire to see his son. There was little evidence that enables me to conclude that DG was attuned or responsive to KB’s needs except in circumstances where they aligned with his.
233. Further, I gained a very strong impression from DG that at times he considered KB’s expressions about their relationship to be negotiable. She had indicated a desire for it to stop but nevertheless had subsequently slept with him, despite her misgivings. She had even, at times, initiated the request herself, as the text messages show. Further, his evidence shows that the situation KB described – sex when he visits to see EMP, sex after KB has a shower, sex when EMP was in the house – had all happened on other occasions.
234. I have little doubt that DG had certain expectations about his visits to see EMP. For example, he told the police in interview that he had asked if KB wanted sex when they visited Centre Parcs ‘because it was my birthday’. Whilst it is an example of DG accepting ‘no’ as an answer it is also a demonstration the fact that he considered it a realistic possibility.

Conclusions on the allegation of rape

235. In reaching a conclusion I remind myself that whilst the burden falls on KB (the burden of proof) I must consider the issue on the balance of probabilities, which in itself implies a large margin of error (i.e. in a binary decision the outcome is the same whether the conclusion is reached on the basis that the tribunal considers it marginal or highly probable). The issue at hand is of course a very serious one with substantial potential consequences for either party. Relative likelihoods do not assist me and I acknowledge that any conclusion I reach in these circumstances is inevitably finely balanced, rarely more so than in this specific case.
236. My conclusion on the balance of probabilities is as follows:
- a. That on an occasion in early 2017 DG visited EMP and KB at KB's home.
 - b. KB went upstairs for a shower;
 - c. DG went upstairs, leaving EMP downstairs being entertained by his Kindle;
 - d. DG went upstairs with the intention of having sex with KB. His expectation was that she would be willing, as she had been on previous occasions when he had visited;
 - e. DG thought that he would be able to persuade or cajole KB to engage with his desire to have sex;
 - f. KB came out of the shower and into her bedroom naked;
 - g. DG mistook KB's nakedness for an indication of her willingness to engage in sexual activity and acted as if that was the case, moving her to the bed and proceeding to initiate sex;
 - h. DG ignored KB's indications that she did not wish to have sex, which most likely started with objections based on the fact that EMP was in the house and progressed to KB saying things like "You can't do this" and "We can't do this";
 - i. I think KB's protestations were muted (i) because of the shock she felt at the situation and (ii) because of EMP being in the house. However, I am satisfied that KB made it clear that she did not want sex;
 - j. DG responded by telling KB that she loved it and proceeded to have sex with her, ignoring her unwillingness to have sex and trying to engage her by saying something he regarded at the time as both erotic and complimentary;
 - k. At no point did KB consent to sex.
237. I strongly suspect that DG convinced himself during and after the event that her protestations about not having sex were akin to her approach in the text conversations i.e. she may at times say no but often he had persuaded her and had previously shown that she was willing to have sex despite earlier indications to the contrary. In making that observation I do not intend it to either excuse what happened or to indicate that KB was in some way responsible because previously,

either by attrition over time or contemporaneously, she had consented to sex or indeed sought sex with DG.

The relationship - 2017 onwards

238. It is now clear that any sexual activity concluded in 2017. DG says in police interview that the last time the couple had sex was March 2017. On balance, I think it most likely that the last time was the occasion I have described above. As can be seen from the chronology later in 2017 there is a text exchange [419] in which DG calls KB a ‘mongo’ and means it in a derogatory sense and by then the couple’s relationship had so soured that they were exchanging messages about the ‘silent treatment’. It seems that in April 2018 contact between DG and EMP ceased, solicitors were threatened and a year later DG issues his application for a Child Arrangements Order.
239. There were a number of complaints made by KB about DG’s behaviour that when being viewed as ‘stand-alone’ events I struggled to understand or factually did not ultimately agree with the conclusions that KB had reached. Of course, they must be now placed in context, which I will return to later.

Funeral Postcard

240. In February 2019 DG sent a postcard to EMP from another country. It told EMP that DG had been at EMP’s uncles’ funeral and that it was sad, explaining what other family members were there and they send their love. On the reverse were pictures of a church and a coffin.
241. In evidence I was anxious to understand KBs objections to this postcard as KB had described it in her statement as ‘extremely concerning’ as EMP was only 6 at the time and had not met his uncle. Conversely, the former Guardian had commented in her report “I continue to take the view that this is not inappropriate but is a sensitive and warm communication about a loved family member.”
242. My own view is that it fact falls somewhere in the middle of these expressed opinions.
243. In her written submissions KB says:

“...a great amount of time was spent discussing the ‘postcard’ sent by the Applicant to EMP, with the photos from a relatives funeral. This was discussed at length, and suggested to me many times, that this could be seen merely as inappropriate or misplaced.

This particular incident is absolutely indicative of the control the Applicant wishes to exert over me. The sending of the postcard, without any envelope, forces me into

having a conversation with EMP, as soon as we step through the door, to talk about the death of a relative he has never met nor spoken to.

This postcard was creepy and wholly inappropriate for a child of EMP's age, and dictated how our evening was to unfold. The taking of photographs at a funeral is quite unconventional and not in usual societal norms, certainly for the humanist or Christian type funerals that I have attended.

244. There is reference in the text messages [3277 and 3900] to DG having previously sent postcards to EMP ("KB: "Oh, I got EMP postcard yesterday, thank you ;-0") It was not, therefore, the act of sending the post card that was inappropriate but its' contents.
245. I can understand that some parents may take the view that a postcard of this nature may not be considered inappropriate. I also know from my own experience that some would not. It is a difference of parenting opinion. However, as an individual incident the worst that can be said about it is that DG may not have known if EMP had seen funerals on television, or discussed them with friends or the like and that his primary carer may have wanted to deal with the issue of death in a different way.
246. However, there is no evidence to suggest that DG was in the habit of sending inappropriate material to EMP.

The Family Tree

247. On a another countries website which records family trees for genealogy purposes there is a family tree of DG's family. On that website EMP's parentage is mistakenly shown as being X's mother instead of KB. KB asserts that this is a deliberate act of exclusion by DG. Having listened to both parties I am far from satisfied on the balance of probabilities that this was either (a) completed only by DG and in any event if it was (b) it was anything more than a mistake.

DG looking for accommodation in Cumbria

248. There was an occasion when DG applied for accommodation on a website in 2018. That accommodation was advertised by the childminder who was employed by KB. DG enquired about the accommodation (by posting on the website). If he had taken it (which he did not) he would have been living in Cumbria closer to KB and his then employment. During this time KB asserts that DG was not in contact with her. She considered the enquiry an attempt by him to live closer to her to harass her, although he made no direct communication with her. No evidence was presented that established anything other than a posting on a website for accommodation and there was no evidence to suggest that DG knew that the

advertiser was in fact KB's childminder. I am not satisfied on the balance of probabilities it was anything more than a coincidence.

Miscellaneous complaints about contact

249. KB raises a number of complaints about incidental things that occurred during times when DG and EMP were spending time together, including:
- i. Generally taking too many photographs;
 - ii. An occasion when, during video contact, another man (a tradesman whom DG knew and whom DG asserts EMP had met previously) spoke to EMP;
 - iii. EMP reporting seeing a woman on a bed during video contact.
250. Having reviewed carefully all the notes that relate when EMP himself has said (to school, the other witnesses, Cafcass) there are no substantive complaints made *by EMP* about any of these alleged behaviours or incidents.
251. Non-resident parents often take lots of photographs of their children during contact. Many resident parents do. There is nothing to suggest that the amount taken by DG was at a level which could be considered abusive. Likewise, parents involved in contests about the nature and amount of time with their children often take photographs as 'evidence' that they attended, their child had a good time etc. Again, there is nothing in the evidence I have read or heard that elevates these criticisms to a level that would come close to being considered abusive or significantly detrimental to EMP's welfare.
252. On one occasion EMP spoke to someone DG knew during a video call. In normal circumstances that would pass without comment. Given the background and context of this case it was possibly unwise but not warranting of serious criticism.
253. With respect to EMP telling his mother that there was a woman on the bed during a video contact, without much more detail I am unable to reach any firm conclusions as to whether that did occur (DG denies it).

Text messages about contact

254. There are a number of text exchanges which KB and DG exhibit to statement in which the parents are having disagreements about contact. I have set some of them out in the chronology. There are also occasions where DG asks for proof of, for example, Covid infection or tonsillitis.
255. Viewed absent the 'bigger picture' they are all reasonable and lack abusive comments or threats save for one in July 2022 when DG calls KB a "narcisist"

who doesn't "give a toss about EMP's relationship with his dad.". In the context of the sort of exchanges this court regularly sees between parents they could not, as individual examples of communication, generally be considered anything other than within the bounds of fraught but ultimately not seriously concerning communication.

256. A non-resident parent is generally entitled to both know of and ask for evidence of their child's illness, particularly in circumstances where such illness gives rise to missed time with the child concerned.

257. I have already commented on DG's use of social media. Whilst I understand taking a picture when attending contact to show that you have abided by the court order, posting a picture of the child sat in the car opposite with the message "This was as close to the wee man I got today" is unwise and unnecessary, for all the reasons I have commented on above.

Post October 2021

258. In October 2021 KB filed and served a statement in which she set out her allegation of rape against DG. This was, as I understand it, the time when DG became aware that the allegation was being made.

259. On 1st December 2021 DG sent a text to KB saying "Thought I would like to do present opening at yours"

260. On 20th December 2021 the hearing before HHJ Dodd took place. The allegation of rape was a major issue in that hearing.

261. Shortly after her attendance with the police KB was given the 'Safephone' referred to in the chronology, with a view to there being a means of communication solely for KB and DG in light of the needs to have some communication about contact but without it needing to take place on KB's usual phone. There are several occasions when DG sends messages to KB's usual number. In the police interview he explained that there were times when he would use the Safephone number and not receive a reply so would resort to texting KB's usual number.

262. All of the above actions (from October 2021) were, in my view, deliberately provocative, even when simply viewed in isolation. DG in effect treated the allegation of rape with contempt and acted accordingly.

263. I have also set out above an analysis of the evidence as it relates to complaints made by KB about DG's behaviour post March 2017 as 'stand-alone' events.

However, they were of course not individual events to be assessed on their merits in a way that detaches them from the overall picture.

264. I have found, for the reasons set out above, that in about March 2017 DG raped KB.
265. That of course changes the court's perspective on a number of the incidents related above and explains why, from KB's perspective, individual communications which might to the objective observer seem anodyne and not untypical for parents engaged in court proceedings, have far greater significance in context.

Conclusions

266. Bringing all of the matters set out above together I have reached the following factual conclusions, which in summary form I have limited to those matters which are central to the current and future issues in determining EMP's welfare. They are not however intended to be divisible from the judgment as a whole.

- a. The father's relationship to date with EMP:
- i. The father has a view of parenting that is markedly different to that of the child's primary carer. He has engaged in behaviours with the child that he has considered to be rough play or humorous activities. For example:
1. As a baby/infant, flicking the child's penis and remarking 'What's the Golden Rule, always cover your tool' which was the context of the activity. Such action was not sexual or physically harmful to the child but a manifestation of the father's approach to parenting. The father was unempathetic and dismissive of the mother's (his primary carer) view that such activity was inappropriate and potentially degrading;
 2. The father's approach to the child coming to minor harm (falling over, being ill, hurting himself) was to consider such events on occasions amusing and character building. The mother viewed such an approach as antithetical to her more nurturing style of parenting;
 3. The father would engage in behaviour that would cause EMP physical pain, being of the view that the same was rough and boisterous play appropriate for a young boy whom the father

considered would benefit from behaviour intended to inculcate resilience and fortitude in his son. The father's behaviour was at times excessive and inappropriately ignored a number of factors that would have resulted in a more attuned and skilful parent mollifying his behaviour, namely (i) that the child's primary carer did not engage in or approve of such activities and therefore the father's behaviour was likely to set up in the child's mind an unfavourable dichotomy viz-a-viz his parents (ii) that the father's behaviour would distress and alarm the child's mother;

4. Some of the father's activities towards EMP – e.g. spontaneously pulling his leg hairs, pushing him over - were simply inappropriate with respect to any child and can objectively be considered abusive, albeit at the lower end of the spectrum;
- ii. EMP's currently extant generally negative view of his father is the consequence of two factors:
 1. The effect of the matters set out above at (a)(1)(i) – (iv); and
 2. The mother's own view of and reactions to the father being, to some degree, understood by and influential upon EMP.
 - b. The father has withheld and minimised his financial contribution to EMP's upkeep (both directly in the form of maintenance and indirectly in the form of satisfying or attempting to satisfy the costs order previously made). A major factor in doing so has been as a means of exerting pressure on the mother to agree to the nature and level of contact with EMP that he wished to have.
 - c. The parents' relationship (2012 to 2014):
 - i. There were times during the parents' relationship when the father acted in crass and thoughtless ways, ignorant of and unempathetic with regard to the effect of his behaviour on the mother. This included:
 1. Inappropriately interfering with the mother's social media account;
 2. Engaging in activities that he considered to be pranks or 'jokes' without proper consideration of the effect on the mother; and
 3. On occasions using insulting and derogatory terms and intending them to be hurtful and demeaning.

- ii. On balance, the court does not make adverse findings against the father with respect to the mother's complaints about *physical* activity by the father towards the mother beyond the fact that the mother found them disconcerting at the time and has come to view them as abusive because of her subsequent experience with the father.
- d. The parents' relationship (2015 to March 2017):
- i. The parents' relationship was marked by entirely different aims and approaches to each other and their relationship.
 - ii. The mother wanted a loving relationship in which the parents built a family together. She had ambivalent feelings towards the father ranging from loving him to being significantly affected by his unwillingness to engage with or take account of her emotional needs.
 - iii. The parents' relationship continued to involve sexual intercourse on occasions up to March 2017. The mother viewed the same as having at its foundation her continued emotional connection to the father. The father enjoyed having sex with the mother.
 - iv. The father was persistent in his pursuit of sexual activity with the mother. In doing so he ignored her clearly stated wish for them to stop sleeping with each other and her concerns about the effect it was having on her own wellbeing.
 - v. The overall effect of the father's pursuit of sex was coercive in that it was exploitative of the mother's vulnerabilities and pursued with the aim of gratifying his sexual needs despite the mother's clearly expressed concerns about the effect on her welfare.
- e. In March 2017 the father had sexual intercourse with the mother without her consent and against her express wishes. This was rape.
- f. In the context of the finding at (e) above the father's communications with the mother since that event and posts on social media have further compounded and built upon the trauma the mother has suffered.

Outstanding Issues

267. Having reached the conclusions above it will be obvious that any application for enforcement based upon the order of 11th September 2020 cannot succeed and accordingly I dismiss the same.
268. Having reached my factual conclusions it will be necessary for the court to determine the remaining issues:
- a. What Child Arrangements Order should be made pursuant to the father’s application; and
 - b. The mother’s application to change the child’s surname (a specific issue order application).
269. In doing so I will inevitably ask the Guardian provide a report examining the remaining issues. As both parents are now litigants in person it may be of assistance to set out what I consider to be the parameters and legal framework to that assessment.
270. Any decision as to a Child Arrangements Order or Specific Issue Order has as its paramount consideration the welfare of the child pursuant to [section 1](#) of The Children Act 1989. [Section 1\(3\)](#) sets out the factors (often referred to at the ‘Welfare Checklist’) which the court must take into account.
271. In considering the welfare of the child, the court must (according to sections 1(2A) and 1(2B)) “presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child's welfare” where ‘involvement’ is defined as “involvement of some kind, either direct or indirect, but not any particular division of a child's time.”
272. Clearly, in light of my findings consideration of whether “the contrary is shown” engages directly with the provisions of [Practice Direction 12J](#) and in particular paragraph 30 to 39.
273. In light of paragraph 37A of Practice Direction 12J I put all parties on notice that an additional issue to be considered at any concluding hearing of this matter is whether the court should make an order under [section 91\(14\)](#) of the Children Act 1989 and if so, of what duration.

Observations regarding local practice

274. This matter has had a long and difficult history and errors have been made. As Designated Family Judge for Cumbria it seems appropriate for me to set out where I consider better practice locally might have made a difference, at least to the progress of this matter. Obviously, all practitioners and judiciary locally will

have been aware of the Appeal Judgment ([CM v IP \[2022\] EWHC 2755 \(Fam\)](#)) in this matter in which the High Court highlighted the need to ensure appropriate compliance with Practice Directions 3A and 12J.

Obtaining the other jurisdiction's papers

275. The mother raised the issue of her concerns around the father's approach to parenting and issues that she was to some extent aware of in the proceedings relating to X which were taking place in another jurisdiction.
276. It took an inordinately long time for the most complete set of those papers to be obtained not, I hasten to add, because of any lack of cooperation from the other jurisdiction's court but because the correct procedure was not followed in this jurisdiction. Locally, given that one of the court's in Cumbria sits no more than 10 miles from the border, issues of liaison with other jurisdiction's proceedings is not uncommon. On becoming aware of this matter, which came to my attention shortly after being appointed as DFJ for this area, I distributed a note to the judiciary and legal advisers in Cumbria reminding everyone of the correct procedure. It bears repeating in this judgment.
277. The route to obtaining disclosure is through the [International Family Justice Office](#) ("IFJO"). In circumstances where disclosure is sought from another jurisdiction, barring presently irrelevant discussion about the reach of the High Court, a court in England and Wales should not make a 'order' directing disclosure from another jurisdiction but should make a *request* via the IFJO in writing.
278. That request should set out:
 - a. Sufficient details to allow any other proceedings to be identified (including if possible case references, details of the parties, the names and dates of birth of the children, the name of the local authority or other agency involved (if applicable), the background circumstances of the parties, and any known addresses in the receiving jurisdiction.
 - b. The request should set out in clear terms the question or questions being asked of the liaison judge in the receiving jurisdiction, and any information sought.
 - c. The request should advise whether there is any urgency and, if so, the nature of the urgency. Where appropriate, the request may specify a deadline by which a response is sought.

- d. The request should be supported by a summary of information confined to those matters which are necessary and appropriate for the purposes of the request including the essential and relevant facts relating to the case in question and the scope and effects of any court order or other remedy or potential remedy sought in the proceedings.
 - e. The request should also state whether the parties appearing before the requesting judge have consented to the request.
279. The above summary is a condensed version of the well-established Judicial Protocol which of course should be read and complied with in full.
280. This procedure should be followed by all levels of the Family Court, including the Magistrates. There is no reason why cases in the Magistrates that are appropriately allocated to that level of judiciary for other reasons should not remain there providing such requests follow the correct procedure. In this case the Magistrates purported to make an order against that Court which was to be transmitted by the applicant's then solicitor. It is not surprising that the Court did not comply with such an 'order'.
281. Once the correct procedure was followed the staff at the IFJO were both helpful and efficient and the relevant documents were obtained.

Dealing with late allegations

282. The Court and professionals locally must, in my view, be alive to the particular difficulties that arise from potentially significant allegations that are made late within extant proceedings.
283. In his submissions Mr Gilmore points out:
- “This case demonstrates most clearly the importance of the initial safeguarding letter. That letter must be informed by accurate information from the parents otherwise professionals and the Court are immediately hampered. Failing to provide such information at an early stage can have a detrimental impact upon the proceedings as whole and the very path that unfolded before it.”
284. It is fair to point out the fact that allegations of considerable potential significance were not made until these proceedings had been in existence for 2 years. That fact has been the subject of anxious consideration by this court in this judgment.
285. However, I am also conscious that the Family Court deals with human beings, many of whom are at various points representing themselves in circumstances where individuals are dealing with emotional and sometimes traumatic events.

There is no easy solution and there will always be an understandable fear that steps taken to ensure the court is fully informed of all *relevant* details may be encouragement to proliferate irrelevant issues in the context of a system that has scarce resources and high demands upon its time.

286. Nevertheless, in the appropriate case it may be that there is a role for the court, particularly at First Hearing Dispute Resolution Appointments (FHDRAs), in explaining to parties that any statement dealing with allegations must be both complete and that there may not be another opportunity to set out everything on which a parent seeks to rely. It may be of assistance to parents if judges impress upon parents that the court is tasked with determining “at an early stage the real issue in the case in particular with regard to the welfare of the child” and that “[t]he court must ascertain at the earliest opportunity ... whether domestic abuse is raised as an issue which is likely to be relevant to any decision of the court relating to the welfare of the child.” (see *K and K* [2022] EWCA Civ 468 at para 8 – referencing PD12J)
287. Support services (often voluntary) exist for victims of domestic abuse. Locally, all applicants and respondents who make applications in the Family Court are now sent a leaflet which details a website containing information about support services. As [Practice Direction 27C](#) now makes clear, from 6th April 2023, Independent Domestic Abuse Advisers (IDVAs) and Independent Sexual Violence Advisers (ISVAs) are ordinarily to be permitted to attend hearings and provide “information, practical support and emotional or moral support, help in dealing with authorities or other support services, and may include explaining the court process and what to expect.” I appreciate that such support still requires the individual concerned to initiate contact but an awareness of the provision within courts and indeed Cafcass may be an important step to ensuring not only that victims of domestic abuse receive help and assistance but also that individuals involved in court proceedings understand the need to ensure that the court is provided with all relevant information as soon as possible.
288. It is also important that professionals have a clear understanding of the differing roles within the family court system, which originates from the fundamental understanding that it is the court that is the arbiter of both (a) facts and (b) the extent to which an enquiry into the factual matrix that underpins welfare decisions is warranted.
289. I have not heard complete direct evidence on the point so my observations must be both general and based on the written evidence I have seen. They are intended only as a cautionary reminder to local professionals.

290. The former Guardian made a note on 16th April 2021 (set out in the chronology) which is a clear and unequivocal report of an incident of non-consensual sex (i.e. rape). The subsequent report (1st July 2021) makes no mention of that allegation being made beyond a general reference to “unwanted and inappropriate sexual approaches”.
291. I do understand, on reviewing this case as a whole, how that situation occurred. Until the allegation of rape the allegations by the mother had not given rise to any court making a direction for a finding of fact hearing for reasons that in hindsight are understandable when measured against the case law, given the allegations as they stood at the time and the available evidence.
292. Further, the issues in the case appeared at that stage to be limited, revolving around whether contact should move to unsupported time with the father for reasonably short duration.
293. However, an allegation as serious as rape must give rise to the court determining whether the allegation needs to be adjudicated upon. I do not know and have not enquired as to whether on 12th July 2021 the issue was raised (there is no mention of it on the order). However, no one is served by serious allegations being referred to euphemistically or ambiguously. Doing so removes from the court the opportunity to evaluate the situation and ultimately serves to usurp the court’s role in making case management decisions and as the tribunal of fact.
294. Additionally, professionals and the court must be careful to guard against an approach that have at their core misguided assumptions. It is not always the case that late allegations are untrue and it does not follow that just because contact has taken place previously allegations about past behaviour need not be determined. What is required is a careful analysis of the potential relevance and effect of such allegations on the court and professionals’ ability to reach appropriate welfare decisions about the child in question. That is only possible if the court has available to it and is made aware of all the relevant information.

The Transparency Order and Publication of this Judgment

295. The finding of fact hearing took place within the auspices of the [Transparency Pilot](#). I made a transparency order but imposed an embargo on reporting until further order. I did so because I was aware that the Cumbria Police have not as yet reached a charging decision with respect to the allegation of rape made by KB against DG.

296. The police made an application for disclosure of documents from these proceedings on 26th May 2023 and that application falls to be determined at the next hearing.

297. The President’s Guidance on the Transparency Pilot states:

“The Court may also determine that there should be no reporting, or restricted or delayed reporting of all, or part, of the proceedings (see paragraphs above relating to the content of a Transparency Order). The Court may also consider whether reporting should be restricted for a certain period or up to an event, for example a criminal trial.” (para 22)

and

“When deciding whether to make, or vary, a Transparency Order the following categories of case will require careful consideration:

a. Cases where matters relevant to the case are subject to criminal charges investigation or proceedings, where reporting may cause prejudice to those proceedings...” (para 33)

298. The above considerations also apply to the publication of this judgment.

299. Subject to submissions to the contrary it is my preliminary view that I will disclose to the Cumbrian Police:

- i. A copy of this judgment;
- ii. An index to the bundle; and
- iii. Such papers as can readily be identified at this stage as being relevant to their criminal investigation (e.g. Parties’ statement and the Cyfor analysis of the mobile phones).

300. I will ask the Cumbrian police to make any submissions they have as to any reporting restrictions (including the possibility of continuing the embargo until, for example charging decision or trial) that they consider should be imposed and what risk of prejudice they assert (if any) relevant to any such restrictions, taking full account of the following:

- i. Reporting will and must not identify the adults or children involved in this matter; and
- ii. Other restrictions can be imposed on the information relayed in any such reporting.

301. Similar considerations apply to the timing of the publication of this judgment.

302. In addition, I will invite submissions from all the parties and any reporters who wish to attend as to the degree of anonymisation with respect to reporting the case generally and the judgment. Consideration will include any other matters within the judgment that the parties consider relevant (e.g. the names of professionals, any particular details set out in the judgment).

Appeal

303. In accordance with the suggested best practice advised by The President of the Family Division I will remind the parties that in the event that any party wishes to appeal this judgment they should do so within 21 days of this judgment being formerly handed down (i.e. from 21st September 2023). The procedure, time limits etc concerning appeals from this court are set out in the [Family Procedure Rules 2010 rule 30](#) and the accompanying [Practice Direction 30A](#).
304. For the avoidance of doubt I confirm that in my view the issues in this finding of fact hearing and subsequent judgment directly "concern the issue upon which the determination of the whole case ultimately turns" (see the judgment of Macur LJ at [21] in *Re M* [2013] EWCA Civ 1170 and Dame Elizabeth Butler Sloss P in *Re B (A Child) (Split Hearings: Jurisdiction)* [2000] 1 FCR 297, [2000] 1 FLR 334) and therefore if any party wishes to appeal it is not in my view necessary to wait until the conclusion of the Children Act proceedings.
305. The above reminders should not be taken as any indication by this court concerning the merits of an appeal or any application for leave made to this court or elsewhere.

His Honour Judge C Baker

21st September 2023

Postscript

Subsequent to Cumbria Police being invited to make any submissions on the issue of anonymised publication of this judgment, the police indicated that they had no objection to the judgment being published in anonymised form. The court heard further representations from the parties as to the contents and anonymisation of judgment and the above version is the agreed culmination of those submissions.

A Transparency Order has also been made allowing anonymised reporting of this matter with terms ensuring the appropriate anonymisation of any such reports.