



Neutral Citation Number: [2023] EWFC 198 (B)

IN THE WEST LONDON FAMILY COURT

4 Dukes Green Avenue, Feltham TW14 0LR

Date: 29 November 2023

Before :

RECORDER DALEY

In Re A (a child)

The applicant appeared in person
Dr Charlotte Proudman (instructed by **Wilsons Solicitors LLP**) for the **Respondent**

Hearing dates: 23–26 October 2023; 29 November 2023

Approved Judgment

This judgment was handed down in at 2:00pm on 29 November 2023 at a hearing at Wandsworth Family Court and by release in anonymised form to the National Archives.

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RECORDER DALEY

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Recorder Daley :

1. Introduction and background

- 1.1 This case is about a 4-year-old girl, A, whose parents are in conflict about how, and how much, the father (F) should spend time with her. A's mother (M) has made allegations about how F behaved, and F has made counter-allegations. In this case, it is necessary to decide whether those allegations are true before the Court can decide what level of F's involvement in her life would be best for A's welfare.
- 1.2 This case is a paradigm example of the sort of case considered in *K v K* [2022] EWCA Civ 468, namely one in which coercive or controlling behaviour is alleged and is likely to be a live issue relating to the child's welfare. That is the context within which I must consider the allegations. It is a case in which perceived deficiencies in the relationship have been allowed to assume an importance out of all proportion to their relevance to A's welfare, where witness statement upon witness statement has been filed, and where the true issue which may affect A's welfare—F's anger—risked being overshadowed by the way in which the case was prepared.
- 1.3 By way of brief outline, the parties are both professionals, whose marriage was an arranged one. They were engaged in August 2015 and married in India on 16 January 2016 and in the UK on 30 January 2016. They initially lived with M's parents before buying their home in R Road, W Town, in June 2018. A was born on 19 September 2019 and is now 4 years old. Refurbishment works at home led to the family moving back in with M's parents in May 2021. The relationship deteriorated from the end of summer 2021, the parties lived apart, and F sought a divorce in December 2021.
- 1.4 M issued an application under the Family Law Act 1996 for a non-molestation order and occupation order in January 2022, compromised in February 2022 without findings of fact on the basis of an agreed non-molestation order lasting until 10 February 2023.
- 1.5 On 7 April 2022, F applied for a child arrangements order in respect of A, making allegations of harm. On 27 June 2022, M made her own application for a prohibited steps order and a child arrangements order. Following allocation and gatekeeping, both applications were listed for a FHDRA on 21 October 2022, at which the Court made directions including for a fact finding hearing, directing a further hearing at which it would be decided which of the parties' allegations needed to be determined. The Court directed FaceTime contact between A and F, once a week, and indirect contact in the forms of cards and small gifts once a month. A hearing took place on the day the non-molestation order expired, F gave undertakings not to remove A from M but was not willing to give undertakings about not attending R Road and both undertook not to remove her from the jurisdiction without permission. The Court concluded it was necessary to *consider* all of the allegations made and gave directions through to a fact finding hearing with a time estimate of 5 days, with questions to be put by the Court on behalf of F to M, her mother (MGM) and her father (MGF), all of whom were adjudged to be vulnerable and in need of participation directions.
- 1.6 On 24 May 2023, M applied afresh for a non-molestation order and an occupation order. At a hearing on 29 June 2023, the Court consolidated that application with the applications under the Children Act 1989 with the issues raised in the non-molestation order application to be dealt with at the fact-finding hearing. I was not addressed on that

application, though it appeared the occupation order aspect had been overtaken by the conclusion more recently of financial remedy proceedings. If, having considered my findings, M wishes to pursue the application, I will hear submissions after this judgment is handed down.

- 1.7 On 19 July 2023, M applied to vary the Order for contact dated 21 October 2022, on the grounds F was recording the video contact sessions and invited the Court to consider that application after the fact-finding hearing. I shall do so at the hearing at which this judgment is handed down. On 19 September 2023, 10 days before the pre-trial review (PTR), M applied to admit further evidence including statements from two new witnesses and CCTV including sexually explicit material, and to raise a new allegation that F had lied to the Court during the non-molestation order hearing on 29 June 2023.
- 1.8 At the PTR itself, M applied for permission to file a further statement detailing sexual abuse. Permission was given to file the further statements M sought and for M to rely on CCTV of evidence outside the home (not including therefore the explicit material) and time was extended for F to comply with earlier directions to file various documents.

2. The allegations

- 2.1 Although schedules can be a barrier to fairness and good process, are capable of obfuscating a pattern of coercive and/or controlling behaviour and can distort the true picture of a relationship (see *Re H-N* [2021] EWCA Civ 448 at [43] to [46]), in this case they were ordered, together with schedules of the types of coercive and controlling behaviour alleged.
- 2.2 The purpose of schedules is to define the issues to be decided. In neither of M's schedules was sexual abuse alleged. Nevertheless, at pre-trial review M was permitted to file a 3-page witness statement "addressing her allegations of sexual abuse perpetrated by the father" with one by way of reply from F to be served by 16 October 2023, 7 days before the hearing. It means that this Court was invited to deal with enormously serious allegations on the basis of 3 page witness statements from each side, in a hearing already burdened with 7 witness statements from each parent and bundles running to four-lever arch files containing some 1,400-odd pages, in a case in which M was legally represented throughout with solicitors who must have been aware of the broad outline of the allegations, referred to as they were in statements already filed (apparently by previous solicitors but M's current solicitors have been acting since at least May 2023).
- 2.3 There are therefore 15 allegations raised by M to be decided, namely of F:
 - 1) controlling M and her family from 2018 onwards, more particularly as set out in M's schedule of controlling behaviours, which can be loosely "clustered" (to adopt the language of Cobb J in *Re B-B (Domestic Abuse: Fact-Finding)* [2022] EWHC 108 (Fam)) as follows:
 - a) emotional and/or psychological abuse: in particular belittling M's feelings and emotions and/or persuading her she was wrong about his interest in pornography and use of phone; intimidating M by looks and gestures and using abusive language towards her;

- b) financial abuse;
 - c) physical abuse: threatening physical violence and twice attempting physical assault; and
 - d) sexual abuse;
- 2) on 13 September 2021, implying that he would kill or incapacitate M;
 - 3) on 15 September 2021, threatening to kill the M, A and A's maternal grandparents;
 - 4) on 22 September 2021, swearing and shouting;
 - 5) on 9 October 2021, throwing a water bottle towards M, narrowly missing her and refusing to open the bedroom door, and attempting to punch M's father;
 - 6) between October and November 2021, attempting to intimidate M into withdrawing her police complaint about events on 9 October 2021;
 - 7) on 13 November 2021, shouting and yelling while following M back to her car and slamming her car door, just missing her arm;
 - 8) on 4 December 2021, shouting aggressively at M while driving to M's parents;
 - 9) on 5 December 2021, threatening M that he could arrange to have M, A and M's parents harmed in India or if his family were in the UK;
 - 10) financially controlling M;
 - 11) between December 2021 and March 2022, barring M from the former matrimonial home;
 - 12) on 9 April 2022, driving past the former matrimonial home, slowing down and staring at it;
 - 13) on 17 April 2022, stopping outside the former matrimonial home and driving past 10 minutes later;
 - 14) stealing some framed coins from a particular place (M's temple) within the former matrimonial home; and
 - 15) forcing M to have sex, against her wishes, on 17 January 2016, April 2016 and February 2017, pestering her to have sex on honeymoon, watching pornography, discussing their sex lives with others.
- 2.4 It was also alleged that F had sex with prostitutes after the relationship ended. That is not an allegation of coercive or controlling behaviour or of abuse during the relationship. It is not an allegation of sexual abuse against M, it is instead an allegation of lack of sexual boundaries and sexually risky behaviour. There is no suggestion the alleged prostitutes were minors or that he engaged in sexual behaviour in front of children.

2.5 F also alleges coercive and/or controlling behaviour against M. They can be broadly classified as follows:

- 1) Psychological abuse or control: tracking F, calling him “lazy”, “phone addict”, “good for nothing”, and a “killer” and “rapist”, reporting him to police
- 2) Emotional abuse: being unhappy with F’s domestic contributions; not engaging in sex after 2018 aside from when trying to conceive, not caring about F’s bout of Covid or after-effects
- 3) Financial abuse: demanding that F share his bank statements and questioning transactions.

F asserted that M’s parents tried to control his life “in every possible way” and that M’s father in particular would make fun of him and shamed him. The Order of DDJ Drew dated 10 February 2023 made it clear that the Court could not make findings against the maternal grandparents. Furthermore, even if true, any abuse of F from that source would be (a) situational in that F asserts they came about while he was living with the grandparents, and/or (b) capable of management in the context of any child arrangements order. Nevertheless, as DDJ Drew pointed out, the truth or otherwise of the evidence will be relevant to the factual matrix.

3. The law

3.1 The person making an allegation bears the burden of proof. The person against whom an allegation is made need not prove anything.

3.2 The allegations must be proven on the balance of probabilities: that is whether it is more likely than not that they occurred. They either occurred or did not, and I cannot decide they *might* have done. The inherent probability or improbability of an event is relevant to whether it happened, but there is no higher standard of proof required for particularly serious or significant allegations.

3.3 The findings must be based on evidence and not speculation, though that includes inferences that can properly be drawn from the evidence. The rules about hearsay evidence are not as strict as in other types of case, but I should give reasons for accepting or not accepting that evidence. I have to look at the “broad canvas” of evidence before the Court, and consider each piece evidence in the context of all the other evidence.

3.4 The parties’ evidence is vitally important and I must assess their reliability and credibility, as indeed I must of all the witnesses in the case. Demeanour of a witness is an uncertain guide, but as the Court of Appeal restated in *Re B-M (Children: Findings of Fact)* [2021] EWCA Civ 1371 at [24] to [26], it has its place (among other tools such as consistency of account and consistency with known facts), especially where facts are not likely to be primarily found in contemporaneous documents, though I must give due allowance for the pressure of giving evidence. As Macur LJ put it in *Re M* [2013] EWCA Civ 1147, at [12], I should warn myself “to guard against an assessment solely by virtue of [the witness’s] behaviour in the witness box”.

3.5 Witnesses do sometimes lie, but they may do so for a variety of reasons including shame, panic, misplaced loyalty and even distress. Lying about some matters does not

mean they are lying about all: *R v Lucas* [1981] QB 720. If a lie is to be taken into account, I should be satisfied it is (1) deliberate, (2) goes to a significant issue, and (3) can only be explained by guilt.

- 3.6 Memories are not infallible and passage of time can cause memories to fade or to change, as can retelling or replaying in the mind. Contemporaneous accounts are therefore likely to be more reliable.
- 3.7 It is wrong in a family case to be drawn into an analysis of the evidence based on criminal law principles and concepts. I am not concerned with culpability but with how past events may impact on the evaluation of which option for A’s future care best meets her welfare.
- 3.8 As to coercive and controlling behaviours, the law is set out by the Court of Appeal in *Re H-N*, and the potential harm to a child of such behaviour are there spelled out (see [31]). I remind myself of the helpful and often repeated guidance (described by the Court of Appeal as “essential reading for the Family judiciary) of Hayden J in *F v M* [2021] EWHC 4, at [108]:

“the definition in the FPR ... provides some useful guidance, when it is broken down:

Coercive Behaviour:

- i. a pattern of acts;
- ii. such acts will be characterised by assault, threats, humiliation and intimidation but are not confined to this and may appear in other guises;
- iii. the objective of these acts is to harm, punish or frighten the victim.

Controlling Behaviour:

- i. a pattern of acts;
- ii. designed to make a person **subordinate** and/or **dependent**;
- iii. achieved by isolating them from support, exploiting their resources and capacities for personal gain, depriving them of their means of independence, resistance and escape and regulating their everyday activities.”

- 3.9 Of course, behaviour need not be controlling or coercive in order to be abusive. But Practice Direction 12J gives a very clear indication of the type and seriousness of behaviour which should be considered abusive. *H-N* also reminds us that:

“It is equally important to be clear that not all directive, assertive, stubborn or selfish behaviour, will be ‘abuse’ in the context of proceedings concerning the welfare of a child; much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour.”

- 3.10 In analysing the facts as I find them, I shall not refer by rote to both controlling and coercive behaviour. Rather, I shall tackle them under the category most likely to apply, and shall consider whether the facts could be abusive in any other way. Just because I do not below mention coercive behaviour, or other forms of abuse, does not mean I have not considered it. My judgment will be long enough without weighing it down further.
- 3.11 Bearing in mind the essence of *H-N*, I remind myself that the specific incidents (allegations 2 to 15) may each contribute to the larger picture of controlling or coercive behaviour. It is, as *F v M* emphasises, the cumulative effect of a pattern or series of acts which must be assessed. Where a pattern of coercive and/or controlling behaviour is asserted, that should be the primary issue for determination at any fact-finding hearing.
- 3.12 I shall adopt the approach of Cobb J and make my findings in relation to M's specific allegations within the appropriate cluster of behaviours alleged when considering the overall pattern of behaviour. I do not propose to rehearse every allegation made by either parent in the 14 witness statements relied upon by M (eight of which were from her), or the eight witness statements of F, which together (and without exhibits) total around 200 pages of testimony.

4. The evidence

- 4.1 In accordance with FPR rule 3A and Practice Direction 3AA, it was determined at the hearing on 10 February 2023 that F would not directly question M or either of her parents, as the latter were also vulnerable requiring participation directions. Accordingly, F submitted his questions in advance of the hearing. With each witness, I gave him an opportunity to provide additional follow-up questions (in the case of M's evidence, he had overnight after Day 1 to do so) and an opportunity to argue in favour of my asking any of his questions which I considered did not need to be asked. He took up both opportunities, having provided very clear questions for all 3 which for the most part were relevant and proportionate and needed only modest trimming. I also followed up on some of the answers where it appeared there was a forensic difficulty with the answer I had, and added some questions of my own to ensure his case was fully and fairly put to all three witnesses. Counsel for M confirmed she was happy with this approach and that F's case had been put sufficiently and fairly. F indicated that he accepted my removal of some questions which had no bearing on the decision I have to make.

M's evidence

- 4.2 I found M to be a mostly helpful witness. She was asked a large number of questions by F, through me. They were not as forensically-challenging as those which counsel might have posed, but her evidence is no less convincing for that. I am asked to take into account that she is a vulnerable witness in assessing her credibility. I take into account the difficulty that M would have retelling particularly intimate and difficult events, if her account is accurate. M had what appeared a frank demeanour in the witness box. She was nervous, as many witnesses are. She clearly found giving evidence about the sexual abuse, in particular, especially painful and was close to tears.
- 4.3 She had a tendency, not always but sufficiently to be worthy of remark, to answer F's questions (put through me) guardedly, with a bare denial, for example when asked

whether she had gone to F on 9 October 2021 and started shouting at him. When I asked if she had installed CCTV in the former matrimonial home, she simply said “no”, providing fuller information only in response to a follow-up question.

- 4.4 A GP letter of September 2023 said M finds it challenging to explain the entire history and context of multiple events in the proceedings. I noted, however, that she spent most of the hearing, after she had given evidence, diligently typing at her laptop as apparently calm, focussed and professional as the solicitors sitting next to her. In sum, there appeared a steely resolve beneath the apparent fragility.
- 4.5 All of that said, it would be dangerous to read too much into M’s presentation, and I prefer (as I must) to look at the substance of what she said and test it for internal or external consistency, appropriate detail, and general probability. Counsel suggested an example of M volunteering answers she need not have provided was her accepting she used the “Find My” app to locate F. I note, though, that she had already accepted this in her statements of December 2022 and January 2023, so it was not a spontaneous volunteering. M made appropriate concessions which could have been inconsequentially denied, for example admitting that there was a common diary to which she had access and in which they both kept account passwords, that she initially tried to wake F from his daytime naps.
- 4.6 She was clearly an empathetic wife: her text message exchange with F on 14 September 2021 at around 2am shows the concern she had for her husband after he left the family home in an apparently unstable state.
- 4.7 There were inconsistencies in her evidence. For example:
 - 1) M claimed in oral evidence that F had paused in his car on 17 April for a minute and a half outside her property. It was clear from the video footage played to me that it was no longer than around 15 seconds.
 - 2) M denied in cross-examination that she or her parents had ever called F “lazy” (“not at all, my parents gave him maximum love and care”) or (to his face and in front of others) a “phone addict” (“no, I have spoken to him about phone addiction, but not in front of others”). However, Mr X, M’s own witness who gave evidence in a very compelling way, made it clear he was aware of the family calling F both “lazy” and “a phone addict”.
 - 3) M claimed that F had stolen a collection of Indian coins. She said he took the coins when he vacated the family home in March 2022. She provided evidence in the form of a photograph said to show the coins having been removed by 6 March 2022. Yet she told me she moved back in only on 25 March 2022, the date by which the parties agreed F would vacate and until which M agreed she would remain away. During evidence, she said she had returned on 6 March to get some “job files” related to redundancy, but (i) she had not previously mentioned this visit and (ii) according to Mr X, it was not possible for her to go there alone because of the non-molestation order. But more significantly her evidence that he took the coins when he vacated is at odds with her evidence that the coins were gone by 6 March 2022.

I do not consider those relatively isolated areas enough to tarnish her evidence entirely. One might imagine embarrassment at having called F lazy and a phone addict, and perhaps a desire at times to embellish details. Indeed, I detected a desire always to think and paint the worst picture possible of F. For example, M complained of F driving slowly past her house (the former home) on 17 April 2022 and of being “very petrified”. She did not say she was absent from the property and observed this only on CCTV. She may have mentioned it to the police, but it was a vitally important detail missing from her statement to this Court. M said F had “clearly locked” the house extension on 25 December 2021 “not for security reasons, but to bar me from entering my home and moving in”. She accepted that other doors within the home, eg those upstairs, were not locked and F’s entirely credible explanation—which M seemed unwilling to accept—was that the doors had only been installed the previous day or so.

4.8 However, despite some deficiencies, at the core of M’s evidence was a relatively consistent narrative, even if not necessarily the one that she sought to present at the hearing.

1) In M’s first witness statement to a court about her relationship, in January 2022 (M1), M described a relationship which had become “more difficult and distant since our daughter was born when he showed limited interest in her and me and avoided taking any responsibility”. She described F being addicted to his mobile phone and not engaging with social or family life. She “started feeling controlled ... and isolated” by F as he asked her to cut down the time spent with her parents. She does not say when this was. She describes the impact of stress when they moved back in with her parents in May 2021:

“I was sensing a lot of detachment from the R who always seemed focused on his own needs (food, daytime naps, and phone entertainment) than [sic] on his family”

2) Although she refers to noticing “in time” that F was arguing with her and talking in a threatening manner, she very clearly leads with F’s addiction to his telephone and disinterest in family life. The picture painted is very much of a husband of limited maturity who is unwilling to engage in domestic chores, disinterested in helping with the new-born child, and whose rigidity develops into a resentment at his married situation, saying or threatening (in her December 2022 statement clarified as being from May 2021) “I cannot sustain this marriage any more”. She then describes incidents which took place from 13 September onwards, centred around F’s desire to move away from M’s parents’ into rented accommodation as they were unable to re-occupy the FMH. From this point on, it is clear the relationship was acrimonious until the parties separated in October and F asked for a divorce in December.

3) Similarly, the picture in M’s statement of June 2022 (M2) is one of controlling or aggressive behaviour towards the end of the relationship, linking “increasingly controlling and ... [aggressive]” with having to go on sick leave from 14 September 2021. She describes feeling controlled “and neglected” once she and F moved to their own home in June 2018 because of F’s unwillingness to help with chores, and taking over joint household accounts, and adding second factor authentication. She describes, but without any detail, F questioning her and expressing unhappiness about her spending time with her

family and preventing her from arranging outings with her family or friends. What emerges overall is a pattern of disinterest in family life morphing into degrading comments when the parties moved back to M's parents' house in Spring 2021 before a number of serious and detailed allegations around the time of the marital breakdown. M also details F arriving home late from work during the marriage and an addiction to watching pornography.

- 4) M's third statement was made on the same day as M2 but in support of an application to vary and enforce the non-molestation order. It deals principally with F allegedly driving past the FMH in breach of the order and failing to contribute financially as agreed in recitals to the non-molestation order.
- 5) M's fourth and most detailed statement was made in December 2022 (M4), over a year after separation. Again, she opens by detailing a marriage in which she lacked support from F, though now saying he took on the role of "dominating husband" and that she was not an equal partner. She describes a particular lack of support from F for almost 3 months after A was born. I understand her to say M and F and A all moved in with M's parents between around September 2019 and December 2019. In March 2020, it is common ground the parties lived apart for a period due to F contracting COVID as the first lockdown commenced. From April 2020, with A around 7 months of age, she describes F arguing or being sulky if M bought things or cooked meals without consulting him. F's interest in pornography is described. In this witness statement there is more detail offered in relation to the controlling behaviour. M says F controlled what they should eat, and when, and what should be bought. M describes F demanding a head massage. I note F's evidence of a WhatsApp exchange in November 2019 when M asked him to come and "press my head a little" and then "and close curtain", to which he responded "Coming", which is somewhat at odds with the description by M of F not allowing her "10-15min to allow me to have a bath". M does describe F as staring "aggressively with his eyes and gestures", but the gestures were never elaborated except that in later times she says F would point at her, the first such occasion mentioned being in 2021 (both 2022 statements, though introduced also in M's May 2023 statement without such a time limitation). M talks of F shouting at her for crying and "showing myself as emotional and immature", but it is noteworthy that the evidence that F called M immature appears in M's statement at the point in the narrative where F was seeking to leave F's parents' home in 2021, or (January and June 2022 statements) in December 2021, or (Mr X's statement) during a reconciliation meeting in Autumn 2021.
- 6) For the rest, the picture in this statement, prior to 2021, is simply one of lack of support: "During the first 6 months after her birth prior to lockdown, [F] did not support me with taking A to attend any playgroups or classes...".
- 7) In M's fifth statement (M5), she describes herself as once a "confident and independent" woman. That rings true, given her apparent success in work, receiving substantial performance bonuses and having as a result earned in the region of £130,000 in 2021-22 despite working a 3 day week that year, having returned from maternity leave. It sits somewhat uncomfortable with her description of a "simple Indian girl and family": her parents have also both achieved success as medical professionals. Again, she talks mostly of

“emotional neglect” and lack of involvement (see paragraphs 19 onwards). She says F “controlled and harassed them daily” but gives no details.

F’s evidence

4.9 F’s presentation was mostly very flat, and his demeanour offered very few clues to his credibility. At one stage, cross-examining Mr X, he became quite heated, almost shouting about Mr X’s situation—having worked away from home often—being comparable to his own and therefore F’s own absences being no worse than those of Mr X. Mr X wanted to “correct” F, and F forcefully overrode his objections with “no, no my question has not ended”. But that moment of indignation aside, and some apparent nervousness (which I describe later) around the sexual abuse allegations, there was little to assist in how he presented.

4.10 There were inconsistencies in his evidence also.

- 1) F raised a litany of complaints of allegedly controlling behaviour, saying M was tracking him, sending him aggressive messages, fighting him about being late home, not engaging in sexual relations, not involving him in household decisions, calling him “lazy” and/or a “phone addict”, “forcing” him to move house, preventing him from watching TV and nagging him for not doing enough at home. Yet F told the Cafcass adviser completing safeguarding that there had been no domestic abuse or violence. In evidence he claimed this was because he had not been asked, but that is scarcely credible, given that M told the same adviser there was domestic abuse of a variety of types and did so before the adviser’s interview with F. In fact, very few of the swathe of allegations he makes could even *possibly* amount to controlling behaviour. As I made clear during the hearing, M’s decision not to have sex with him from 2018 is incapable of amounting to controlling or coercive behaviour.
- 2) F said that he did his fair share of chores around the house, yet he agreed there were arguments about the chores with M’s parents (“they are reminding you day and night ... you need to contribute more to house chores”) and he—inherently improbably—asserted that M would offer to have sex only in return for his completing a list of chores.
- 3) F conceded that M was “always fine with my work and she was even accommodating”. However, he complained in cross-examination that if he said he was going to an office gathering (or meeting some friends), M “would be triggered”.
- 4) Finally, but by no means least significantly, F told the Court on 29 June 2023 that he opposed a zonal non-molestation order on the basis he “sometimes visits (approximately monthly) two friends on [R Road], [W Town]”, namely Mr X and Mr Y. So recites the Order of that date, and it is unlikely in the extreme such a recital does not accurately record what the Court was told. After Mr X and Mr Y had provided statements denying having seen F since, respectively, December 2021 and June 2021 (Y having then left R Road), F explained in cross-examination that he had merely told the Court they were people he “would like to meet”. Such a wish would not have been recorded by the learned Recorder in that way.

As between M's evidence and F's evidence

4.11 Both parties' evidence had some inconsistencies and deficiencies. My overall impression was that M was rather more reliable on questions of straight fact, though she tended to portray F's actions in the worst possible light. I do not think their relative credibility is such that I can universally prefer M's evidence over F's wherever there is a clash. Instead, I need to weigh the inherent probability of each behaviour asserted and each allegation made, the context, and any inconsistencies peculiar to it.

M's parents' evidence

4.12 M's mother gave clear evidence. She described F living in her home in T Avenue for two and a half years and showing little interest in family life, instead being absorbed in his phone, getting his meals cooked for him and being ungrateful about them (eg "why can't you cook something different") and after A was born helping M with the chores in M and F's home. She described M appearing unhappy when she and F moved back to T Avenue in April (or 2021) and the relationship deteriorating with F showing "disrespect" to [M's parents], with F humiliating M, napping and watching TV late in the evening. She "concurred" with her husband's description of events, but did not give detail about the precise language she heard. She listened in to a conversation on 15 September from an adjoining room. MGM described M being very scared on 22 September 2021 and F having "a very weird expression in his eyes and anger in his face". Beyond that, she simply agreed with the description in her daughter's statement. As to 9 October, MGM simply "concurred" with the description given in her daughter's statement. In cross-examination, she recalled MGF saying words to the effect of "if you can say my daughter is 'mental', I can say you are a rapist", that tempers on both sides were heated, and that M was sufficiently scared by F's demeanour that she asked M to hide away all the kitchen knives.

4.13 MGM described an incident on 30 December 2021 when F paced up and down her driveway demanding that M respond to his request that she provide the parties' marriage certificate, and on 23 January 2022 when he arrived unannounced shouting at her to "get [M] to talk to [him]".

4.14 MGM's response to questions appeared open and straightforward. She did not embellish. Asked why F's parents had left after staying with her and MGF for a month, she said she was not sure and that her daughter thought it was because F's parents had felt ill-served by her and MGF. She did not claim that she felt this was the case. She accepted she saw M most weekends and that MGF also sometimes napped in front of the TV but that she sometimes asked F not to take nap, and agree she sometimes woke F from his naps, and agreed with F that there had sometimes been family discussions about F getting a job with more family-friendly hours. None of her evidence seemed inconsistent with anything that was put to her. In short, I found her generally very reliable. I shall deal later with the only aspect of her evidence which I do not fully accept.

4.15 M's father (MGF), was in contrast a poor historian. M's counsel realistically accepted, as she had to, that he was trying to second-guess the questions put on behalf of father, and had great difficulty simply answering the question. She asked me to take into account his age and apparent difficulty at times hearing questions. I do, but neither of those account for his reluctance simply to answer the question. Asked whether he had

regularly commented on F's weight, he responded "not publicly, not medically". That rather admits of the possibility F is right to assert that MGF would "taunt" him about his body weight. He denied calling him a "phone addict" and "lazy", though Mr X clearly understood these descriptions to have been used. He appeared very authoritarian, declaring that a child A's age watching TV in his house was "not allowed", that he "forbid it", despite MGM's evidence that A was allowed to watch age-appropriate TV in their house. Bizarrely, he suggested he could not have shown F medical journal articles about napping because of copyright law. When the "girl" in India had rung him before the marriage, he said, he handed the phone to M. M said she knew nothing of this at the time; MGF's evidence in further questions on the subject was confused. He claimed he did not see M and F most weekends, and claimed to have been too busy to know who visited, which seems highly unlikely given MGM's evidence that the family got together most weekends and MGM and M's evidence that F did not look after A on his Mondays off but instead got her or MGF to take the day off to do so. A perusal of the leave schedule produced by M shows that MGF took all, or nearly all, Mondays as leave between September 2020 and September 2021.

4.16 In short, I found MGF's evidence highly unreliable.

Mr X

4.17 Mr X was a family friend, known to M and her parents since before she married. He got to know F when he married M in 2016. After the parties separated, he attempted to mediate a reconciliation between them, having meetings with them at his home in October to November 2021. F cross-examined him directly. F clearly found this understandably difficult and at times his questions were rather testy, on one occasion quite angry. Mr X maintained his composure throughout and appeared to answer in a very level, matter-of-fact way. One of Mr X's assertions was that F had said he considered his relationship with M more important than that with A, that A was "a by-product" of their relationship. F asked Mr X about this, suggesting that F had been trying to "prioritise" his relationship. F did not challenge his description of A as a "by-product", but asked questions suggesting that it was his response to being told by Mr X that he and M should reconcile because of their daughter. Mr X agreed, and agreed when F put it that if both parties were happy then their daughter, their "by-product", would be happy too. Had Mr X's intention been simply to harm F's case, he might well have disagreed here.

4.18 I would add that F's command of English was ample to give evidence and cross-examine, but I formed the clear impression that he did not understand the negative connotations associated with the expression "by-product", though it was clear he considered salvaging his relationship with M was his priority.

4.19 Mr X made other appropriate concessions, for example that during the reconciliation meetings, F had asked M to ask her parents to apologise to him for things she had said. Mr X recalled M's family calling F "lazy" and a "phone addict". He also agreed that F had during reconciliation meetings offered to go for a walk or sit in another room while M's parents visited and that F had told M's sister and brother-in-law he would call the police if they tried to come into the home when they visited on 25 February 2022 to collect clothes.

4.20 In all, I found Mr X a compelling witness. Although a friend of M’s family, he had no obvious motivation to give anything other than honest and independent evidence, and no such reason was suggested.

Other evidence

4.21 F did not wish to cross-examine Y or X and accepted their evidence.

4.22 I was shown two video clips from CCTV. One was a 5 second clip showing a car driving past the matrimonial home on 9 April 2022; one, taken at night on 17 April 2022, showing a car (which F accepted could have been driven by him) slowing outside the home before a parked car to allow an oncoming vehicle to pass, pulling out to pass the parked car, slowing again for around 15 seconds for no obvious reason (certainly not accounted for by the speed bump in the road), then driving on.

5. Analysis of M’s allegations: (1) Emotional and/or psychological control

5.1 At the core of M’s evidence is the unhappy picture of a marriage in which F invested little either emotionally or practically. He was called “lazy” by her family. That seems entirely understandable given his attitude. He says he ordered groceries and helped with feeding A at night, but I accept M’s evidence that the latter was only for a limited period. F’s assertion that he did almost everything bar the cooking is at odds with his description of M and her parents never being happy with his contribution, in circumstances where I find MGM to be the most straightforward of all the witnesses before me. It is also at odds with his peculiar assertion that M offered sex in return for his doing chores and the overall sense of entitlement one gains from reading his schedule of alleged controlling behaviour by M. I accept the evidence of M and MGM that F’s input, both emotional and domestic, was limited. He was absorbed in his own life, his own career, and his phone or TV when not out or working. The evidence overall overwhelmingly leads to this conclusion. But that alone is not, and in my judgment cannot be, enough to support a finding of controlling behaviour.

5.2 F’s imposition of his terms on domestic life, such as what the parties ate and lack of input into the household and relationship *might* provide a motive for abusive behaviour or be an outcome from which I can infer there was abusive behaviour, but a key question would be how the end was achieved. Without threats or other intentional behaviour, apathy is not itself behaviour designed to subordinate or make dependent. Stepping back and asking myself how F went about avoiding chores and domestic social life, there was nothing in the apathetic way he set about that which amounts to coercive or controlling behaviour.

5.3 M suggested in oral evidence that F would “get his parents to remind me that it was my duty to serve him”. There is no primary evidence whatever as to what he might have asked his parents to do. I could draw inferences, but to do so would be inconsistent with M’s own case, advanced in cross-examination of F, that F’s parents refused to build any kind of relationship with M and barely communicated with her, F’s unchallenged evidence being that they simply exchanged a few words now and then when he happened to be speaking to his parents.

5.4 On M’s case, the parties gave consent at some stage for the sharing of their location with each other via their iPhones’ “Find My” feature. F says he did not consent, but I

do not find that credible against my finding that he was clearly very attached to his telephone. There was no independent evidence either way, but it is inherently less likely that M could have somehow obtained and gained access to his phone to activate tracking than that he gave his consent during happier times in their marriage. Equally, given that M must have consented to its activation, and does not assert that F insisted on this (she does not say she only knew about it from December 2021, only that she then discovered it was *still* active; indeed she knew that her parents and sister were removed from this shared location feature at some earlier point), I do not consider that it was an attempt by F to control or coerce M.

- 5.5 M's suggestion that F sought to "cut down our time spent with my parents" after A was born is not supported by the clear evidence that she saw her parents most weeks. There was no attempt to isolate her.
- 5.6 F admitted to using pornography. He portrayed it as to "relieve his sexual needs". On the balance of probabilities I am satisfied that F's interest in pornography dates back to at least the start of the relationship. M describes finding F "regularly watching obscene and degrading pornography on his laptop" in March/April 2016. It is hard to be mistaken about something of this nature and I prefer M's evidence to that of F. However, I am not satisfied that he watched a video entitled "Couple filmed having sex in park in front of kids (video)". The only evidence is that he opened an email with that title in his Gmail account while using M's computer. Although he had a voracious appetite for pornography, it seems to me inherently improbable that he would have opened such a video, and the evidence of his having opened an email with that title, most probably spam, is scant evidence that he opened a video, not least given that it follows immediately his having opened another self-evidently spam email entitled "How to earn income in 2021". Moreover, if M had found that item in F's internet history, I am astonished she did not—as she might easily have—then go on to identify the video itself in the internet history. Although she found the email was viewed by searching for his email address, she then knew the exact date and time he had opened the email and if concerned about it could easily have checked whether he went on to open the video. F's interest in pornography, however obsessive it might have been, did not amount to abusive or controlling or coercive behaviour. If this is what M refers to in her schedule of controlling behaviours as F's "elusive sexual behaviours", the existence of which he tried to dissuade her, it was not abusive behaviour: it was a husband with an unpleasant interest in pornography trying to hide it from his wife.
- 5.7 M says it was clear to her during a holiday in November 2016 that F had discussed the couple's sex life with acquaintances S and R while on holiday in India. She says this based on R's questions to her about sex and claim that she and S had sex every other day. In my judgment, that is too great a leap. This is not an inference which can be drawn on the balance of probabilities. It is not alone as an event into which M has read more significance than is warranted. F's driving past the house in April 2022 is another example. It is not something for which I criticise M. Looked at through the prism of someone who has been through a vitriolic divorce, with a partner who invested little in the relationship and who felt considerable resentment for one's own parents, it is unsurprising M ascribes to some incidents a meaning which is not there.

Events from mid-2021

- 5.8 There is evidence from M of some behaviour by F more threatening than that recounted above. But there is a tendency in M's statements to fail to detail when within the relationship events such as F shouting occurred, save that they increased over time. It is of course impossible for a party to relationship to detail with precision when their partner may have raised their voice or called them immature: it would be absurd for them to keep a diary. But the broad canvas of M's evidence was that the heated arguments and most troubling behaviour started to emerge in 2021, not long before the marriage broke up. This is, in fact, consistent with F's concession in cross-examination that "after we separated there were some heated arguments", and MGF's evidence that he was unaware of any difficulty at all in the first 5 years of his daughter's marriage.
- 5.9 The nearest M gets to putting a clear timeframe on worsening events is that "as soon as [F] got Indefinite Leave to Remain (ILR) in March 2021, he completely turned against me and my parents". On the evidence she presents, viewed as a whole (and in light of the conclusions I have come to about the particular allegations raised in M's schedule), I conclude on the balance of probabilities that there was no emotionally or psychologically controlling behaviour by F but rather a distressing and vitriolic end to the parties' marriage.
- 5.10 Taking even only M's evidence of controlling behaviour as a whole, her complaint is in my judgment best summarised as she put it in her fifth witness statement:
- "he has been neglectful of me and [A] and **later** behaving in an aggressive manner, threatening and abusing me by shouting and exercising controlling behaviour. [F] has controlled me financially as well and he became deceitful and manipulative. He showed total lack of empathy, love and care towards me and [A]" (my emphasis)
- 5.11 In 2021, it is clear that F would have preferred M to leave her parents' home with him and to go to rented accommodation while the matrimonial home was extended. It may be his relationship with MGF, in particular, had reached breaking point. MGF was taunting him about his weight, both grandparents were (justifiably) complaining about his lack of input. MGF in particular had a dominating and authoritarian personality, which came across clearly in the hearing. F did apply much emotional pressure on M then to leave. He started to say he could not "sustain the marriage", again I find as a result of his strained relationship with M's parents. He accepts pleading with M to move into rented accommodation. M was quite able to resist that pleading: she told me it was not her parents' decision not to move: "it was my own decision". Ultimately, he decided to move back to the matrimonial home, unready as it was for habitation, rather than continue to live under M's parents' roof. It was not an attempt to isolate M but a manifestation of his own desperation to leave. In coming to that decision, I have taken into account also my conclusions under physical abuse, below.
- 5.12 M's allegation of verbal abuse which she found frightening on 22 September 2021 (**allegation 4**) is made out, though I find it was in the context of an argument rather than that F suddenly started shouting at M and attempting to control her. F's response, that the whole scenario is "made up" is very light on detail and seems improbable, given the clear evidence that by late September and early October 2021 tensions were running very high, he was desperate to leave the family home, and he admits to at least one very

heated argument with MGF. The language used is consistent with his WhatsApp message of 19 October, “Fuck you and your father”. In cross-examination, his responses were monosyllabic and he had no explanation why M would devote three paragraphs of her witness statement to something he says never happened. Equally, however, it is most improbable that—with the couple at odds over whether they should leave M’s parents’ home, on M’s own case the topic discussed—this was ever the calm conversation she describes. Nor is it credible that in response to M asking F to stop that he replied, as a direct quote as M alleges, that he did not care “whether A suffers any emotional or psychological harm”. Nobody talks that way in the real world, still less during an argument. The description is redolent of a lawyer’s input. That said, I accept her clear description of scooping up A and taking her upstairs. On the balance of probabilities, she was present while F swore angrily during the argument.

- 5.13 The allegation that F stole M’s heirloom coin collection, passed down from her grandmother, (**allegation 14**) is put forward as part of a picture of “gaslighting”. It is not made out on the balance of probabilities. If F wished to steal it, why simply place it in a bedside drawer? If M was so concerned about finding the coins in his bedside drawer that she took a photograph of them, it would be wholly irrational to leave them there. She does not suggest the rest of her sacred “temple”, of which this formed part, remained in the home (and F said all precious items were removed, as one would expect, when they moved out for building works), so it seems unlikely the coins were moved to a drawer as part of any attempt to “gaslight” M. Far more likely is that they were put there to be out of sight of builders or (possibly) F’s later sexual partners. It is at least as likely that on this occasion, M—long after the parties had separated and during an acrimonious battle which had already resulted in litigation—having found the coins in a bedside drawer for innocent reason, succumbed to the temptation to take them and later claim F had stolen them. F never put this directly to M. The possibility was raised in his witness statement, and M had the opportunity to meet that allegation. But given the ambivalent terms in which it was put in F’s statement and the absence of direct cross-examination, I prefer to conclude that M has not proven, on the balance of probabilities, that this allegation is made out.
- 5.14 It is common ground that F sought to persuade M to withdraw her complaint to the police about the events of 9 October 2021, both by asking her to call the police to retract it and by inviting her to sign a written agreement (**allegation 6**). Asking her to do might amount to some offence, but that is not what I am concerned with. The question is whether F sought to intimidate humiliate or frighten M, or to make her subordinate or dependent on him. M said F’s demand that she call the police was “a way to humiliate me”. As with much of M’s evidence, although she was a mostly accurate historian, the facts came with the added interpretation (whether deliberate or a result of genuine but mistaken belief) that F’s actions were designed to achieve dominance over her or had other malign intent. There is a much more prosaic explanation: that F feared prosecution and did not want that hanging over him if the parties were to reconcile. F was completely open about this in cross-examination. He told M that if she was not prepared to sign the agreement, he was not prepared to reconcile. I accept he was, as he told me, “insecure and worried”. M decided not to sign. F’s further correspondence on the subject hardly smacks of harassing her. The messages produced by M from 5 and 8 November are selective parts of conversations and F’s message on 8 November, in particular, is evidently in response to some request of M that they move back together.

- 5.15 I do not find that F deliberately tried to block M from the new extension on 25 December 2021: there is no evidence to gainsay his account that the new doors were erected only shortly before M tried to get into the new parts on 25 December 2021, had been left locked, and F had simply not yet provided M with keys. Equally, he said in a text message that he “did not consent” to M moving back in. He was doubtless reluctant to do so, as he had by 18 December 2021 demanded a divorce and even continued in early 2022 to believe that he was entitled to occupy the property to the exclusion of M, saying in cross-examination that he thought she needed permission to go there because in the recitals to the February 2022 non-molestation order it had been agreed he would vacate the home by 25 March 2022 and M would occupy it from that date. He did seek to exclude her from the property generally at that time (**allegation 11**). Of course, by late 2021 the divorce was under way and Court applications only around the corner. F was wrong that M needed his consent, but seeking to exclude her from the property he occupied was no more than the commonplace cut and thrust of an acrimonious separation. It was neither controlling nor coercive. Nor can I see anything abusive about his asking for 3 months to vacate at the non-molestation order hearing, and the reference in M’s schedule to F having “wrong intentions with the house [sic]” does not appear to be an allegation of abuse.
- 5.16 I am not satisfied on the balance of probabilities that F intended to harass or intimidate M by driving past the house on two occasions in April 2022.
- 1) On the first such occasion, on 9 April 2022 (**allegation 12**), M said she saw him driving past her house and that one can see him slowing down on the CCTV footage. She did not say she herself saw him slowing down other than in that footage. Her mother did not mention it at all in her evidence. I saw the CCTV footage. It is around 5 seconds long. I could not see a car slowing down (which might have constituted harassment). There was no bar on F driving a car down R Road at the time.
 - 2) On the second alleged occasion, on 17 April 2022 (**allegation 13**), M was not at home but relies on the CCTV footage. F accepted, ultimately, that it could be his car. I have described what can be seen above. It seems on the balance of probabilities F did linger for longer than he needed, having been initially slowed by giving way to an oncoming car, and although he denies staring at the house, his reason for lying about this could well be an understandable fear that he might have breached the non-molestation order just by doing so. In my judgment, his failure to drive off is as consistent with a natural curiosity prompted by the chance of having had to stop anyway as any intention to purposely intimidate M, and I am therefore not satisfied it was his intent.

6. Analysis of M’s allegations: (2) Financial abuse

- 6.1 M’s case on financial abuse is extremely weak, and is not made out. Indeed, the way in which it and the allegations of generally controlling and coercive behaviours were raised by M in my judgment risked obfuscating the allegations which do have merit.
- 6.2 M agreed that throughout the relationship she had access to her own personal account, into which her earnings were paid. In the year to 2022, she earned around £135,000, though I accept this included bonus payments. Overall, she conceded, she earned more than F during the relationship, all paid into the account over which she had sole control.

She was on maternity leave from September 2019 to September 2020, when she returned to work at 3 days per week. She “titrated” up her hours, as she put it, returning to work full time by July 2022. M’s January 2022 witness statement records that she was then still working 3 days per week. It is notable, therefore, that M’s £135,000 was earned at a time she was not working full hours. M did not dispute F’s evidence that she currently earns over £90,000 gross per annum.

- 6.3 As a chartered accountant, F may have advised M, as she alleges, to maximise her pension savings, but there is no evidence whatever he did so with the intention of reducing the money she had available to herself, or that it had the effect of leaving her without the ability to spend as she wished. M complains that she and her parents paid the majority of the household expenses, but nowhere suggests this left her no or little money, nor does she say she was compelled to pay money into any account by him. She says F demanded that the parties pay in equally to the joint account and spent some of it on personal expenses and F “told” her to pay for various things like his driving school fee which she did “as an obedient wife”. But on the balance of probabilities, I do not find the evidence supports any finding that F made her do so. In so concluding, I have considered in particular the evidence about the parties’ relationship during the marriage, the absence of any pervasive coercive or controlling behaviour while they remained in a relationship, and the picture M paints of a husband who simply contributed little emotionally or practically to their marriage. It may be that he contributed little financially, although the evidence is insufficiently clear so to conclude (even on the balance of probabilities) but that would not amount to any abuse or other form of relevant conduct.
- 6.4 For example, M says that it “got to a point” where she “had to seek validation or permission from him for everything, even whether I should buy extra nappies for A” and F would “interrogate” her over even small spending. Save for the fact that M is asserting this point was reached after A was born but (presumably) before the end of 2021, the timing is not expressly dealt with (even approximately). I accept that after A was born F questioned spending as unnecessary, taking as an example that given by M of a toy costing around £10 to £15. It seems in addition to any other characteristics F may have had, he was a frugal man. But equally, M questioned him about some quite trivial payments, albeit—as she explained in cross-examination—because she says the parties had agreed they would only spend from the joint account on A or for joint utility bills. But it does show that M was just as capable of asserting herself financially and of querying even the smallest of expenditure.
- 6.5 A significant amount of time and evidence was devoted to the question of whether F complied with an agreement recited in the consent non-molestation order of February 2022, left M in a difficult situation after the end of the marriage by closing an account shortly before bills were to be paid, or wrongly excluded her from the running of a company. But all of these matters are in my judgment very clearly the result of the acrimonious divorce. There are and were proceedings under the Family Law Act 1996, private law proceedings about A and financial remedy proceedings. It would in my judgment require something wholly unusual about someone’s conduct during such proceedings to justify a finding that they were seeking to control or coerce their former partner. There is nothing justifying such a finding in this case.

7. Analysis of M's allegations: (3) Physical abuse

- 7.1 M draws a vivid picture of F having, from mid-2021, a quick and rather frightening temper. She describes bloodshot eyes, shouting, pointing, and angry looks. F himself admits that the stress all became too much by mid-September when he described in cross-examination having a “mental breakdown”. I find this is borne out also by many of the individual allegations. This impression is strongly fortified by Mr X’s compelling evidence of F during the reconciliation meetings being “extremely aggressive, stubborn, arrogant and unwilling to appreciate the seriousness of the situation” and admitting to being “hot-headed”. He even told F to “act maturely”, which I find entirely consistent with the view of F’s behaviour described above. F’s evidence that M had “anger issues” lacked any real conviction. His examples, such as her being angry if he was chatting on WhatsApp with friends, appear to be justifiable displeasure at F’s interest in pornography and disinterest in domestic life.
- 7.2 Aside from the sexual abuse allegations, which I consider below, the first allegation of a threat of physical abuse is on 13 September 2021 when F is said to have threatened to kill M (**allegation 2**). M herself describes this as “the first serious incident”. She says that in the course of trying to persuade her to move to a rented property, F said “What would happen to A if we both continue to have arguments living at the rental property and get stressed?”. This is highly improbable, as F pointed out. To say such a thing would be antithetical to his argument that they should move to a rented property. M’s version makes no sense. Even she acknowledged in evidence that it seemed “quite strange at the time”, she “could not fully comprehend what he was saying”, and that it was the first time he had said anything like it. It is entirely possible that in the course of a stressful argument, at a time both parties were under great stress, M misunderstood what F was saying. On balance, I think she did *not* understand it at the time as malevolent, because she was prepared to go upstairs later that evening with F to have a private discussion even though she “thought he was planning to do something to harm me or A”. It seems more likely that her recollection and interpretation of what was said (and possibly that of her parents) on 13 September has been coloured by what F later said on 15 September. Although allegedly heard also by MGF and MGM, MGF’s recall of history is wholly unreliable and—as M’s counsel asserted—he struggles with hearing. MGM’s recollection was not detailed: she just confirmed she agreed with MGF. F’s account, namely that he was commenting on the effects on A of her parents (or at least F) being stressed by continuing to live with M’s parents, is so much more plausible than M’s understanding that on the balance of probabilities I am quite satisfied it is true.
- 7.3 I am satisfied on the balance of probabilities that F did on 15 September 2021 say he could end up killing M, her parents and A if he had to move back in with them (**allegation 3**), but it was intended rhetorically and not as a genuine threat. It was ill-judged, angry, and open to being misinterpreted, and so it transpired. M says F said, “There is no guarantee that if I come back here that I will not get so stressed out that I decide to pick up the knife, kill your parents first in their sleep and then kill you and A.” F says he was responding to MGF having accused him on 13 September of planning to kill M and A if they moved to rented accommodation, by pointing out that if that were the case he could just as easily do so at M’s parents’ home. M’s account is corroborated by that of MGM. However, she was eavesdropping from another room and is less likely than her daughter to have had the full context. MGF admits to telling

F on 13 September that he thought he was not in a normal state and that he did not think M and A would be safe in rented accommodation while F was in this state of mind. MGF denies having called F a “killer”, but when asked about the text message in the bundle in which F complains of MGF “designating” him a killer, MGF denied the word but not the sentiment: “no, I didn’t use the word ‘killer’, he was extrapolating”.

- 7.4 It is most likely that F was striking back at MGF’s accusatory words. It was ill-judged. F is not an empathetic person. As demonstrated in cross-examination, he struggled to assess what emotions his actions could trigger in M. It seems unlikely, given the heightened emotions on all sides, that F was coolly and logically trying to argue that MGF’s fears were groundless because if F were a “killer” he could kill everyone at T. More likely and probable is that he did so in anger and/or petulance in response to what he perceived as another slight perpetrated by MGF, and I so find. Without suggesting these were the words used, it was along the lines of, “I’m not moving back here. Your father says I’m a killer; if he’s right I’d just come back and kill everyone”. This is not only consistent with both M and F’s evidence, but it is also consistent with what appears from F’s approach to domestic life to be a great deal of immaturity on his part. There are no grounds to think he would ever carry out his threat.
- 7.5 Given the above, the heightened tensions as the marriage fell apart, and M’s generally more reliable evidence, it is more likely than not that on 9 October 2021 during the course of a row following which F called M “mental” in a text message exhibited by M, that F did throw a water bottle (there is no suggestion it was glass rather than plastic and no evidence whether full or empty) at M and blocked her exit from the room (**allegation 5**).
- 7.6 Indeed, F accepted he shouted at M from 9 October 2021. To his credit, he agreed he was angry. MGF admitted he called F a “rapist” in response to F’s assertion that M was “mental”. Both F and MGF were clearly very angry. MGM described tempers as “heated”. Both M and F agree that MGM had to interpose herself: M described MGM “pull[ing] my father away, just in time before [F] could punch him”. That is entirely consistent with F’s assertion that MGF raised a fist too, and my own observation of MGF’s authoritarian attitude. MGF said he never raised his fist but neither M nor MGM spoke to that. On the balance of probabilities, I find that the pair squared up to each other and MGM intervened to restore calm.
- 7.7 M alleges F lost his temper in Starbuck’s on 13 November 2021, followed her back to her car, shouting and yelling, and slammed her car door nearly hitting her arm (**allegation 7**). Again, I find M’s account preferable to F’s. F denies that he “tried to assault M” but admits to an argument because M was asking him to move back in with her while he would not do so unless she signed the agreement. F’s evidence in cross-examination that he then simply watched M settle A in the car before getting into the driver’s seat, then went to his own car and stood behind it watching them leave defies logic. F slamming M’s car door is not something about which M could be merely mistaken or could be reading too much. On the balance of probabilities, it happened. It may well be F simply did it out of temper. M thinks F saw her arm outstretched reaching for the door but does not say why. It would be very difficult for her to be sure of that and just as hard for me to be satisfied of it even on the balance of probabilities. He followed her from the restaurant, the argument continued, and in his temper he slammed her car door, being lucky not to strike her.

- 7.8 Similarly, I accept M’s account of an incident on 4 December 2021 when F and M argued in the car (**allegation 8**). Who started the argument does not need to be resolved: it was an argument. In cross-examination, F initially denied there was an argument, trying to minimise it as “an incident, you could say”, only later admitting he was angry and shouting. It undermines his credibility on this allegation. The relationship was reaching the end of its drawn-out and tumultuous disintegration. What matters most, especially from the point of view of A’s welfare, is whether F imperilled M and A by his driving. In the context of such an argument, and with F’s temper being such as it appears to have been, it is likely that he was somewhat distracted by the argument. M says he drove “aggressively”, “in a rage and unfocussed”. It is hard to know what this means. I do not find he deliberately drove in a manner designed to scare—or worse, injure—M or A, but he was undoubtedly distracted by the raging argument.
- 7.9 M wrote of a video call with F to which Mr X was a party, on 5 December 2021, when she says F said that if she, A and her parents were in India, or his family in the UK, “things would be very different”, and that he said he could easily arrange to harm them as he had many connections in India (**allegation 9**). In cross-examination, M was quite sure that she heard the reference to harm. Mr X also heard this very clearly. F addressed only the comment about things being different, saying he meant he would have more support, that things would not have escalated, and that this was not meant to sound threatening. Tellingly, in my judgment, he came close to admitting the threat in his response to Mr X’s account, saying:

“It should not be a surprise for Rajeev to see a person who is cornered by everyone and was battling alone his bought with depression, anxiety and anger towards his in laws, broken marriage, and alienation from her one and only daughter to behave irrationally sometime.”

It is in keeping with F’s short temper and the difficult circumstances of the time that on the balance of probabilities he did make the threat. It is no excuse that he probably did not (as with his threat on 15 September 2021) mean the threat seriously. It may well have been said in the heat of the moment, but M rightly describes the effect as shocking. She did, though, it appears, understand that there was nothing in fact to fear from F, standing up to him and telling him to threaten her, and agreeing to meet him alone (albeit in a public place and, of course, not in India) only a few days later. That it was a result of F’s anger, and that it may not in fact have put M in fear, may contextualise the behaviour, but it in no way excuses it.

8. Analysis of M’s allegations: (4) Sexual abuse

- 8.1 I have considered anxiously whether I ought to make freestanding findings of fact about these very serious allegations. As I decided during the hearing, it is open to me to do so, and it was right that I heard the evidence. There is a danger of being distracted by allegations such as this, highlighted in *K v K*. I have reflected at length on whether the allegations cast light on the most important allegation here, coercive and controlling behaviour. There *are* suggestions of emotionally manipulative behaviour—for example, F is said to have sulked when told M objected to digital penetration in December 2015—and of a lack of empathy and respect for M’s wishes, in continuing sexual intercourse when M found it painful and asked him to stop. Yet, in my judgment, they relate to a particular area of the couple’s relationship and are limited to a particular phase of that relationship which is such as is unlikely to help me fairly assess the

dynamics of that relationship as a whole. I have cautioned myself against giving undue weight to F's behaviour in the bedroom or his veracity in relation to that.

- 8.2 There is little by way of detail in the evidence, but it remains the Court's task to decide whether the events happened or did not. There is little scope in these allegations for the parties to be mistaken.
- 8.3 I have dealt above with F's interest in pornography and do not need to repeat it here. That is not abusive, nor is it controlling or coercive behaviour.
- 8.4 M's allegations are that F:
- 1) digitally penetrated M in her parents' house in December 2015 despite M trying to stop him, saying she wanted to wait until they were married;
 - 2) bit M and refused to stop having sex when she found sex painful on their wedding night in early 2016;
 - 3) pestered M for sex while on honeymoon and making vulgar insults making her feel cheap and at his mercy;
 - 4) attempted anal sex without M's consent in April 2016, when she screamed and said she did not want to continue he forced her to try again, when he tried vaginal penetration she was crying and said "no", but he continued;
 - 5) attempted sex with M in an uncomfortable position in February 2017; F called her a "scared" for refusing; M felt she had to give into his demands to try yet a further position; and
 - 6) had sex with prostitutes in the family home, in a bed formerly used by A, after the couple separated.
- 8.5 The fact these allegations were made only a matter of 2 weeks before the hearing is of little or no evidential significance. They were adverted to in M's earlier witness statements and would have been painful matters which M would be understandably very reluctant to discuss in Court. There were no referrals to police, or reports to others, but many victims of sex abuse do not feel able to say anything, often because of shame or embarrassment. I do not regard the absence of any reports to others as relevant.
- 8.6 As to (1), there is little by way of detail, but I accept on the balance of probabilities—albeit by the finest of margins, given the scant evidence and inherently low probability that someone would behave as alleged—that it happened as M alleges. F's statement didn't deal with the allegation and in cross-examination, F denied sexual activity by saying "no, we never had sex in 2015", which is not the same thing, though he later flatly denied digital penetration, simply saying "no, it never happened". He offered no explanation why M might allege it. M said that she thought she had to allow it to go on because F sulked when she said "no". This is consistent with the pattern of petulant and immature behaviour he displayed later in the marriage. M might rightly, perhaps, have wondered whether this might be a sign of F's likely behaviour in the relationship, but even if he did sulk about it there is no evidence or likelihood this was done to suborn M, and no act intended to harm, punish or frighten.

- 8.7 As to (2), on the balance of probabilities, but again by the narrowest of margins, I find this happened as M alleges. She described whimpering and crying and saying “no”. He asserts—with no other detail—that this was not M’s first sexual experience, despite her assertion to the contrary. When asked about biting M, F paused for some time before providing the odd answer, “I wouldn’t say I was biting but it was part of the sexual encounter”. Again, F’s response is evasive, saying that M initiated sex and asked to do it again some time later, and was not shy. That does not address the critical question whether she asked him to stop and found it painful. Given in addition M’s generally better credibility, and F’s general lack of empathy, I find that on the balance of probabilities he did continue with sex despite M finding it painful and asking him to stop. For similar reasons, I reach the same conclusion in relation to (4) and (5). They are of a piece with (2) and consistent with F’s apparent attitude towards sex and the belief that he was entitled to sex as highlighted by his assertion that M’s abstention from sex was controlling behaviour. However, as to (4), M gave no evidence as to how F “forced” her to try anal sex again. Without more detail, it seems just as likely she felt obliged to allow it to continue and was persuaded to do so. That, of course, cannot be true of his continuing with sex after she said “no”. As to (5), M felt she “had to give into his demands”. It seems this may have been a result of his saying his life would not be satisfactory if she refused, but this was not clarified in evidence.
- 8.8 F’s decision to lie about these matters is consistent with his decision to lie about looking at the family home when driving past in April 2022. It seems to me that F was at his most likely to lie when confronted with matters which he considered could threaten him with findings that he had broken the law. This is not probative that he always lied about such things; equally it is no real proof that he lied about things of lesser potential consequence.
- 8.9 F’s evidence that M may have worn bikinis on honeymoon is not remotely relevant to M’s allegation that F “regularly pestered” her for sex. The fact he regards it as relevant suggests he felt M dressing in a bikini was an invitation to sex and betrays an unacceptably immature understanding of sex between a loving couple. But I do not have any evidence of how he pestered or demanded sex, or of what insults he may have used. There is insufficient evidence to make any meaningful finding of fact in that regard.
- 8.10 I do not find that F had sex with prostitutes. Counsel put to F that he had committed criminal offences. He agreed he had sex in a bed in which A had occasionally previously sleep when not in her cot, but as it was not a bed used for that purpose any longer this again strikes me as M investing in an event a greater significance than is warranted. M says she heard a discussion about money on the sexually graphic CCTV video which I was spared having to watch (mercifully: I cannot conceive of how it would be compatible with *Re M (A Child: Private Law Proceedings: Case Management: Intimate Images)* [2022] EWHC 986, though it was not argued before me but dealt with at the PTR). Without more detail as to what was allegedly said, none being offered, there seems to me no basis whatever for concluding that the women were prostitutes.

9. Analysis of F’s allegations

- 9.1 It will be clear from the foregoing that I do not accept that M sought to control F’s behaviour in any way that could be considered abusive. Lacking trust in F, being angry if F was late home for work, being unhappy about lack of contribution to domestic chores, “not liking it” if he watched Netflix or arguing about his listening to music while

mowing the lawn are no more controlling than his failure to do his share of housework. Allegations that M's father taunted him about his accent or his weight are irrelevant: there is no evidence whatever that M was involved in this. His being called "lazy" seems unsurprising in view of the conclusions I formed about his involvement in family life.

10. Conclusion

10.1 My findings of fact, which are to be scheduled to the Order arising from this hearing, are therefore as follows:

- 1) F did not exert controlling or coercive behaviour on M before the relationship started to break down. He was, however, detached from domestic life and apathetic towards most household chores. M understandably found that frustrating, disappointing, and stressful.
- 2) M did not exert controlling or coercive behaviour on F during the relationship. It is hard to conceive of any circumstances in which abstaining from sexual relations could amount to controlling behaviour. There was certainly none here.
- 3) F found MGF an overbearing presence who was critical of F, for example about his weight, in ways which F found overwhelming when the couple moved back in with M's parents in 2021.
- 4) As a result of F's resentment of MGF, he tried to persuade M to leave her parents' home with him and to stay in rented accommodation until works at their own home were completed.
- 5) Having throughout the relationship had a relatively immature approach to marriage and domestic life, a lack of sexual relationship with M, and a strong and developing appetite for pornography, F became increasingly distant from M with the result that by May 2021 he was contemplating ending it.
- 6) The combination of those factors meant that F was intolerant of M's wholly rational wish to remain living with her parents, and arguments—increasingly heated—ensued. In the context of heated arguments, F said things in anger, not with the intention of harming, frightening or punishing M but with a short-tempered desire to get his own way.
- 7) F did not on 13 September 2021 threaten harm to either M or A. He was trying to persuade M to leave her parents' home with him and suggesting the stress of remaining there would be bad for A.
- 8) On 15 September 2021, F did tell M, in an angry attempt to persuade her to join him in moving out of her parents' home, "There is no guarantee that if I come back here that I will not get so stressed out that I decide to pick up the knife, kill your parents first in their sleep and then kill you and A". This was manipulative, ill-judged, immature, selfish and a product of a short temper. It put M in understandable fear and understandably shaped her (and her family's) interpretation of events thereafter.

- 9) On 22 September 2021, there was an argument between the parents during which F swore, using Hindi swear words the equivalent of “bullshit” and “fucker” and did so in front of A. Both A and M were put in fear.
- 10) During an argument on 9 October 2021, in anger F threw a water bottle, the Court being unable to make any finding whether it was full or empty, plastic or glass, or the size thereof, towards M. It did not hit her. He also refused to let her open the bedroom door and was abusive. He and MGF squared up to each other with raised fists after F called M “mental” and MGF called F “a rapist”. MGM had to intervene to calm both MGF and F.
- 11) F tried to persuade M to withdraw her complaint to the police, but did not pester or harass her about that, and did not apply any coercive or controlling behaviour to achieve that aim.
- 12) F lost his temper when arguing with R in Starbucks on 13 November 2021, followed her back to her car continuing the argument, and in his anger slammed her car door, missing her arm. A was crying and scared as a result.
- 13) On 4 December 2021, F and M argued in the car while F was driving. He was in a bad temper and was distracted from the driving task by that and the argument but did not intend to scare or harm M or A.
- 14) On 5 December 2021, F threatened M by saying that things would have been different if the couple had been in India and he knew people who could harm her, A or her parents. He said this while losing his temper, and it was shocking for M. M did not, however, believe that it was genuinely meant by F.
- 15) F did not financially control M (nor she him).
- 16) F did seek to exclude M from the house from late 2021 to March 2022 following the parties’ separation. This was not abusive behaviour but part of an acrimonious divorce.
- 17) F did not slow down while driving past the home on R Road on 9 April 2022.
- 18) F did not drive on as quickly as he could after giving way to an oncoming car while driving past the home on 17 April 2022, pausing for 15 seconds and succumbing to the temptation to look at his former home. He did not intend to harass or intimidate M by doing this.
- 19) F did not steal M’s grandmother’s coins.
- 20) F digitally penetrated M in her parents’ house in December 2015 despite her saying she wanted to wait until she and F were married.
- 21) During what was initially consensual sex on their wedding night, F bit M’s breasts and refused to stop then refused to stop when penetration caused her to cry in pain and she said “no”.
- 22) F attempted to have anal sex with M in April 2016 without discussing it with her first or obtaining her consent, made her try again when she said she did not

want to (though it is unclear what he did to force her), and failed to stop having vaginal intercourse despite her saying “no”.

- 23) In February 2017, F attempted to have sex with M in an uncomfortable position: when she refused to continue, she felt she had to allow him to try another position. The reasons for her so feeling were not established.
- 24) F did not have sex with prostitutes. After the breakup of the relationship, many months after A had lived at the property, he had sex in a bed in which A had formerly occasionally slept.