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Case No: FD22P00615 & WD22P00519

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 6th July 2023

**Before :**

**MRS JUSTICE ARBUTHNOT**

**Between :**

**SM**

**Applicant**

**– and –**

**PM**

**Respondent**

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**Teertha Gupta KC** (instructed by **Aramm Legal**) for the **Applicant**  
**Charles Hale KC** and **Julia Townend** (instructed by Camilla Baldwin and assisted by the  
mother's Indian solicitors, Sameer Tapia and Siddhi Doshi, ALMT Legal Advocates &  
Solicitors, Mumbai) for the **Respondent**

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Hearing dates: 4th – 13th May 2023

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## **Judgment**

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This judgment was delivered in private [and a reporting restrictions order OR transparency order is in force]. 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 and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

**Mrs Justice Arbuthnot:****Introduction**

1. These proceedings concern two children child A, a boy, aged 10 and a girl child B, aged 5. Before their removal from England, they were habitually resident in this jurisdiction.
2. Their father is the applicant SM and the mother is the respondent PM. For convenience I have referred to them below as the father and the mother.
3. On 3<sup>rd</sup> August 2022, police had been called by the mother to the family's flat in the wider London area. The father was arrested after the mother had made allegations of domestic abuse. The original allegations were denied by the father in police interview and later allegations were denied by the father in the various statements made in these proceedings.
4. On 4<sup>th</sup> August 2022 the respondent mother took the parties' children first to the Middle East and then once she had obtained a visa on to India. She did not have the consent of the father.
5. The father started proceedings first in the local Family Court for a Child Arrangement Order and a Prohibited Steps Order to prevent the mother from removing the children from England and Wales and then at the High Court. He applies for the return of the children to this jurisdiction. The mother has a cross-application for permission to be given for the children to relocate permanently to India to live with her.
6. The matter came before me for a fact-finding hearing. The parties make cross-allegations of domestic abuse. The parties had extremely experienced counsel in Mr Gupta KC for the father and Mr Hale KC for the mother. I am very grateful to them and their teams for their careful preparation of their cases and for their efficiency and succinctness in court.

**Background**

7. An arranged marriage took place between the parties on 23<sup>rd</sup> November 2009 in India. The father comes from a relatively modest background but has had and is having a

very successful career. He has many qualifications including a MBA from various universities and after a long career was earning about £200K net before a bonus more or less doubled his income.

8. The mother comes from a wealthy family who run a successful business. They have a branch in the Middle East run by one of the maternal uncles and the main headquarters in India where the maternal grandfather and the other maternal uncle work.
9. The parties moved to the United Kingdom in October 2014 and lived in various areas including in Scotland.
10. In July 2015 there was a crisis in the relationship and the mother came back to India with child A. There was a meeting between the families at which it was decided that she would return to her husband and the United Kingdom. She returned on 25<sup>th</sup> December 2015.
11. In 2018 she gave birth to their second child and days afterwards the maternal grandmother died and days after that the paternal grandmother died.
12. I have set out the August events above which led to the local Family Court proceedings followed by the case coming to the High Court.

## **Law**

13. This is a hearing to determine the truth or otherwise of certain allegations made by both parties.
14. The following is a distillation of the principles which the Court will apply.

### Burden of proof and standard

- a. The burden of proof is on the party which makes the allegation in this case. To give just one example: the mother says that she suffered many different forms of domestic abuse over a number of years. It is for her to prove that, it is not for the father to have to prove he did not abuse her.

- b. The standard of proof is on the balance of probabilities. If the mother does not prove on the balance of probabilities that she was abused in the particular way alleged, then the Court will disregard that allegation.
- c. Any findings I make must be based on evidence placed in the context of all the evidence. Inferences may be drawn from the evidence, but speculation, suspicion, surmise or assertion are not proof.
- d. Findings can be drawn from the account of a party or an assessment of the family circumstances. So far as some allegations are being made in relation to matters which happened many years ago, I have to bear in mind that memories fade and change with time, sometimes matters are remembered that were not remembered initially but the Court should be careful that it is not imagination that is becoming more active, or memory being affected by strong emotion.
- e. Another factor to consider with caution are the demeanours of the parties and their witnesses. I must bear in mind that a witness may come to honestly believe something happened when it bears either no or little relation to the events that occurred at the time.
- f. I remind myself that in assessing and weighing the impression which the Court forms of the all the witnesses, the Court must also keep in mind the observations of Macur LJ in *Re M Children* [2013] EWCA Civ 1147 at paragraphs 11 and 12:

*“Any judge appraising witnesses in the emotionally charged atmosphere of a contested family dispute should warn themselves to guard against an assessment solely by virtue of their behaviour in the witness box, and to expressly indicate that they have done so”.*

- g. Hearsay evidence is admissible but the weight to be given to that evidence is a matter for the Court. This is a particularly apt principle in these proceedings. The Court will look to see for example if it is receiving multiple hearsay or whether the evidence is contemporaneous with the events it describes, whether there was a motive for the witness to falsify their evidence or whether from other evidence it is clear that the hearsay is or may be wrong or mistaken.

### Motive

15. The father has said the mother's allegations are motivated by her and her family's wish for him to enter the family business or take it over. Another motive for the allegations made by the mother is said to be that she wanted to return to India to be with her family. I bear in mind that the father does not need to prove a motive for what he says are the mother's lies. I remind myself that Courts know that sometimes it is impossible to say what has motivated a party to make the allegations that they have made. Sometimes the most serious allegations are made for no reason at all.

### Domestic abuse

16. The mother has made allegations that the father was abusive towards her in many different ways, physically, sexually and emotionally and that also he was particularly coercively controlling towards her and also towards the children. She alleges that his abuse led eventually to her fleeing the marriage and jurisdiction such was her fear of him.
17. The mother gave evidence by video link from India whilst the father was in Court. Mr Hale KC for the mother was asked if any special measures were required beyond the video link and he confirmed that nothing else was necessary. When the father gave his evidence, he was not visible to the mother. I consider she was protected therefore by this remote means of giving evidence and was able to give her best evidence. The conditions in which she gave her evidence complied with Practice Direction 12J in so far as it was possible in this hybrid hearing.
18. The father has made allegations that the mother physically abused him by breaking his little finger in June 2011. She assaulted him again in July 2016 at a moment of "psychological instability" when she threw the kitchen utensils towards him and he was injured to the face. He alleged the mother went to hit child A in November 2019 and he stepped in to protect him. Mr X, a witness who was a colleague and very close friend of the father's, said he saw the injuries caused by the mother's assaults and questioned the father about them. The father said there were other times when he and the children were hurt by the mother using household items.

19. The father alleges coercive control and emotional abuse. He said she humiliated him in front of family and friends and controlled the children when they were with others. He said she and her family controlled his life and career and she was rude to his friends and family. She insulted him by calling him a beggar.
20. The father said the mother put the children at risk when she organised photoshoots in his absence. She was mentally unstable and accused him of not having daily sexual relations with her. The mother had removed their son in 2015 from the United Kingdom without his consent. In mediation, her family suggested he leave his job and join their family business, they threatened his life if he did not do so.
21. Finally, the father alleged that the 3<sup>rd</sup> August 2022 was a child abduction which was pre-planned by her and her family. He says, and it is admitted by the mother, that she had abducted the children without the father's consent when she removed them to the Middle East first then India.
22. The father gave evidence in Court. He would not have been able to see the mother when he gave his evidence and I was satisfied that he was able to give his best evidence.
23. I have applied and followed guidance in Practice Direction 12J and that given by the Court of Appeal in *Re H-N and others* [2021 EWCA Civ 448].
24. Turning first to PD12J, the definitions of various kinds of domestic abuse are set out at paragraph 3:

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

...

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

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

25. The Court of Appeal set out the principles the court should apply in *Re H-N and others*. It said domestic abuse “includes any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members... This can encompass, but is not limited to, psychological, physical, sexual, financial, or emotional abuse” (paragraph 26).
26. It defined coercive behaviour as “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” (paragraph 26).
27. The Court of Appeal said controlling behaviour “means an act or a pattern of acts 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” (paragraph 26)
28. The Court of Appeal set out the harm children can be caused by coercive and controlling behaviour. The Court then endorsed the judgment given by Hayden J in *F v M* [2021] EWFC 4 but emphasised that not all “directive, assertive, stubborn or selfish behaviour, will be ‘abuse’ in the context of proceedings concerning the welfare of the child; much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour” (paragraph 32).
29. The approach courts should take with allegations of domestic abuse suggested by the Court of Appeal in *Re H-N and Others* is set out at paragraph 37. There is no need to set that out in full, suffice it to say that there is no doubt that a fact-finding was necessary in this case to provide a factual framework for the decision of whether the children should be ordered to return to the UK with or without their mother and to provide a basis for an accurate assessment of the risks of a return to this jurisdiction.

30. The procedure used in fact findings was considered in *Re H-N and Others*, it recommended that where a pattern of coercive and controlling behaviour was alleged, that assertion should be the primary issue for determination at the fact-finding. The more specific allegations were to be explored because of their probative relevance to the alleged pattern of behaviour. However, particularly serious allegations will justify determination “irrespective of any alleged pattern of coercive and/or controlling behaviour (a likely example being an allegation of rape)”. In this case some individual serious allegations are being made in particular by the mother and should be determined.

### Lies

31. This is a principle which has particular relevance in these proceedings. The guidance in *R v Lucas* [1982] QB 720 and *R v Middleton* [2000] TLR 293 is that a conclusion that a person is lying about or telling the truth about point (a) does not mean that he is lying about or telling the truth about point (b). There are many reasons why a person might lie including (with examples given by Lord Lane in *Lucas*) an attempt to bolster up a just cause; shame or an attempt to conceal disgraceful behaviour from an individual’s family.
32. As to the application of the *Lucas* direction in family proceedings, the Court of Appeal has been explicit that the Court must go beyond reminding itself of the principle and McFarlane LJ (as he then was) has set out in *Re H -C (Children)* [2016] EWCA Civ 139 and in particular at para [100 et seq] the way in which the Court must properly apply the principles in *Lucas*. In *Wakefield Metropolitan District Council v R & Others* [2019] EWHC 3581 (Fam) at [109] Lieven J summarised the approach to be taken as follows:

*‘The Court should first determine if the alleged perpetrator has deliberately lied. Then, if such a finding is made, consider why the party lied. The Court should caution itself that the mere fact an alleged perpetrator tells a lie is not evidence that they are culpable of the incident alleged. The Court should remind itself that a person may lie for many reasons, including ‘innocent’ explanations in the sense that they do not denote culpability of the incident alleged.’*



33. The Court must bear in mind that lies told by a party can be told for a number of reasons. A party may lie about one matter and be telling the truth about another.

### **Evidence**

34. The parties provided a number of witness statements and exhibits. The parties gave evidence and called three witnesses each. The witnesses were all related to or close friends of the party calling them.
35. I was provided with Scott schedules on behalf of each party which set out individual allegations in a relationship which each party said had been abusive in one way or another.
36. The mother gave evidence first, with the limited weight I can give to her demeanour I observed nevertheless in her reaction to giving evidence there was nothing which appeared to undermine the allegations she had made or her defence to the father's allegations against her. She was upset at times when speaking of the abuse she said she had suffered. I did not consider she was putting on an act, but I am wary of giving much weight to that observation when her evidence was given remotely.
37. I would make a similar comment in relation to the father. There was nothing in his demeanour when giving evidence which would lead to a particular finding either that he had conducted himself in the way alleged or not. I could not tell from his demeanour whether his allegations against the mother were true or not.

### **Lies – evidence and conclusions**

38. The truthfulness or otherwise of the witnesses is something I have been able to test by considering what was said and comparing that to the documentary evidence including photographs in the case.
39. The father's overall allegation was that the mother had fabricated each allegation of abuse because she and her family wanted the father to join the maternal family's business in India. In some way the allegations would lead to the father and mother returning to India. The father either denied the allegation completely (such as the anal rapes) or gave an alternative explanation to explain third-party evidence which supported the mother's case.

40. The father raised the business in India as a motive from his interview with the police on 4<sup>th</sup> August 2022 and repeated the claim in statements he had provided for the local Family Court and the High Court and then again in evidence. He said that he had rejected the family's request to join their business multiple times.
41. The father's account that this was the family's aim was supported in part by his witnesses. The father's old friend Mr Y said that in 2015 the maternal family was trying to get the father to resign and look after their family business. This account was given also by the father's cousin Mrs Z. His friend Mr X however, said that in June 2015, the father had told him that the mother had threatened to kill herself unless he left his job. He made no mention of the father at that point saying the plan was for him to be employed by the family company.
42. There was compelling evidence against the father's claim. The mother and her witness the maternal uncle Mr R both said that there was no such plan. The evidence from the maternal uncle was that he and his brother were in the business which was a partnership. They were working for the maternal grandfather who had only 25% of the business. The mother and the uncle's evidence was that the paternal uncles were going to take over the business.
43. A reason why the father might not have been thought to be a match with the business was that his experience was as an employee (admittedly occupying a responsible and very senior position) of a company in a wholly different industry to the specialism of the maternal family business. I noted that there appeared to be no need for the father to join because the company was very successful without him. Bringing him in to the business might be very expensive bearing in mind what he said he was earning in his current job.
44. There was no documentary evidence supporting the father's contention that that was the motivating factor for the mother and her family. The father said the maternal family's aim went back to soon after their marriage but he could produce nothing to support this.
45. In particular, in an, admittedly, incomplete exchange of emails between the father and Mr S, one of the maternal uncles, I noted that there was no mention of the uncle saying that he should join the family business.

46. In the emails dated 5<sup>th</sup> November 2015, insults were being exchanged with the maternal uncle saying that the father had an attitude problem and was obsessed by the net worth of people. He mentions that the father is an employee of a company where he is one of 10,000. That could have been the point at which Mr S might have said that if the father joined the family business he would no longer be an employee but a company director or partner but there was no such comment.
47. The father responded in his email a couple of hours later by setting out the various demands on him made by the maternal grandfather. Amongst other arguments, the father says the maternal grandfather asked him not to go to North America for two years; they asked him not to join a large company in a particular city in India and the maternal grandmother asked him to take the mother to Australia and they would pay the expense; he asked why “are they involving each and every step of the life” (sic).
48. The allegation made by the father in his lengthy email is that the maternal family are interfering with the father and mother’s life. Nowhere does it say however, that the family were trying to persuade him or force him to join the family business.
49. Furthermore, in the lengthy WhatsApp exchanges exhibited by the mother, nowhere is it mentioned that the family wish the father to work in their business.
50. The final matter I would note is that the relationship between the father and the maternal family was extremely poor, certainly after 2015 and possibly before that. It does not make sense that the maternal family would have been asking him to join the business in those circumstances.
51. I consider that the father was lying when he said this was the motive for the mother’s allegations. I have to consider why he said that. It seemed to me that when he had been arrested, he had to think of some reason why she should have said what he said were false allegations. He said it to the police and went on saying it and he has persuaded his witnesses to give the same dishonest explanation.
52. I bear in mind that just because he is telling what is obviously a lie does not mean he has behaved in the way the mother says he has. It may be that he thought he was in a difficult position and wanted to bolster his denial with the false motive. He wanted

to show that rather than him using controlling and abusive behaviour it was her and her family.

53. A motive which was briefly relied on by the father when he gave his evidence was that the allegations had been made up because the mother wanted to return to India. I do not accept that the mother was motivated to give false evidence by a wish to return to India. She had returned in 2015 for six months and could have done so again.
54. A small lie told by the father was that henchmen were used by the maternal family during mediation meetings between the two families in about September 2015 and that he was beaten up. He also said that if he told his wife he was going to India then the family would have him killed.
55. The story of the henchmen seemed rather far-fetched and was undermined by the father's own witness Mr Y. The witness was asked if there had been physical beatings at the meetings between the two families. He said there had been a heated argument and disrespectful language had been used but when asked the question "no physical beatings?" he said "no, no" firmly.
56. I found the story of henchmen, of being beaten up and the account that he would be killed in India to be fabricated. The father had said repeatedly that he had been threatened by the family yet there was no independent evidence of this and I do not accept that this was happening. I consider this was an attempt to damage the credibility of the mother and her family. I can see no other reason for saying this. He wants to paint them in a bad light.
57. In support of this conclusion, I noted that in his email exchange with the paternal uncle in November 2015 that I have referred to above, amongst all the accusations against the maternal family there is no reference to violence and yet according to the father it would have occurred a matter of two months before during the mediation between the families.
58. I did not find either the mother or her family were controlling the father in his family life. They may have wanted to interfere as they wanted their daughter and her husband in India but it did not go further than that.

59. The mother produced in evidence a spreadsheet which she said she found in 2012 on her own computer that the father had been using. She said she had emailed it to her sister-in-law some years before possibly in 2012. She said it was prepared by the father and it was a list of women he had had sexual relations with in the years before she found it. Some of them pre-dated their marriage in 2009 but many post-dated it.
60. The spreadsheet gave the first names of the women he had dated, their marital status, the city where the 'dating' took place, how they knew each other and other columns were called the time taken, the Gillma (which was a word for sexual relations) and a feedback and status column for a commentary. If it was genuine, the spreadsheet writer had taken a crude and immature approach to relationships or his sexual conquests akin to someone putting notches on a bedpost.
61. The father's case was that the spreadsheet was a forgery created by the mother. I asked the mother one question in her evidence and that was whether she had the original email sending the spreadsheet to her sister-in-law.
62. Overnight, the mother found the original and provided it to the court. It showed that the spreadsheet was sent on 8<sup>th</sup> September 2015 to her sister-in-law as an attachment along with some email conversations the father was having with other women in 2011. The mother said she had raised the question of the spreadsheet with the father when she had found it because one of his recent sexual conquests was a female colleague who had been to their house. The mother told the father that that lacked respect.
63. In his evidence, the father admitted to knowing two of the named women, one at the beginning and one near the end of the spreadsheet. He accepted the one near the end was a work colleague. He said he did not know the others. He admitted to having been to the cities where the women were based. The father said the mother had fabricated the email of 8<sup>th</sup> September 2015 and its attachments.
64. I found the evidence of the mother on the point was credible. I do not accept the father's contention that the mother had created the document and the email of 2015. The mother had not mentioned in her statements the email of 8<sup>th</sup> September 2015 until I had asked about it. I asked her to look for this overnight. I do not accept she forged the email in that time and produced it as a ploy to support the genuineness of the

spreadsheet. The father was a software specialist, he would have had the skills to produce such a document and with his sexual interest in threesomes shown in a WhatsApp message, is clearly sexually experienced. On balance I find the spreadsheet is genuine and was prepared by the father.

65. The spreadsheet gives the lie to another piece of evidence the father gave, that he was never unfaithful to the mother. I noted that in the attachments exhibited to the email of 8<sup>th</sup> September 2015, he tells one woman in December 2010 that he is a “young bachelor” when he is no such thing. The email attachments contained links and passwords for dating apps in Australia. The parties went there for the father’s work soon after they were married. Other attachments included various flirtatious conversations post-marriage include him telling a woman that he loves her and he has gifts for her and another telling him she is ready for him. I find these are genuine conversations that he had with various women.
66. I was struck too by the way that soon after the mother went to India in 2015 Ms T the mother’s sister-in-law produced a page showing that on 29<sup>th</sup> June 2015, the father had as his WhatsApp status “Bachelor Again”. It is an expression that he uses on occasion.
67. I have not gone through the many other allegations made by the father which I have concluded are lies. He said that the children were exposed to drugs and alcohol in their mother’s care. At one point he said she was an alcoholic. There was no evidence of this. The medical records indicate she did not drink alcohol at all.
68. The father said she had mental health problems and was threatening suicide. His witness Mr Y said that the mother had told him she had mental instability. The father had mentioned two suicide attempts and her banging her head on occasions to the police during his interview but it was clearly not significant, first, it was not mentioned when he spoke to Cafcass on 6<sup>th</sup> September 2022 for their safeguarding letter and second, more significantly there was no mention of mental illness in the mother’s medical notes. She felt low in late summer 2018 when she had had a baby and the grandmothers had died.
69. The father also said that the children attended (adult) parties every week in India. It is true that according to Cafcass the children were excited to be going to their

grandfather's birthday party but this did not suggest that parties were common. The Cafcass officer had checked with the children's schools in India and there were no safeguarding concerns. Likewise, when she checked with the schools in England, they had had no concerns about them either.

70. There was the allegation that child A had said to the father he had been sexually abused by his maternal uncle on more than one occasion at parties in 2015. At one point the father said that the uncle admitted to him to behaving inappropriately with his nephew. The uncle denied it in evidence and said he had been shocked by the allegation. The Cafcass officer pointed out that if child A had really been at risk the father would never have just let it go. The mother had clearly never been told about the allegation by her son or her brother. I thought it unlikely to be true.
71. The father also alleged that the mother had hit particularly their son child A with a stick and made him kneel. He described her as aggressive and violent towards him and the children. He said that she had physically hurt him and the children several times with household items such as kitchen utensils, the modem, the children's toys and that she did this by throwing them at them or chasing them and making sure that it hit them hard.
72. So far as the children were concerned child A said that the father had grabbed his ear and hit him when he was aged five. He became upset when telling the Cafcass officer this. Neither child described the mother as being violent or aggressive towards them or their father. I accept of course that I have not heard direct evidence from the children and what they have said has come through Cafcass. I also accept that they have not seen their father since 3<sup>rd</sup> August 2022. As a result I have to give their views less weight but I noted the Cafcass guardian was careful to distinguish between what the children witnessed or experienced with their father and what they had been told by their mother.
73. The children's expressions spoke volumes, when they spoke about their mother they smiled and told Cafcass that she was kind to them and was always with them and when they needed something they asked her. Child A said in a later interview that his father scared him.
74. I do not accept that the mother had been violent or aggressive with the children.

75. In terms of the honesty or otherwise of the mother, Mr Gupta KC makes the valid and significant observation that the mother failed to report the abuse to others. She failed to call the police except on 3<sup>rd</sup> August 2022. Her accounts of rape and abuse showed inconsistencies and developed after she had left the father.
76. The mother had been to her doctors on numerous occasions sometimes with injuries she says now were caused by the father but never told them the truth.
77. On 17<sup>th</sup> September 2018 the mother had been referred by the GP to the Perinatal Mental Health Service in Scotland. The community staff nurse sent a letter to the GP and this was included in the mother's medical records. The mother had been assessed. She was said to be feeling low as a result of the deaths of her mother and mother-in-law just after the birth of child B.
78. The mother told the community staff nurse that she had never suffered from any mental health problems in the past. She had had ups and downs in her life "specific her marital life" however she had not suffered from low mood or anxiety to an effective degree in the past. The mother had told the nurse that she had had a rough time when she separated from the father for five months in the past (this must have been a reference to 2015). She said that they had sought marital counselling to repair their relationship. The mother told the nurse that for the past several years they had been living in a "wonderful and supportive relationship". Her low mood was due to the death of her mother.
79. The mother went on to tell the nurse that her husband was very loving and supportive and was also grieving at the time (presumably because of the death of his mother). She also told the community staff nurse that she had a degree in interior design. That was not true. She said too that she had friends in the surrounding area and that she treasured and valued her relationship with her husband. Her case was that she was isolated by the father.
80. The troubling aspect of this letter is that the picture the mother created was of a loving relationship between her and her husband. I look at that assessment and what the mother said in the context of what was happening in their lives. They had had a new baby in June 2018 which was very swiftly followed by the deaths of both grandmothers. From the Scott schedule relied on by the mother there had been no



specific allegations during that period of time. My job is not to speculate but I did consider that the father and the mother had gone through a great loss at the very same time. It may be that in his grief for the paternal grandmother the father was being supportive of the mother at that point.

81. The mother was less than honest with the Court when she appeared remotely on 16<sup>th</sup> August 2022 in front of Judge McPhee at the local Family Court. The mother had an Indian lawyer with her and the Judge was told that the mother needed time to find a lawyer as it was a long weekend in India.
82. Judge McPhee said that the order prohibiting the removal of the children from England and Wales should remain in force. He then asked whether anyone had anything to say about that. This would have been the opportunity for the mother to explain she had already left the jurisdiction, but she gave no answer. She should have replied and said she was in the Middle East. In my judgment she misled the court. Her McKenzie friend said something inaudible but was able to ask when the matter was coming back to court. I accept the hearing was short and took 17 minutes, nevertheless she was not being open with the Court. Furthermore, I noted that the mother said in her first statement in these proceedings that the 16<sup>th</sup> August 2022 hearing was ineffective because the father's counsel was apparently unable to attend. If that was a reference to the hearing in front of HH Judge McPhee that too was wrong.
83. The question is why was it that she was not open with the court saying that she had left the jurisdiction. Looking at it from her perspective, if what she is saying was true that she had been abused for many years in many different ways including by being coercively controlled by her husband, she had arrived in the Middle East but had not reached the relative safety of India. She may have felt that the English authorities could have prevented her from leaving the Middle East to go to India. It may have been fear that had driven her to keep quiet in this misleading way. The father says it is another example of her dishonesty. I am not convinced that he is right.
84. The father criticises the mother for flouting the court's jurisdiction. At the hearing on 16<sup>th</sup> August 2022 the Court in the local London area said it had jurisdiction whilst on 6<sup>th</sup> September 2022, the mother was pursuing proceedings in India. What the father

says is that there was a prohibited steps order preventing the mother from leaving the jurisdiction and the mother then flew on from the Middle East to India.

85. Another approach to what the mother had done and said or failed to say to the Court in the local London area, is that she had been abused for so long and put up with it that when the father threatened to kill her and was violent, she took an opportunity and fled as quickly as possible out of England. Her aim was to get to India where she could have the support of her father and her family. Her stop in the Middle East with her younger brother was the quickest way of getting out of England. The two brothers had discussed what she should do and agreed that the Middle East was where she should go.
86. The father's case is that her allegations of abuse were a retrospective justification for her abduction of the children. Any evidence therefore which supported her account was of considerable importance.
87. Another lie the mother told was that the father had behaved inappropriately with their daughter. If he had I would have expected her to safeguard her daughter and have given the allegation more significance.
88. In relation to both of the parties, their lies have given me reason to approach their evidence with caution, nevertheless overall I preferred the evidence of the mother which was supported in particular by photographic evidence.

### **Domestic abuse**

89. The mother's case was that she was abused throughout the relationship but particularly when the parties arrived in England in 2014. The physical abuse became more serious after the mother's return to the father on 25<sup>th</sup> December 2015. The father's case is that this was a normal loving relationship. He produced tenth anniversary cards and loving poems from the mother to the father as well as messages from her to him. In some of the messages the mother accepts some of the blame for their arguments. The mother said she was trying to keep the marriage together for a number of reasons including the shame a divorce would bring on her and the maternal family.

90. It is for the party making a particular allegation to prove that the abuse described took place.

### Coercive control

91. The mother said the father isolated her from family and friends, controlled when she saw them and for how long, did not tell her when he was travelling and when he would return, controlled her financially and there was no feeling of a valued partnership between the couple. Their lives were all about him and his career. The father's case was that she wanted to control his career and where they lived.

92. In terms of the coercive control alleged by the mother, there was an abundance of evidence of this in their relationship. The mother said the coercive control and abuse really started to take effect when they moved to England in 2014 and were away from family and friends.

93. A piece of documentary evidence which showed the father's control over the mother goes back to 2015, when he put conditions on her return to the marriage and the UK.

94. On 31<sup>st</sup> October 2015, he gave her two choices. The first was that she live with his parents in India with child A and the father would visit once or twice a year. The second was that she and child A would come to the UK "but things won't be normal as ever". He said the decision would be for the sake of child A's studies. The issue between him and the maternal family is made clear at the bottom of the email: "Hereafter myself and only my family members will take decision on my life/family. That's the final verdict. If your family members take decision, get divorce and get lost". It appeared that the father felt that the maternal family was interfering with his family life.

95. In a following email dated 2<sup>nd</sup> November 2015, he gave her 24 hours to confirm her decision. She was not to allow her family to buy her make-up or clothes. The next part of the email is in poor English but what it appeared to say was that she was not to be always on her mobile phone and she was to cook. He also told her not to torture him by speaking to her father, brother etc and by telling him stories of her family. These were not suggested by the father to be a forgery.

96. The picture painted of her return to the father is not a happy one. She was given two choices and conditions she had to comply with. The emails are striking, at no stage does he suggest that he has missed her or loves her or indeed child A. He was perfectly happy to see them once or twice a year only.
97. In terms of the mother's isolation, I noted that the mother did not work and was dependent financially on the father (possibly too on the maternal family). She was the homemaker, with few friends and outside interests. The father worked from home particularly during Covid and afterwards except for business travel overseas and occasional visits to the office. She said he controlled the keys to the flat and certainly it appeared not to be in dispute that on 3<sup>rd</sup> August 2022 when he was about to travel to India she had to ask him for the Cineworld card and the keys to the post box.
98. The family had moved frequently living in several large cities in this jurisdiction and had moved in India before they came here. They did not put down roots, they were driven to move by the father's ambition to chase ever higher salaries. This is not uncommon but in this family's case, I found the situation went much further than was acceptable to the point that the mother was dominated by the father.
99. Clear evidence of coercive control was shown by WhatsApp messages exchanged between the father and the mother on 30<sup>th</sup> July 2017. She had gone to India to look after the paternal grandmother. On 30<sup>th</sup> July 2017, she writes that she would like to meet her parents. He says "Sorry. I send u for only one job. Do that". She says that even her parents are not well and he says "It's job for u. They are going to die immediately. Are they going to die in 4 months".
100. The mother was asking the father's permission to visit her parents when she was in India looking after his mother. There are cultural issues at play and his argument was that his parents were going to die "immediately". In fact, his mother died in 2018 and his father is still alive now. The tone of the messages is unpleasant. He tells her what to do in a peremptory, unsympathetic way. I appreciate that in India there is a cultural expectation that daughters-in-law will look after their parents-in-law but it was the tone of the message which was disturbing. I observe that by this time the father had spent three years in the UK. He was a professional in a modern

industry yet he exhibits all the traits of someone who was living in the early 20<sup>th</sup> Century, if not earlier.

101. Another example of controlling behaviour and of the way he treated her was clear from a WhatsApp exchange and the father's reaction to it.
102. The mother had had to ask the father's sister-in-law whether the father had left India to go to the UK. The response was that he had left for the UK the week before. The mother commented that the paternal grandparents had not told her that they had gone to a particular city in India to send the father off. The reaction of the sister-in-law is interesting and could be a comment on the father as she said "please don't tell I said yaa (sic)". She then said "My hubby doesn't reveal anything about his brother to me".
103. The husband had exhibited this to one of his early statements and had said at the top of the document (page 400 in the bundle): "I should mention that happened in 2015 where she used to follow me around whenever I travelled and would make an effort to bother all of my known friends in order to find out where I was. Here is an example of my wife spying on me with my brother's wife".
104. The more I read this document and the father's commentary the clearer it is that the mother's account that he did not tell her where he was going or how long he would be away is an accurate description of the way he lived his life. The father's comment should be seen in the context that his wife, the mother, had been in the UK for under a year, she had a young child to look after and had no idea where he was.
105. From the commentary it is clear that the father thought this was an appropriate way to treat his wife. He said it was an example of his wife spying on him with his brother's wife. The reaction of the mother is also instructive. She says that the paternal grandparents had not told her that they had gone to a particular city in India to see her husband off. She does not react at all to the fact that the husband was not telling her when he was returning. It was clear that it was not uncommon that her husband kept his whereabouts in the dark.
106. His control over her was shown furthermore by her only being allowed to go to her mother's funeral for 24 hours. She had said this in a WhatsApp exchange

between her and Ms T on 29<sup>th</sup> May 2021. In a reference to him preventing various meetings with the maternal family, she says she had not seen her family in three years, she missed all her family functions, then her brother's wedding and lost her mother and came back within three days. She said she still had not got over the grief. From the context it was the father preventing her from going to see her family not Covid. This showed a consistency in her allegations of controlling and coercive behaviour which I found lacking in the father's.

107. Whether it was Covid or the father who prevented the mother going to her own brother's wedding, she certainly blamed the father for this and was devastated that she could not be there as she made clear in her WhatsApp messages.

108. The mother's case was that she had no friends. In Scotland in 2018 there was a piece of evidence which suggested that the mother did have friends because that is what she told the community staff nurse. One of these may have been the father's colleague and good friend, Mr X. Whatever the situation in Scotland, I found that she had no friends to turn to in the wider London area. It is instructive to see to whom she turns on 4<sup>th</sup> July 2016 and on 3<sup>rd</sup> August 2022: on each occasion of crisis she contacts her brothers and sisters-in-law despite the fact that they are thousands of miles away.

109. The children when asked by Cafcass about their lived experience in England said that they spent most of the time with their mother at home and they did not recall going out a lot. As against that the father relied on family photographs which showed that they had had holidays around England so I assume the children were talking about their experience of home life rather than holiday time.

110. A small piece of evidence was a children's invitation to a party in Scotland. The WhatsApp exchange was shown. The father told the mother abruptly they could not go to the party but gave no reason. The mother accepted it meekly. The father told the court that he had fallen out with the colleague.

111. The father's control is shown in the way the family lived. The sleeping arrangements at their home in the wider London area were unusual. They lived there from 2020 to 3<sup>rd</sup> August 2022. The father had a bad back. The mother relied on photographs showing that they all slept on the floor on a duvet with no bed. Child A said to the Cafcass officer that he was happy not to have to sleep on the floor

anymore. The father had decided that because he had a bad back and was helped by sleeping on the floor so would his wife and children.

112. The mother had a photograph of a cupboard when they lived in the north of England which was tied shut in which she said the passports and other important documents were kept in a combination locked case. Her evidence was that the father tied the cupboard shut and took a photograph of the way it was tied. Relying on the photograph of the cupboard, I accepted her evidence

113. Another piece of evidence relating to the passport and who controlled them was given by Ms T (a sister-in-law) when she exhibited WhatsApp messages between the mother and herself after the mother had told her that the father had assaulted her. Ms T asked her where her passport was and the mother said “With him”. The father accepted that she was able to leave the country on 4<sup>th</sup> August 2022 because he had let her have the passports so she could renew one of the children’s visas.

114. There was other evidence which showed the control the father had over the family. This included child A’s comment to Cafcass that his father had told him not to speak to the maternal family.

115. There was evidence of financial control. The father said to the police that his job was “his first wife”. In the bundle there were numerous pages of his awards and details from his curriculum vitae. He is clearly a very successful businessman working for large companies where he is very well paid. Understandably he is proud of his success. In 2022-3 the father was earning over £400,000 including a bonus. The mother said that he controlled all the finances and any payment she made was transmitted to his telephone so he could see what she was spending. There was no suggestion that the father shared his success with his family.

116. Evidence of financial control was seen in the way that a Halifax account had been set up for the mother by the father. The contact details were not hers but his. His control can be seen by the fact that he closed the account down soon after she had left the jurisdiction.

117. The father said the mother used to spend lavishly with a debit and credit card. He said in his evidence that the mother spent £2000 to £3000 per month although to

the police he said it was rather more. The lavish spending he relied on was £163 on a telephone bill in a month when she was in India in 2015.

118. The father provided other bank statements which showed food delivery transactions and Amazon payments. There was nothing lavish shown. The mother's spending habits were shown too by the father producing a statement from an add on credit card. I noted the whole of July (I assume 2022) amounted to the spending of about £250 in seven transactions. There was other spending but bearing in mind the earnings of the father, this was insignificant.

119. With his earnings he had to pay the rent on a modest mostly unfurnished two-bedroom flat. He used one of the bedrooms as his work place. A more comfortable home that took account of their needs would have been a three-bedroom home.

120. I observed that it did not appear to be in dispute that the father bought child A who was born in India a British passport but told his wife he could not afford to get one for her. It shows how little he respected or had regard for her as his wife and the mother of his children.

121. It was unclear to me whether the father was supporting family members in India. His female cousin who gave evidence denied any financial support. He told the police he had no other dependents. It seemed to be highly likely in view of his attitude towards the mother's spending that he insisted on her accounting for any expenditure and to assist with that he had set up alerts to tell him when money was spent. A tight-fisted father is not necessarily one who financially controls his family, but I find in this case that he did.

122. Other evidence of controlling behaviour was the way that the mother had to hide the fact that she was speaking to her relations. The father was open about his strong dislike for the maternal family. In his email to the mother on 2<sup>nd</sup> November 2015 it was one of the conditions he imposed that she use her telephone less. There was evidence from one of the mother's witnesses that she was less in touch when she returned to the UK.

123. I rejected the father's account that he was being controlled by the mother and maternal family. The piece of evidence which he said showed she was spying on him



was a natural question asked by a young mother of her sister-in-law in relation to the return of her husband to England from India. She was not able to ask her husband the same question. The maternal family was not trying to recruit the father to run or work in their family business. They may have wanted their daughter to live in India but there was nothing that I read or heard which indicated more than a slight interference and this was certainly not the case in the father and mother's daily lives in England.

#### Verbal and physical abuse

124. The mother says the father body shamed her and caused her anxiety as well as verbally abusing her. He also was short tempered with the children. Certainly, child A was scared of his father but whether that was because of verbal or physical abuse is difficult to tell. The mother supported the fat shaming with a WhatsApp list the father had sent her of what she was to eat on a particular day. The mother exhibited a photograph of a smashed glass that the father threw at her during an argument. There are many more serious abusive findings I am asked to make so I deal with this abuse relatively shortly.
125. The mother alleges she was physically abused and that the seriousness of this increased once she returned to her husband at the end of 2015.
126. The father's case is that the mother self-harmed and any injuries she suffered were caused by herself and she has fabricated any abuse she describes. He said he had never been aggressive or violent towards her but rather she had been aggressive in various ways towards him and the children.
127. The mother made allegations of physical abuse going back to at least 2015. The father is said to have slammed the mother's head against the wall causing her headaches. When he demanded sex on one occasion he held her down with his legs and poured beer on her chest followed by burning her with wax from a lit candle. This was repeated days later when the father poured wax again on to the injury.
128. On 4<sup>th</sup> July 2016, he is said to have hit her in the face with a router causing cuts and bruising and then punched her left arm several times. In 2016, he also kicked

her when she used to return to the house after the school run. In about August 2019, she said he poured hot Indian coffee over her.

129. The mother made the allegations, and they were for her to prove them. Her evidence in support of three allegations were what were said to be contemporaneous photographs taken by the mother. Some had been sent to her sister-in-law very soon after she alleged she had been injured. In my judgment these photographs were significant.
130. There were photographs of scarring on what was said to be the mother's chest (as a result of the burning wax she says) and of a serious burn injury to her hand. There was other evidence such as her medical records which showed that although she went to the doctor regularly, she did not ever report any physical abuse. She did not go to the police at any time or report the abuse to other professionals such as midwives she would have come across.
131. When considering the allegations, I have concentrated on the router assault. The date of this alleged assault is 4<sup>th</sup> July 2016. The mother's case is that her treatment at the hands of the father worsened after 2015.
132. Her case was that on that date, he had hit her in the face and then arm with the wifi router or modem. She said he accused her of sleeping with her father and brother when she was in India in 2015. In evidence she said she did not tell police as she was frightened that if she did he would be more abusive. She said child A witnessed what happened.
133. The father's case was that she had hit herself and that the same day at 8.01pm he had sent an account of what had happened by email to a work colleague and very close friend Mr X whom he called as a witness. The email said that his wife had become out of control and started to hit herself "with the intention of enforcing me to India to take over their family business". He went on to say that he was trying to block her but she seriously injured him and hit child A on one occasion. He said she had injured herself due to depression and sadness. He said "I guess she has planned something against me". He said he was worried she might separate him and their son. He said he was sending the email in case anything happened to him.

134. I would make two points. First, I have already rejected the father's evidence that the maternal family was trying to employ him in their family business. As the father had made clear in 2015 and in his evidence, he did not want to have anything to do with the maternal family.
135. Second, in his email, he said the mother had seriously injured him yet there were no signs that he was ever injured to that extent. The most he was able to exhibit were photographs of scratches on his face on two occasions which the mother said she caused to defend herself and a photograph of a broken little finger that the mother said happened during a football game with colleagues.
136. The father ended the email with a surprising suggestion that he was sending the email to Mr X in case anything were to happen to him. This is not a case where the father had said the mother had ever injured him seriously. I noted from a photograph taken of the couple on holiday that he was very much taller than she was (probably about eight or nine inches), it seemed to me that he could have protected himself without injuring her. Despite that he was sending the email ostensibly concerned that something might happen to him.
137. I noted that this email was never mentioned by Mr X in his statement dated 3<sup>rd</sup> May 2023. He set out in great detail a chronology and for July 2016 said that during video training sessions, he had questioned the father about a mark on his face which he refused to explain. The witness said he called him later and realised from the father's statement that "he was hurt physically by his wife using the internet modem". He said he saw another mark on the father's cheek in November 2019.
138. In his evidence to the court Mr X said that he had taken a snapshot/screenshot of the email of 4<sup>th</sup> July 2016 at the time and kept it as he thought it was strange. It only came to his mind when the father visited him overseas in October 2022. He did not have the original email as it was on his then employer's email system. He showed the father the copy he had made when he was visiting. Mr X accepted that it would not be possible to show how the document was created. When asked why it had not been mentioned in his statement of 3<sup>rd</sup> May 2023 when he had been so shocked by it and kept a copy of it six years before, his explanation made no sense but he denied lying about the document or creating it.

139. Having heard Mr X's explanation, I do not accept he had received the particular email from the father on 4<sup>th</sup> July 2016. There was no reference to it at all in his detailed chronology and if it had indeed been so strange and shocking he would have mentioned it.
140. As regards the father's witnesses, I questioned whether they were telling the truth. It could have been that they were interviewed by the same solicitor but in some respects what they said was worded identically. I noted that the witness Mr Y said that the father was hurt by the mother using the router. He had seen that the father was "completely down for more than 2-4 week (sic) and took long period to recover". This sentence including the grammatical error was repeated word for word in Mrs Y's statement. They were recollecting events of nearly seven years ago and it was not credible that they could remember the same detail.
141. Mr X said that in June 2015, the mother had said that if the father did not leave his job she would commit suicide. That was not what the father had said in his evidence. I noted that Mr X admired greatly the father who had assisted him on his own journey in the same computer field.
142. Mr X was attempting to blacken the character not only of the mother by saying she was snobby with the father's work colleagues but also of her brother Mr R who Mr X said asked him to spy on the father in exchange for money. That seemed to me very unlikely.
143. Mr X said that it was in August 2022 after the father had received various workplace awards, that the mother realised that the father would never take over the family business. This was a slightly different motive to the one given by the father. This one connected the father's awards with the mother's dawning realisation. That was the first time that Mr X suggested that the family business was at play. Bearing in mind how carefully he had gone through a chronology of what had been said by the father on particular dates, I find the father had never mentioned the family business to him before.
144. Mr Y said he had mediated between the families in 2015 and during this the mother had said she was not mentally stable. I did not accept his evidence which reflected what the father said at various points. From the medical records, there is no

doubt that the mother was low in her mood after giving birth and then losing the two grandmothers but that was much later in 2018.

145. Mr Y said that the father told him in relation to the July 2016 incident that the mother had told him not to call the police and said it was her mistake. He mediated online with them and resolved the issue. At no point did he say that the father had told him that the mother had been injured in the router incident. The father accepted that the photographs exhibited by the mother and her sister-in-law reflected her serious injuries yet at no point did the father tell Mr Y about these.

146. Another witness whose credibility I questioned was the father's cousin Mrs Y. She too confirmed that the father had never told her that the mother had been injured in the 4<sup>th</sup> July 2016 router incident. That witness claimed to have witnessed the mother breaking the father's finger at a family gathering.

147. Mrs Z was asked twice by Mr Gupta KC what her reaction was to this event and was unable to answer. She said she and her husband took him to hospital. She did not say or imply she was surprised or shocked by this incident of violence and I was left with the impression that it was unlikely to have occurred in the way she set out. In the various exchanges the father had with the mother by WhatsApp or the father had with her family, never at any point does he complain that she broke his finger or was abusive. His answer that a broken finger caused by abuse is not the sort of thing to be reported to the police in India but is dealt with by the parents could equally apply to the abuse the mother suffered. The mother's account that he had broken it playing football with work colleagues had more of the ring of truth.

148. The injuries caused to the mother as shown in the photographs were serious. She had cuts on her nose, eye and swelling. There were bruises to one arm. She sent the photographs to Mrs R, her sister-in-law. The WhatsApp message started with the mother saying that the father had fought with her "and this time it was too bad [Mrs R] I can't take anymore I'm ready for divorce also plz save me he took my mobile so only had to contact thru mail save spk to dad I will die". The father's injuries if he had any, from the same incident consisted of a scratch to the face. If he had really told the witnesses about the incident, he would have said he was not seriously injured but that the mother was.

149. Overall, I questioned the truthfulness of the father's witnesses and their ability to give objective evidence independent of the father's position.
150. Having considered the nearly contemporaneous distressed tone of the WhatsApp exchange between the mother and her sister-in-law on 4<sup>th</sup> July 2016 and the photographs exhibited, I have no doubt that this was an assault on her by the father rather than self-harm. I rejected his argument that he had been seriously injured by the mother after she had been self-harming and that these injuries were as a result of her being mentally unwell.
151. There is no evidence at all that he was injured other than a scratch or scratches on his face which the mother admitted she had caused by scratching him when he was attacking her. He is about eight or nine inches taller than her and I can understand that to defend herself she would have to have scratched his face. I noted too that the mother said that he had hit her before but "never like this". In my judgment that reflected the seriousness of the incident which I found happened.
152. I take into account when considering the evidence that despite the undoubted serious injuries that she suffered on 4<sup>th</sup> July 2016, according to her medical records she did not go to the surgery until 20<sup>th</sup> July 2016, over two weeks later. It was then to report on her heavy periods etc. It was said that she had some stress related symptoms and had felt exhausted the day before. At no point did the mother tell the doctor about the assault. On 2<sup>nd</sup> August 2016, the mother reported to the doctor that she had "personal problems: stress".
153. Another matter to put in the balance when considering the 4<sup>th</sup> July 2016 events was that the mother's sister-in-law when she had seen the photographs and read the messages sent by the mother asked her whether they should call the police. She said no.
154. Having considered the various features I find the mother has proved the allegations on the balance of probabilities. Her account is accurate and true and the father's is not.
155. It is in the light of that finding that I consider the other allegations of physical abuse. The mother alleged that when living in the north of England, the father would

push the mother's head hard into the wall and this caused her headaches. There was evidence in her medical records that the mother reported having headaches in 2015. She told the doctor on 20<sup>th</sup> March that the headaches had resolved with antibiotics but there was a suggestion over the months that she had sinusitis. She also had problems with her ears and on one occasion, dried blood was found in one of her ears. The mother relied on a photograph of a broken coffee cup to show that the father threw items at her. In the light of my finding above in relation to the assault, I find that the mother was being physically assaulted before 2016 and thereafter in the ways described.

156. When living in the north of England the mother alleged that the father poured beer on her chest followed by burning wax from a candle. He burned her again with candle wax a few days later. The mother provided a photograph she said was of her chest showing scarring. The father said it was undated and it was not clear what it was. In view of my findings above, I have no reason to doubt the mother's evidence and find she was burnt in the cruel way she said she was.

157. In terms of the burn to the hand, the mother's case was in the weeks before 2nd August 2019 the father poured coffee over her. The father in his evidence said she had poured it over her own hand burning herself and she had gone to the GP. The significance of this is the medical record shows that on 2<sup>nd</sup> August 2019 the mother told the doctor that she had prickly heat rash on the back of her right hand, it had gone but it had left her with dry cracking skin. There was no reference to burning coffee yet the father accepted she had gone to the GP. It seemed to me an inference that I could draw is that she had hidden the cause of the burn from the doctor. If she had poured coffee over herself, she would not have felt the need to hide this. She was not willing to tell the doctor what was going on.

158. I find her account of physical abuse is proved. Her accounts of the father throwing items towards her, of throwing her mobile across the room or slapping the mother to be accurate. He makes it clear that he thinks she uses her mobile too much. During the incident on 4<sup>th</sup> July 2016, she explained to her relations that he had removed her mobile. This was an attempt to stop her telling her family what had happened. I find that was another way he controlled her.

159. I find the father physically abused child A by grabbing his ear and hitting him. I do not find the father abused child A as much he did the mother but I accept the mother's account of the father's behaviour towards him. It would explain why child A said he was scared of his father.
160. The abuse continued until 3<sup>rd</sup> August 2022. The father's account was that she had pre-planned her departure with her family. He said too that her departure was also triggered by his refusal to give her the £10,000 she needed whilst he was in India.
161. Having read and heard each party's account of the incident and seen the flight tickets that the maternal uncle booked and provided to the mother on 4<sup>th</sup> August 2022, I reject the father's account and find that the father told the mother that he would push her off the balcony and say it was suicide. He threatened to expose her by circulating intimate photographs and videos of the mother on the internet and send them to her family. His threats were the final straw, and she called the police. The extent of her fear was shown by the fact that she had called them at all.
162. The passports were usually under lock and key but on this day, the father had provided them to the mother to enable her to get a visa for one of the children. This gave the mother the opportunity she needed. She then left as soon as she could before he was released. She took all the documents she could including the birth certificates as she did not intend coming back. As the father did not consent to the children's removal from this jurisdiction, the mother had abducted them.
163. In various places the father said that the mother had previously abducted the children on 13 occasions. I do not find that to be the case. I do not have sufficient evidence to find that the mother had abducted the children in July 2015 for five months. There was a dispute between them then which may have had something to do with finances but I do not consider the father has proved this on balance. There was no evidence that she removed the children from his care on 12 other occasions.
164. The father did not prove that the mother physically abused either him or the children. He did not prove that the two scratches on his face were as a result of her assaulting him. I find it more likely they were an attempt on her part of defend herself from his abuse of her. I do not accept the father's or his witness' evidence that the mother had broken his finger, this was more likely to be a sporting injury.



Sexual abuse

165. I come to these allegations last of all. There is no independent evidence supporting the mother's very serious allegations of sexual assault, no recent complaint and there is no medical evidence of anal injuries or other injuries to the mother's private parts.
166. Some of the allegations were of a fairly unusual type of anal rape including with children's toys and other objects. There was no complaint at the time or close to when she said she was raped. I consider the sexual abuse through the prism of my findings in relation to the father's credibility and his physical abuse of the mother. However, I must bear in mind that a man who abuses his wife physically does not necessarily rape her.
167. As the months have passed after the mother's complaint to the police, her allegations have become clearer. I would observe that in common with the majority of rape allegations, it is a case of the father's word against the mother's. The father said the mother's account is a pack of lies. The mother said that she had told the truth. In the Court's experience, it is not unusual for victims of controlling and coercive behaviour (which I have found she is) to find it difficult to speak about what they have suffered. Sometimes as the victim begins to feel safe and secure so they are able to speak out. The Courts know that sometimes abuse remains hidden for months or even years.
168. The mother gave various explanations for not reporting the abuse. She told the court that she was frightened that if she reported the abuse that it would get worse. The most compelling excuse she gave for not reporting what was happening to her was the cultural reason that in India it was shaming to be divorced, she did not want to be a single mother. She had given the father lots of chances and he had said he would change, and she had wanted that to happen. She wanted "a good family". She had thought that marriage was about sacrifice but in the end not to the extent of the abuse she had suffered. She tried to keep the marriage going until the threat he made to her on 3<sup>rd</sup> August 2022 frightened her so much she had to flee.
169. The father married the mother when she was aged 19. She was inexperienced compared to him as is clear from his schedule of sexual conquests which she found in

2012 very early on in their marriage. I observed that on 13<sup>th</sup> May 2022 he had suggested a threesome and asked “are you okay”, with this I assumed. The mother’s response was a blunt “no” but when the husband said “I want to try many things with you”, she had said “But not this” and later when he asked whether she was possessive, she said “No I don’t want anyone else except u”.

170. I accepted the father’s evidence that he asked whether she agreed to a threesome (“are you okay”). I did not accept that this showed concern for her, rather than that if she was not consenting, it would have been unlikely that a third party would sit by and allow a rape to take place.

171. I noted furthermore that when she said “But not this”, it was leaving the door open for sexual adventures with him but not others. The question for me was whether she was consenting all the time or could she prove on balance that did she not consent on particular occasions including to anal sexual intercourse. It is for the mother to prove the allegations; the father does not have to prove he did not rape her.

172. In 2015, the mother and father had separated and the mother and child A were living with her brother Mr R and her sister-in-law Mrs T. Mrs T’s evidence was that during their stay they used to do the school run together. It was then that the mother told the witness that the father would force her to perform sexual acts on him against her wishes. She said these were “blowjobs”. The mother told her she was not comfortable telling other people about this.

173. I accepted the evidence of Mrs T. I put in the balance that she cannot be said to be an independent witness as she is the mother’s sister-in-law but having considered what was said and in what circumstances, on balance I found it to be true. If the account of forced blowjobs was a fabricated account the mother and the witness could have said that she had told the witness she had been raped. There was no exaggeration in what she told her, and it is the sort of thing a woman might tell another she is really close to when they were bonding over child A’s school run.

174. I thought it unlikely that the rapes alleged by the mother had started before her return to England on 25<sup>th</sup> December 2015. I noted there was no love, respect or liking shown by the father in the WhatsApp messages sent to his wife when he imposed conditions for her returning to England. The mother’s case is that from 2015 on, he

would rape her vaginally and anally, and if she resisted, he would physically assault her and sexually abuse her. This had included inserting objects into her vagina such as a Corona bottle.

175. The most serious allegation of rape was what the mother alleged happened to her on 13<sup>th</sup> May 2022. Her initial complaint was to the police on 3<sup>rd</sup> August 2022 when she spoke about the father returning drunk from a work party on 13<sup>th</sup> May 2022, he forced her to have oral sex which was not consensual before they had consensual sexual intercourse until he became too rough. He was holding her down using his weight. The account is not particularly clear. It certainly does not include any anal rape. Later that day she gave a formal statement which did not include any reference to the events of 13<sup>th</sup> May 2022. I accept Mr Gupta KC's argument that there were inconsistencies in her accounts.

176. Her most detailed account was in her February 2023 statement. She explained that the father had come home drunk and had asked for sex. She consented but he began to slap her, harder and harder. He then used his belt to hit her on her arms and then face. He threatened to get a man around to join in a threesome. She knew he had been involved in a threesome with another man as he had shown her videos of him doing that. She became very distressed and struggled, he got his knees on her chest and then asked if she wanted oral sex. She refused and said she did not like it. He said that she did like it and pushed his penis into her mouth so far that she could not breathe, his body weight was on her and she felt suffocated. He then spun her around, covering her mouth asking why she would not cooperate with him. The father then grabbed a plastic toy with was a rod and penetrated her anus with it. He then pulled the toy out and anally raped her. She said it went on for 45 minutes to an hour.

177. The mother said she had been anally raped before. He did it because he told her that as she had given birth vaginal sexual intercourse was not what he wanted anymore. The mother however, described the incident of 13<sup>th</sup> May 2022 as the most extreme the sexual violence had ever been. After she could not move and eventually went to the bathroom. From then onwards she experienced suicidal thoughts, but the thought of the children prevented her from doing anything to herself.

178. Although there was medical evidence that the mother went to the GP and said she was having menstrual issues in May 2022, there was no evidence that linked the medical visit to what had happened to her anally. I did not accept her account of the time the incident took but noted that victims of assaults often find it very difficult to put a time on them as they often feel that time stands still.
179. More general evidence that the mother linked to sexual abuse was a photograph of bruising to her chest, caused by the father who used to hit her and kick her chest during sexual intercourse. I noted there were no photographs of the mother immediately after 13<sup>th</sup> May 2022 incident.
180. I found the father's recollection of 13<sup>th</sup> May 2022 sexual encounter with his wife in the police interview a support for the mother's case. The father remembered the date in the police interview because he said he was in the office and she had sent him a glamorous photograph in a particular dress. In cross examination he denied that he had remembered the date when interviewed by the police. In cross examination the glamorous photograph had become the mother sending him a nude photograph. He said he was not able to provide the photograph because the police still had his telephone. I did not accept that had the photograph existed he would not have been able to produce it. A man of his undoubted abilities with computers would have preserved the photograph in some way.
181. He told the police that the mother had sent him WhatsApps saying that she liked what had happened so much she wanted it again. The father has never produced any of these messages either. The mother had gone through her WhatsApp messages and discovered that in the two weeks after 13<sup>th</sup> May 2022, there were no messages at all and the father had switched on disappearing messages. She produced the evidence showing disappearing messages was switched on by him. She switched this off on 2<sup>nd</sup> June 2022.
182. There was no evidence that the father had made videos of him having sexual relations with other women but I noted what seemed to me to be the mother's genuine concern that the children might see some of the sex videos on the father's telephone when they were watching children's videos because the father had refused to buy a television.

183. I gave limited account to demeanour, but I noted the mother's reactions to the questions she was being asked about these very sensitive allegations. It seemed to me that she had been traumatised by what she was speaking about. Having considered carefully the evidence and the father's behaviour that I have already found above, despite the way the allegations of rape have gradually come to light and the inconsistencies, I found the mother's account to be compelling. The father had raped the mother including anally.

184. The mother told lies to the doctor and did not inform others such as midwives because she was in an abusive relationship which she was keeping to herself. On 3<sup>rd</sup> August 2022, the father threatened to kill her and to make it look like a suicide and threatened to send to others intimate photographs and videos of herself and him. This frightened her so much that she rang the police and left.

## **Conclusion**

185. I find the mother has proved the allegations made by her against the father. He abused her and to a much lesser extent the children. It was not the happy marriage portrayed by the father which was interfered with by the maternal family's demands for him to work in the family business. The mother's account of a happy relationship to the community staff nurse was not a true one but she was not able to talk at that point about what was happening to her. This was a relationship of control and violence on occasions where the father dominated the mother. His dominance and control were shown in their sexual relations which were about the father's wishes not the mother's. As a result of the mother's cultural expectations which were a reflection of her upbringing, she felt she could not leave or complain. Married at 19, her sexual education was entirely in the father's hands, he led her to a varied sexual life but controlled the life they led.

186. Other than the admitted abduction of 3<sup>rd</sup> August 2022, the father has not discharged the burden of proving the allegations he has made.

