

Neutral Citation Number: [2024] EWHC 2379 (Fam)

Case No: FD24P00652

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 18<sup>th</sup> July 2024

**Before :**

**SIMON COLTON KC**  
**SITTING AS A DEPUTY HIGH COURT JUDGE**

**Between :**

**AOX**

**Applicant**

**- and -**

**LSX**

**Respondent**

**Anita Guha KC and Yasmin Omotosho (instructed by A&N Care Solicitors) for the Applicant**

**William Tyler KC and Liz Andrews (instructed by The International Family Law Group LLP) for the Respondent**

Hearing dates: 16<sup>th</sup> – 18<sup>th</sup> July 2024

**Approved Judgment**

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 and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

**Mr Simon Colton KC:**

**Introduction**

1. This is my judgment at the end of a three day fact-finding hearing.

**The agreed background**

2. Mother and Father, both Ukrainian nationals, met online in April 2019. They lived together initially in Father's flat, and then in a flat in Kyiv belonging to the maternal grandmother. They married in November 2019 in Ukraine. Their daughter, to whom I shall refer by the pseudonym Ludmila, was born in June 2020.
3. In November 2020, Mother and Father separated, and Father returned to live in his own apartment in Kyiv. In January 2021 Mother moved with Ludmila (then aged 9 months) to Zaporizhzhia, to live near her family and friends.
4. On 16 September 2021, Father separated Ludmila (then aged 15 months) from the care of her mother and maternal grandmother, and took Ludmila to live with him in Kyiv. Mother did not see Ludmila again, for the next 6 months or so.
5. On 24 February 2022, Russia invaded Ukraine. On 9 March 2022, Father tried to leave Ukraine with Ludmila via the Polish border, but was detained at the checkpoint. Ludmila was returned to Mother, and the two of them and the maternal grandmother left Ukraine together the following day. Following a short time in Poland, Mother and Ludmila were accommodated in England from 19 April 2022, under the 'Homes for Ukraine' scheme. Mother and Ludmila still live here. Father remains in Ukraine, and has had no contact with Ludmila since March 2022.

**The procedural background**

6. Legal proceedings relating to the residence of Ludmila, and contact with Ludmila, initially took place between the parents in Ukraine. In May 2021 Father issued proceedings in Zaporizhzhia, which seem to have gone nowhere. After Father took Ludmila in September 2021, Mother issued proceedings in Kyiv, seeking an order that Ludmila live with her. After Ludmila was back in Mother's care and living in England, those proceedings were resolved, at first instance, by the Ukrainian court in April 2023. The Ukrainian court determined that it was in Ludmila's best interests for her to continue to live with Mother. Father's appeal against that decision was refused. Father has filed a cassation appeal, which has not yet been resolved.
7. Proceedings in this jurisdiction began in February 2024. On 1 May 2024, Mrs Justice Arbuthnot directed the service of Scott Schedules setting out cross-allegations in preparation for a fact-finding hearing. On 14 May 2024, Mrs Justice Arbuthnot directed the service of responses to Scott Schedules, and that a fact-finding hearing be listed before me with a time estimate of 3 days. On 4 June 2024,

Mrs Justice Arbuthnot directed the parties to agree a composite, summarised Scott Schedule.

**The allegations**

8. As set out in the Summarised Schedule of Allegations, as amended following certain allegations being abandoned in closing submissions, Father alleges against Mother:
  - (1) Mother changed the daughter's location twice without Father's knowledge, permission, or consent. In November 2020, she took the child to Zaporizhzhia (a different region in Ukraine, several hours from Kyiv). In March 2022, she took the child to the UK through Poland.
  - (2) On both occasions Mother removed the child, she provided false information to the competent authorities to conceal the child's whereabouts. (In closing submissions, this was limited to a complaint that Mother did not register with the Ukrainian consulate in the UK from April 2022 onwards.)
  - (3) Mother prevented the child from seeing Father during the periods she was removed from his care. Moreover, she did not provide any information about the child's health, welfare etc.
9. In the Summarised Schedule of Allegations, Mother accepted that she took Ludmila to Zaporizhzhia in January 2021, but says Father was aware of her intention to do so. She also accepted that she took Ludmila to the UK via Poland in March 2022, which she said was due to the outbreak of war and the risks posed by the applicant. She also accepted that Father has not had any direct contact with Ludmila since March 2022.
10. Mother alleges against Father:
  - (1) Father kidnapped Ludmila and physically assaulted the maternal grandmother on 16 September 2021.
  - (2) Father subjected Ludmila to emotional and psychological harm including the period from September 2021 to March 2022.
  - (3) Father threatened to kill Ludmila and Mother on 9 March 2022.
  - (4) Father organised an attempt to kill Mother on 24 February 2022 and there were corrupt dealings between the applicant father and Ukrainian officials.
  - (5) Father was physically abusive towards both Ludmila and Mother.
  - (6) Father engaged in coercive and controlling behaviour of Mother.
11. Immediately prior to the hearing, in Father's position statement, the following admissions were made:

- i. The Father separated Ludmila from the care of her mother and maternal grandmother on 16 September 2021 by removing the child from her pushchair when she was with her grandmother. The Father accepts that he pushed the grandmother when she attempted to take the child away from him and he removed the child from her mother’s home in Zaporizhzhia to his home in Kyiv;
- ii. The Father accepts that Ludmila did not see her mother again for 6 months until March 2022;
- iii. The Father accepts that Ludmila suffered emotional and psychological harm as a result of his actions.”

### The law

12. Counsel for the parties helpfully identified in their position statements a number of relevant and well-known principles concerning fact-finding. In particular, my attention was drawn to the guidance of Mr Justice MacDonald in *Re P (Sexual Abuse: Finding of Fact Hearing)* [2019] EWFC 27 at [247]-[258]; and to the guidance in *Re H-N* [2021] EWCA Civ 448 as to the insidious nature of coercive and controlling behaviour. I found particularly helpful the observation of Her Honour Judge Nott in *B v E* [2023] EWFC 303 (B) at [29]:

“It is common experience that victims of domestic abuse may try and hide what is going on, even from those closest to them. It is common experience that abusive relationships may last for a long time and that victims of abuse may struggle to remove themselves from such a situation. It is the experience of the courts that people who are in an abusive relationship may struggle to extricate themselves from it for a whole range of reasons including fear, shame, lack of resources, family responsibilities, cultural or societal concerns and/or their own conflicting emotions towards their abuser. Further, their capacity to react to events may be compromised or blunted by their past experience or their mental or physical health. Where the abuse is not physical but psychological, emotional and/or financial, those subject to it may not even recognise themselves as victims of abuse, particularly where the behaviours develop over time.”

### Conduct of the hearing

13. As anticipated, Father only attended the hearing remotely. He was assisted by a Ukrainian interpreter, who was also remote. Mother, too, was assisted by an interpreter. I am grateful to both interpreters for the care and focus they brought to their task.
14. Mother alleges that she is the victim of domestic abuse. She was therefore treated as a vulnerable party, and ground rules for her participation were discussed and agreed. In the event, these were straightforward, since Father was only attending remotely. As proposed by her Counsel, and not opposed, all that was required was

that, when giving evidence, the camera was not focused upon her. I was satisfied that Mother was able to follow and participate in the proceedings fully, and without undue distress – over and above the distress which is regrettably common to participants in proceedings of this sort. I was also satisfied that the questioning of Mother by Father’s Counsel was fair, taking account of Mother’s vulnerability.

15. Mother and Father were the only witnesses. Some criticism was made by Counsel for Father of the absence of the maternal grandmother, but I am satisfied that Mrs Justice Arbuthnot previously directed that the maternal grandmother should not be called. In any event, her evidence would have been most relevant in respect of the events of 16 September 2021, as to which I have ample information. Accordingly, I draw no adverse inference from the maternal grandmother’s absence, although I do bear in mind that Father has not had the opportunity to cross-examine her.
16. I received a significant volume of written evidence. In addition to the witness statements, this included numerous criminal complaints made in Ukraine with related material; documents from Ukrainian court proceedings; three psychologist reports served in the context of those court proceedings; and other material. I also received various videos. I have considered all of this material, even if I do not mention it specifically in this judgment.

### **The credibility of Father and Mother**

17. In assessing the credibility of Father and Mother, I have borne in mind the way they gave evidence, but only as a relatively small part of the overall assessment. I have had regard also to the voluminous documentary material, to the inherent plausibility or implausibility of the evidence, and to consistencies and inconsistencies in the various pieces of evidence I have received.

### ***Father***

18. I did not find Father to be a credible witness. He struck me as someone being careful to give the answer he felt would best assist his case. On occasion – for example, regarding the events of 16 September 2021 – I was sure he was lying. On other occasions, however, he struck me as genuine in his denial of Mother’s case – for example, in responding to the allegation that on 24 February 2022 he organised an attempt to kill her. In terms of his conduct generally, he was unwilling or unable to accept that his perceptions of Mother as a mother to Ludmila might be unduly critical – or that his response to her perceived failings might be belittling of her.
19. It was striking how critical Father was of Mother’s ‘failure’ to keep a record of her breast-feeding, or her ‘violations of dietary regimen’ – which he saw as directly causing harm to Ludmila as an infant. It was also notable that in his witness statement Father commented on Mother, when living in Zaporizhzhia, going out with “*bright make up and cleavage*”, saying she often went out “*bright make-up and a revealing neckline – I would presume in search of her fourth husband*”. It struck me forcefully that Father had a strong view of how Mother should behave, and did not see anything wrong with criticising her when she did not meet his expectations.

20. Overall, Father gave the clear impression that he regarded Mother as an inadequate mother, in particular in her ability to provide emotional warmth for Ludmila. He believed that Ludmila's needs could only be met by him, and was willing to negotiate for Mother to spend time with Ludmila only on his terms – namely, that Ludmila lived with him. Despite his formal admission, Father lacked insight into the emotional and psychological harm his own actions had caused.

### ***Mother***

21. As for Mother, I make full allowance for her vulnerability. It is not now in dispute that in September 2021 she had her 15-month old child forcefully removed by Father. As I find, that removal was a violent abduction, pre-meditated, planned and executed by Father. One can only imagine the traumatic effect on Mother. I note that her host under the 'Homes for Ukraine' scheme describes the "*extreme trauma and stress*" as "*badly affecting the day to day lives*" of Mother and the maternal grandmother. Mother has also gone through the trauma of fleeing her homeland in a time of war, to come to live in a country where she barely spoke the language.
22. However, even making allowances, in many respects Mother's evidence was unreliable. She was deliberately evasive when questioned, seeking to deflect difficult questions by rhetoric. Some of the allegations she made against Father were, in my judgment, not tenable. I consider she has reached the point where she has no trust in Father whatsoever, where every action of his is seen in the worst possible light. As she frankly said in evidence, she believes Father has nothing positive to offer Ludmila. She described the relationship with Father now as a 'war' – which he had started in September 2021. She struck me as being very focused on achieving her objective of (in her view) protecting Ludmila by preventing any contact between Father and her daughter. In pursuit of that objective, Mother was prepared to, and did, give false evidence.

### **My findings of fact**

23. In the following sections, I set out my findings of fact in relation to the allegations that have been made by the parties. For ease of comprehension, and to provide context, I have set out those findings separately in chronological order. For clarity, however, I should underscore that I have not weighed the evidence in such manner: when making findings I have had regard to the entire canvas of evidence, including considering the material regarding later events in considering the credibility of allegations relating to earlier events.

### ***September 2019 to 18 November 2020***

24. This was the period when Mother and Father were living together. Father makes no allegations against Mother in this period. However, Mother alleges that Father was physically abusive towards both Ludmila and Mother, and that he engaged in behaviour that was both coercive and controlling.
25. I have found no credible evidence to support the allegations Mother makes against Father.

26. There was no report of domestic abuse during the time that Mother and Father lived together. It is of course the nature of domestic abuse that it happens behind closed doors, and that victims of it may be unwilling or unable to disclose it even to close friends and relatives, let alone to the authorities. But equally, of course, the absence of any report is not evidence that the abuse did happen.
27. In the materials before me, the earliest report of domestic abuse is Mother's instructions to a child psychologist she retained in May 2022 to provide a report for assistance in Ukrainian court proceedings. By this time, Ludmila was back in her mother's care, and I consider Mother was very focused on ensuring they were never separated again, at any cost. Mother told that psychologist that "*the couple has not lived together since November 2020, which was based on the manifestations of cruelty, emotional and physical violence of [Father] towards [Mother] which occurred in the presence of the child*". I note that Mother did not suggest to the psychologist that Father was physically abusive of Ludmila, although that featured in her testimony before me. Nor (albeit, in the summary given by the psychologist) was there any mention of financial abuse, surveillance of Mother, tracking Mother, and threats to take Ludmila to Crimea – all of which formed part of her testimony to me.
28. In January 2023, in the context of Ukrainian court proceedings, Mother said that the family relationship did not work out:
- “because the child's father did not work, did not help take care of the child, and constantly humiliated her. After the operation (childbirth), she had difficulties managing household chores for a while. During this time, [Father] refused to help her, so her mother had to live with her and assist for the first two weeks. When Ludmila was three months old, [Father] left her and the child without support in an important and difficult period for them and went on vacation to the Autonomous Republic of Crimea. Realising that the relationship between them was not improving, she and her daughter were forced to move to another place of residence.”
29. The agreed facts from this period do not support the allegations Mother makes. In particular, Mother's evidence was that after Father became angry with her in late 2019, she collected her belongings and went to live with her mother. Some time later, Father came with apologies, and she forgave him, but after that she refused to move back to his flat. Similarly, on 18 November 2020, she told him to leave, and he did. This acceptance by Father of Mother's decisions evidences a reasonable balance of power between the parties, which does not support Mother's case that Father was coercive and controlling.
30. Father accepted that he may sometimes have criticised the way that Mother looked, but did not accept the suggestion that he had done so “*constantly*”. It is also plain that Father – unfairly, in my judgment – blamed Ludmila's (minor) health conditions as an infant on what he saw as Mother's failure to adhere to dietary and feeding regimes recommended to her. I have no doubt that this led to tension and arguments.

31. Overall, taking the evidence in its totality, I did not believe Mother's evidence of physical violence, or coercive or controlling behaviour, by Father. I was left with the strong impression that Mother was willing to say whatever would assist her to achieve her objective of keeping Father away from Ludmila. In my judgment, Mother's evidence to the Ukrainian court (summarised at paragraph 28 above) is a fair reflection of what really happened: Father was overly-critical, while Mother felt unsupported – especially in the context of struggling with lactation, and the stresses of the Covid-19 pandemic which would have been felt throughout society in Ukraine as around the world. Into the mix were the arguments and occasional anger that may be found in any relationship. In my judgment, there was not at this time cruelty, nor emotional or physical violence. While I accept that Mother did feel belittled and criticised by Father, and did not make up that element of her complaint, I find that Mother's allegations of physical violence towards both herself and Ludmila were invented with the objective of keeping Father away from Ludmila.

### ***November 2020 to September 2021***

32. Mother and Father split up on 18 November 2020, on the eve of their wedding anniversary. Father moved back to his own apartment in Kyiv, where he had previously lived for a time with Mother.
33. A week or so later, Father came back to collect some belongings. On Mother's evidence, Mother asked him to look after Ludmila while she took a shower, but Father was in a hurry and he simply took his belongings and left. Mother's recollection is that Ludmila was asleep, but Mother was upset that Father did not show any interest in seeing Ludmila or staying to help Mother. Father's recollection is that he did see Ludmila, but did not want to disturb her. More significantly, perhaps, is that in her evidence to me Mother accused Father of being "abusive" this day – because he opened the front door with his own key. Mother's evidence was that she knew Father was coming over, but did not know that he would use his key to enter; Father's evidence was that he did use his key, but the door was locked from the inside, so Mother opened the door. On either case, I do not accept there was anything abusive here, but I do consider that Mother's readiness now to characterise it as such is indicative of her efforts to cast the relationship with Father as 'abusive' in an attempt to achieve her objectives.
34. On 14 December 2020, Ludmila had an accident while in Mother's care. Mother called Father to come to help her, and was upset that he was not immediately available. Nonetheless, he did come, and took Mother and Ludmila to the clinic, where Ludmila was assessed as not requiring treatment. They returned to Mother's apartment, at which point they had an argument. Father's evidence was that he wanted to go up to the flat to get some belongings, but Mother refused, and then called the police to say he was threatening to break in to her apartment. Mother told me that Father locked the doors to stop her getting out of the car, before relenting. This version of events was novel, and had not been put to Father, and I do not accept it.
35. Shortly after the incident on 14 December 2020, Father approached Children's Services in Kyiv, to seek their assistance in being able to spend time with Ludmila.



Children's Services called Mother, who told them that she now lived in Zaporizhzhia with Ludmila. Kyiv's Children's Services notified Father of this on 16 January 2021, explaining that he would need to contact the Children's Services of Zaporizhzhia.

36. As she indicated to Children's Services, in early January 2021, Mother moved with Ludmila to Zaporizhzhia. Mother did not tell Father that she was going to make this move, although he learned of it in mid-January, from the letter from Children's Services.
37. There was some communication between Mother and Father at this time, although it was limited. Father's evidence to the Ukrainian court was that Mother promised not to hinder his contact with Ludmila if he agreed to transfer Mother US\$ 2,000 per month, and promised not to show Ludmila, or photos of her, to relatives on his side of the family. Father's Counsel put to Mother that she had made these demands; Mother said she did not remember – but did not deny it. I find as a fact that Mother did make these demands.
38. In May 2021, Father made an application in Zaporizhzhia, seeking contact with Ludmila. There is no evidence to explain the delay in this application since January 2021.
39. In July 2021, Father travelled to Zaporizhzhia, hoping to see Ludmila, but was rebuffed. There is a dispute between the parties as to how Father behaved on this day, and whether he intended to abduct Ludmila, but I need not and do not make any finding in that regard.
40. Overall, my assessment is that in November and December 2020 Mother felt unsupported by Father, and they argued. Mother took the view that she and Ludmila were better off without the involvement of Father, and she preferred to be in Zaporizhzhia, near family and friends, and unilaterally decided to move there with Ludmila. Mother knew that Father wanted contact with Ludmila, but took no steps to assist in that. On the contrary, she deliberately impeded contact, insisting that Father should go through a formal court process, then attacking the evidence served on procedural grounds. Even via her Ukrainian lawyers, she never made any proposals to allow him to spend time with Ludmila.

### ***16 September 2021***

41. As noted in paragraph 11 above, Father now accepts that he separated Ludmila from the care of her mother and maternal grandmother on 16 September 2021. What remains in dispute is the manner of that separation.
42. There was a Ukrainian police investigation into these events, and as a result there is a good deal of near-contemporaneous evidence concerning them.
43. A statement from a neighbour, made on the evening of 16 September 2021, read:

“I can say that on September 16, 2021 at 19.00 I was walking in the yard of the house . . . ., I saw a woman walking by with a baby in the baby carriage of grey colour. At this very moment between the

second and third block of the house there was a car parked, red colour, plates 0305 (didn't memorize), two men with a heavy build, height up to 180cm, walked out from the car. One man was wearing a medical blue mask and sportive uniform, I don't remember exactly, the second man was wearing a mask too I believe, and a sportive uniform. The first man approached the woman with the baby carriage, she was hiding the carriage behind her back. The first man poked away the woman while the second man approached the carriage to take the baby and put the baby into the car. I can't say who of them was a driver, afterwards this car left our yard .... I called to the police and informed about the accident.”

44. On 17 September 2021, the manager of a car rental company in Dnipropetrovsk made a statement to police. He said that on 16 September 2021 he was called by Father, asking to rent a car for two days, and that Father arrived to collect the car, a red Ford, with his mother, at about 11.30am that day. The car rental manager followed the car remotely, using an on-board GPS tracker, which showed that it went to Zaporizhzhia, arriving there at about 1.40pm, in the Komunarskyi district. The witness said that the following day he was called by Father and told the car had been left in the Komunarskyi district, and he was subsequently sent the keys to collect the car.

45. A further statement was obtained from the maternal great-grandmother. She said:

“On September 16, 2021 together with my daughter [...] and my grand-grand daughter [...], we were walking around the playground at the premises of the house [...] I went home, and [the maternal grandmother] stayed with her granddaughter [...] outside. Approximately at 19.00 I've heard the screaming of my daughter, I looked out of the window at the kitchen, it was open, and I saw a red car parked between the second and third blocks, from the one side of the car there was a man punching [the maternal grandmother] and slapping her down to the ground. From the other side of the car there was another man standing near the open back door. The baby carriage was near the car but there was no baby inside. The driver tossed aside [the maternal grandmother], set in the car and the car started driving out of the yard. I was screaming from the window. [The maternal grandmother] went upstairs to our apartment and asked for the phone to call to the police. She was yelling that unknown people kidnapped her granddaughter and her son-in-law [...] was punching her not giving her a chance to protect the granddaughter. We went outside to wait for police.

The next day after the incident my daughter [...] was sharing the details of what happened. The car arrived harshly, two men jumped from the car, the driver was [Father], who started punching her, the second man grabbed the baby from the carriage. She was talking that [Father] had a gun, that there was another woman in the car, who took the baby inside the car. This woman was sitting at the back seat and [the maternal grandmother] recognized the mother of the son in law...”

46. On 18 November 2021, another neighbour of the maternal grandmother provided a statement. She said that at about 7pm on 16 September 2021, she had seen two men come running up to the maternal grandmother who was with Ludmila's pram; man number 1 was masked; man number 2 came running up to the maternal grandmother from the back, and pushed her, and she fell down into the front garden. Man number 1 then grabbed the baby, while man number 2 fought the maternal grandmother. Both men got into a red car, with man number 2 driving. The maternal grandmother tried to stop him driving off, but he pushed her away so she fell, and drove the car off at high speed with the driver's door swinging open. The witness exhibited a Telegram comment she had sent just a few hours after the incident, under the heading "*The father kidnapped the child*": "*The child had a walk with her grandmother. When they were near the entrance hall already and were going to come inside, the car has drove up, two men ran out of it, took the child away forcefully, put the child in the car, pushed the grandmother off and went away.*"
47. Father accepted in cross-examination that he had rented the red Ford. He said that he and his mother planned to go to Kryvyi Rih for a few days, and each would need a car, so he rented a car with the plan that his mother would drive his Range Rover while he drove the rental car. They drove first to Zaporizhzhia intending to see Ludmila, but with no intention of doing more than spending some time with her and then leaving again. He had come to Zaporizhzhia previously with the same intention, in July 2021, but Mother refused to allow him any contact with his daughter and refused to open the door to him. On this occasion, they parked up the Range Rover, then both he and his mother got into the red Ford, and waited in the area for more than 5 hours (from 1.40pm until 7pm). He did not think there had been anyone other than the two of them in the car at any point.
48. Father's description of the incident at 7pm was that he had taken Ludmila from her pram, announcing loudly that he was the child's father; the maternal grandmother initially did not react but then came and attacked him from behind; he was shocked and frightened by her action, and so he decided in that instant to take Ludmila away to keep her safe; he got into the car, then fought the maternal grandmother off as she came at him in the car; and he drove off, perhaps (as one witness recalled) with the door open. Father was insistent that there was no second man, and that he did not have a gun.
49. Father's explanation for why the red Ford was hired has varied over time. In his initial response to Mother's allegations, he claimed that he changed cars as "*a necessary precaution because the respondent's mother has criminal connections and had made several threats against him. The applicant reasonably believed that his life would be in danger if his presence was discovered*". In cross-examination, his initial description was that the car was rented just as a matter of convenience – so that he and his mother would each have a car available to them – before also accepting that he thought he would have a greater chance of seeing his daughter if he turned up in a car that was not his own (which, I understood, Mother and maternal grandmother would recognise).
50. As regards the allegation that Father had a gun, the evidence is that he owns (or owned) a gun, but that on 2 October 2021 he filed a statement with the police in Kyiv declaring that it was lost, because he had left it in Crimea and was unable to

take it back from there. In cross-examination, Father said this had been the position since 2014. It was put to Father by Mother's Counsel that this declaration was made only to provide a defence to Mother's criminal complaint against him arising out of the 16 September incident, but he denied this.

51. I do not accept Father's evidence concerning the events of 16 September 2021. In my judgment, Father has consistently lied about the events of that evening. I find that this was a pre-meditated and planned abduction; that Father deliberately hired a car so that he could get close to Ludmila without being recognised; that, in addition to his own mother, Father had another male accomplice, who was masked; that Father acted first in attacking the maternal grandmother; and that Father had with him a gun which he showed to the maternal grandmother in the course of the attack.
52. In the course of his evidence, Father was asked whether he thought he had done anything wrong in taking Ludmila. His answer was that his action was not good in general, but that as he drove away, he called her 'chipmunk', and she laughed, so he did not think that Ludmila had been harmed. The impact on Ludmila of being removed from everything that was familiar to her – her carers, her clothes, her toys and bedding – seems not to have registered with him. What is more, Father thought that the real harm Ludmila had suffered had been in the previous 6 months, because he believed that Mother could not provide any emotional connection with Ludmila – as he put it: "*harm is measured in the absence of [Mother's] warmth, walking with her, spending time, playing with her*". Despite his formal admission, Father lacked insight into the harm that was undoubtedly caused to Ludmila by the violent manner in which she was snatched from her maternal grandmother, and by not seeing her mother (with whom she had always been) for the next six months.
53. I note that on 9 May 2024 the Ukrainian authorities decided to close their investigation into the events of 16 September 2021. This was on the basis that it was not a criminal offence under Ukrainian law for a father to take his own child.
54. Counsel for Mother described Father's conduct in forcibly abducting Ludmila as an act of intense cruelty. I agree with that. I have also found that that Father lied about the circumstances of the abduction. I have of course borne these findings in mind when considering other allegations in the case. However, I have also borne in mind that Father had a particular motivation to lie about the circumstances of the 16 September 2021 abduction – namely, to avoid admitting breaching criminal law by the involvement of an accomplice, the use of a gun, or an unprovoked attack on the maternal grandmother – and so his lies about that do not necessarily mean he has lied about other matters. Further, the factual context changed quite dramatically over time. Without in any way condoning Father's actions, they followed nine months of being completely and deliberately excluded from his child's life. The cruel way in which Father behaved at that time provides only limited indications as to how he might have behaved at an earlier stage, before he and Mother separated, or at a later stage when he had the upper hand by having Ludmila within his care to the exclusion of Mother.

**September 2021 to February 2022**

55. In this period, Ludmila was living with her Father. Mother was trying desperately to spend time with Ludmila, spending many days outside Father's flat, but was consistently rebuffed by Father. Mother did not see Ludmila even once in this period.
56. On 22 September 2021 – less than a week after Ludmila was snatched by Father – the maternal grandmother went to Father's flat, and stood outside shouting at him. Father says that she also banged on his door and shouted threats. There is no evidence that Mother was responsible for this action, and I cannot see that this incident has any relevance to future welfare decisions for Ludmila. In any event, the context for this incident is crucial: it can be no real surprise that the maternal grandmother was angry, upset, and traumatised by the attack on her, and the violent abduction of her grandchild, less than a week previously.
57. Later in September 2021, Mother issued an application in Kyiv for an order that Ludmila live with her, but that was not resolved until April 2023. From then on, and over the next months, Mother also made repeated criminal complaints against Father for preventing her from seeing Ludmila. In December 2021, these complaints included that Father had taken Ludmila to an undisclosed location (believed to be Crimea).
58. [REDACTED]
59. In December 2021, the Ukrainian court made an order for interim contact with Mother, in alternating weeks. However, that order was subject to any opposition from Father, and Father did oppose it. His explanation to me was that he did not accept the schedule proposed, and that he feared Mother's final goal was to remove Ludmila back to Zaporizhzhia. In my judgment, Father was determined not to allow any contact at this time, in part as a bargaining chip to secure agreement to Ludmila living permanently with him, in part out of fear that Mother would take Ludmila away, and in part out of revenge for Mother denying him time with Ludmila between January and September 2021.
60. One of the allegations made by Mother against Father is that he caused emotional and psychological harm to Ludmila. I accept that allegation (which is conceded) in relation to the forcible abduction of 16 September 2021, and the consequential separation of Ludmila from Mother between then and 9 March 2022. However, I do not find that there is any credible evidence to support Mother's allegations or suspicions that while Ludmila was in her Father's care in that period he mistreated his daughter. Mother invited me to view a video she took in March 2022, asking Ludmila "*Were you beaten?*" and "*Is that how they beat you? In the face?*". I do not regard this video as having any evidential value. Nor am I assisted by Mother's evidence concerning what she says Ludmila's physical condition was in March 2022. I note that Mother exhibited to her witness evidence various paediatricians' reports concerning Ludmila during the period she was in her Father's care, none of which raise any concerns as to her care.

**24 February 2022**

61. On 24 February 2022, Russia invaded Ukraine.
62. There was a phone call between Mother and Father that morning, which Mother recorded. Mother wanted Ludmila to live with her. Father proposed a negotiated settlement, where Ludmila live with him, but both parents spend time with her, and both could travel abroad with her. Mother would not accept Ludmila living with him.
63. According to Mother in her first statement, that day she went to Father's address, and begged him to evacuate Ludmila from Ukraine with her. She says she stood in front of his door "*from morning til the evening*". Then:

"Following a military alarm, I went downstairs to the underground parking, where people were taking refuge from shelling. As I stepped into the parking lot, a man came charging directly after me holding a knife. It was clear that he was coming straight towards me and that he was intending to use the knife to either kill me or subject me to significant physical harm. I recognised the man to be one of [Father]'s friends, Andrey [...]. I was utterly petrified. He chased me around the parking lot, and I eventually managed to escape through a metal door.... It was clear that [Father] had instructed his friend to attack me, as I had no other ties to this individual."

64. In her second statement, Mother similarly recounted:

"As I stepped into the car park, Andrey ran directly towards me with a knife. It was clear that he was targeting me specifically. I ran as fast as I could around the car park and eventually managed to escape through a heavy metal door which separated the car park and street."

65. Mother made a complaint to the police the night of 24 February 2022. This alleged:

"On the date of February 24, 2022, [Father], accompanied by his associates, specifically Andrey [...] and an unidentified third individual, were present in the parking area situated at [...] in Kyiv. When I arrived at the parking lot, I encountered [Father], Andrey, and another unidentified man. They immediately started running away from me and my mother. They hurried to enter the parking lot, and when [...] Andrey turned towards them, he had a small knife in his hand which he then dropped. Another man was holding a gun and used it to threaten my mother. I tried to chase after [Father], but couldn't catch up. When I returned to the parking lot, I saw [Father] taking my child, Ludmila, in an unknown direction."

66. Mother says that she asked the police for CCTV footage of these events, but was told that CCTV had 'vanished'. However, Father did manage to obtain CCTV footage of at least part of the events in question. I have watched this footage more than once, and Father and Mother were cross-examined about what it shows.

67. In my judgment, the CCTV shows Father and Andrey walking through the car park. They are moving with some speed and purpose. They come up to a door, and see through it Mother, and the maternal grandmother, coming the other way. They immediately turn and walk away, then, as they are chased by Mother and maternal grandmother, they run, until they are out of sight. After about 30 seconds, Andrey runs back into sight, pursued by a man pointing a gun at him. After some tense discussion, in which the maternal grandmother gets involved, Andrey is allowed to leave and walks off.
68. None of this is consistent with Mother's evidence in her witness statements. Most strikingly, in my judgment there was no question of Father and Andrey lying in wait for Mother and maternal grandmother; on the contrary – the moment they saw her, they turned tail, and tried to avoid a confrontation with them. It was Mother and the maternal grandmother who chased them, not the other way around.
69. For the assistance of Father, Andrey produced a witness statement which was notarised on 8 April 2024. I bear in mind that this was some two years after the event, and that there was no opportunity for cross-examination. However, Andrey's evidence was that he dropped his keys and a folding knife as he ran away and stopped to pick them up, while Mother continued to chase Father. The maternal grandmother, who had been shouting at him, caught up to him, so he ran back off towards the main exit of the car park (the area covered by the CCTV footage I have seen) before being shocked to be stopped by a man holding a gun.
70. In cross-examination, Father was criticised for only producing footage from one CCTV camera. I accept his explanation that he thought the footage produced was sufficient. It was put to Father that Andrey pulled a knife on Mother in another part of the car park – out of sight of the CCTV camera from which footage was produced – and made as if to cause her very serious harm. I do not accept this version of events: in my judgment, having watched the CCTV footage, Andrey's description of events is more likely to be accurate, and I accept it. In particular, I find nothing suspicious in Andrey having had a knife with him that evening: this was the day war had broken out, and, as is common ground, a passer-by was also carrying a gun.
71. Overall, I do not consider that Mother has established any wrongdoing by Father in relation to this incident. Father sought to avoid a confrontation. His friend was carrying a knife – but this was not with any intention to harm Mother. I accept Father's evidence that the passer-by pulled out his gun because the maternal grandmother shouted that Andrey and Father had kidnapped her grandchild (or words to that effect); I reject Mother's evidence that Father said "*Deal with her*" or similar, as an instruction to Andrey to hurt her.

### **9 March 2022**

72. On 9 March 2022, Father tried to leave Ukraine with Ludmila and his mother. They were stopped at the border and Mother was called. According to Mother's first statement:

“[W]hilst [Father] and I were at the police station on 9 March 2022, following the police having removed Ludmila from [Father] during

his attempt to cross the border, [Father] and I were in a room together with a police officer. When the police officer left the room, [Father] told me that if I did not leave Ludmila with him then he would kill me and that Ludmila would ‘die with me’. He further told me that no one would ever look for us because there was the war ongoing in Ukraine. He further stated, ‘maybe someday they will find your bodies in 20 years.’ Given the recent incident in the parking lot when [Father]’s friend had chased me with a knife, I feared that there was real truth in [Father]’s threats. I knew that I had to leave Ukraine with Ludmila immediately.”

73. In Mother’s second statement, she added to this:

“[Father] further stated that I wouldn’t get to Zaporizhzhia because he would cause an accident, even if Ludmila was in the car. I was very scared, so I informed the Ukrainian police of these threats. The police therefore escorted Ludmila and I to the border of Ukraine in a police car, and my mother followed. When we arrived in Poland and settled down, I immediately went to the police and reported [Father]’s numerous death threats against Ludmila and me. A copy of that report to the Polish police is enclosed at ....”

74. In the same statement, Mother said:

“When the policeman left the room, [Father] started pushing me against the wall and randomly hit me and Ludmila, jerking me and trying to rip the child out of my hands. So that these blows wouldn’t hurt the child I’d cover her with my body and put my hands. As a result of his aggression, I suffered a blow to the wall and the caused me to bleed. My hand was smashed and my blood got on Ludmila’s clothes and my clothes. I enclose a photo at ... which shows the stain of blood on my jacket at the time. Ludmila’s clothes were also blood stained. I was very scared. I tried to protect Ludmila from [Father]’s violence. Both myself and Ludmila were screaming. Several police officers came to our screams. I sat on the floor in a corner and covered Ludmila with myself until the policemen pulled [Father] away from us.”

75. The report given to the Polish police states that Mother informed that

“on 9 March 2022, in period from 23:00 to 23:30 in city of Volodymyr-Volynskyi in Ukraine her ex-husband [...] threatened to murder her and her underage daughter Ludmila... and the threat he told were real for implementation. The affected filed the application for criminal prosecution of [Father] for his threats directed against her.”



76. The photo which is said to show blood on Mother's jacket is indistinct. There is no photo showing any injuries to Mother, or to Ludmila, nor any photo of blood stains on Ludmila's clothes.
77. Father denied that any of this occurred. In his witness statement he said that, on the contrary, it was Mother who was violent, snatching Ludmila from him, hitting Ludmila's head against the wall. He said Ludmila was crying, reaching out to him, but when he touched her hand Mother squeezed his left hand hard – a matter of which he later made a criminal complaint. Father says he was asked to wait outside while the police dealt with Mother, and that Ludmila would be returned to his care. However, the officers' attitude changed, and his and his relatives' documents were confiscated, and he was not allowed to approach his daughter again. In cross-examination, Father accepted that he was angry, but denied that he assaulted or threatened Mother or Ludmila, and, indeed, did not recall that the police officers ever left them alone together.
78. I accept Father's denial of the allegations against him. I do not accept Mother's evidence that Father made any threat to kill either her or Ludmila, nor her evidence that Father was violent towards either of them. I believed Father's denial. I note the complete absence of any supporting evidence for Mother's case – which is not consistent with Mother's evidence that she told police officers of the threats and violence at the time. Mother alleges that the absence of evidence is a result of a conspiracy between Father and Ukrainian officials, but I have seen nothing to support that theory. I consider that the complaint made in Poland was tactical on Mother's part, an attempt – now she had finally been reunited with Ludmila – to build a case to support her efforts to ensure that Ludmila would never be taken from her again.

### ***March 2022 to present***

79. Mother and Ludmila left Ukraine, with the maternal grandmother, on 10 March 2022. They did so without permission of the Ukrainian court, or Father, which appears to have been a wrongful removal under Ukrainian law. I accept Mother's evidence that she did this both to protect Ludmila from the war (a desire which Father too had had), and out of a fear that if they remained in Ukraine Father might once again arrange the abduction of Ludmila.
80. Since 19 April 2022, Ludmila has been living with her Mother in England and, based on reports from her kindergarten and a consultant paediatrician working in the NHS, is doing well. I have read a report written by the host of Ludmila and Mother under the 'Homes for Ukraine' scheme, which describes her as "*a wonderful little girl; clever, sociable, fun loving and affectionate*". The host also speaks in warm terms of the care being given to Ludmila by Mother and maternal grandmother.
81. Mother did not register with the Ukrainian consulate, which could have enabled Father to locate Ludmila. Equally, Mother did not provide Father with any information about Ludmila's health or education. Again, however, in the context of the outbreak of war, and the previous pre-meditated violent abduction of Ludmila

by Father, I accept that such conduct was justified by a genuine fear that Father would, if given any opportunity, arrange for the abduction of Ludmila.

82. On 4 April 2023, the Kyiv court decided on the application issued by Mother in September 2021 for an order that Ludmila live with her, and Father's cross-application of December 2021. The backdrop to the decision was that, by this time, Ludmila had been living with Mother alone for more than a year. The court decided:

“The court has determined that the living conditions provided ensure the best interests of the minor child according to her development in a safe, peaceful, and stable environment, specifically at the mother's place of residence. The child has an established and stable way of life there. Changing this, in the court's conviction, would negatively impact the child. Residing with the mother corresponds to the child's interest in maintaining her connection with the family, as she has lived and will continue to live with her mother.

The plaintiff's arguments in the counterclaim that the child's did not properly discharge her responsibilities to participate in the child's education were not confirmed.”

83. The decision of the Kyiv court was upheld on appeal. Father has asked the court of cassation to review that decision. It was suggested to Father in cross-examination that this was an element of his controlling behaviour. I do not accept that proposition: Father is entitled to invoke the legal procedures available to him.
84. I note that on Mother's evidence, which I have no reason to doubt, she does not speak to Ludmila about her Father, and Ludmila does not ask anything about him. There has been no contact between Ludmila and her Father since March 2022, and I have the firm impression that Mother is very content with that.

### ***The other allegations***

85. There are various allegations by Mother that at different times Father put her under surveillance of various forms. I have seen and heard no credible evidence to support this. Apart from her own word, Mother relies on her own criminal complaint from December 2021, which provides no real support to that allegation.
86. There are also various allegations by Mother that Father conspired with or corrupted various Ukrainian authorities. Again, I saw and heard no credible evidence to support such a finding. There was one complaint by Mother in September 2021 about the failure of an investigator to provide her with information on her criminal complaint, which a Judge upheld on 5 October 2021. In my judgment, this does not assist Mother in her allegation.

### **Conclusion**

87. For these reasons, in very brief summary my findings on the allegations made are as follows:

- (1) There was no domestic abuse, nor coercive and controlling behaviour, by Father towards Mother in the period up to their separation on 18 November 2020.
- (2) During the period from January 2021 to September 2021, Mother deliberately and actively prevented Father from having any contact with his daughter.
- (3) On 16 September 2021, Father violently abducted Ludmila, after which he deliberately and actively prevented Mother from having any contact with her daughter.
- (4) There was no wrongdoing by Father towards Mother on 24 February 2022, nor on 9 March 2022.
- (5) On 10 March 2022, Mother left Ukraine with Ludmila without Father's knowledge and consent. That appears to have been a wrongful removal under Ukrainian law. Thereafter, Mother did not disclose to Father where she had moved, and did not allow contact with Ludmila. However, in the context of the outbreak of war, and the previous pre-meditated violent abduction of Ludmila by Father, such conduct was justified by a genuine fear that Father would, if given the opportunity, again arrange for the abduction of Ludmila.