



Neutral Citation Number: [2024] EWHC 582 (Fam)

Case No: FD23P00122

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/02/2024

Before:

MS JUSTICE HENKE

Between:

The Mother

Applicant

- and -

(1) The Father

Respondents

(2) U

(by their Children's Guardian)

(Re U: Findings of Fact)

Sarah Hayward (instructed by **Anthony Louca Solicitors Ltd.**) for the **Applicant**
The **First Respondent** appeared **In Person**
Adam Tear acted as a court-appointed **Qualified Legal Representative** to cross-examine the
Applicant
Jonathan Evans (instructed by **CAFCASS Legal**) for the **Second Respondent**

Hearing dates: 19-21 February 2024

Approved Judgment

This judgment was handed down remotely at 4:30pm on 22 February 2024 by circulation to the parties or their representatives by e-mail.

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MS JUSTICE HENKE

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.

Henke J:

Introduction

1. This case concerns the child U. This is the second judgment I have given in relation to him. The first was handed down on 1 November 2023 ([2023] EWHC 3494 (Fam)). That judgment relates solely to the recognition and enforcement of orders that had been made in relation to him in France. This judgment deals with findings of fact which each of U's parents asks me to make against the other and which are said to be relevant to his future welfare.

Brief Background and Chronology

2. U's parents met in March 2018. They separated in the summer of 2020. At the time, U and his parents were living in London. There was a brief period of reconciliation between U's parents in early 2021, which was not sustained.
3. Children Act proceedings in relation to U were started by his father as long ago as October 2020. I have already set out the relevant procedural history up to and including 20 September 2023 in paragraphs 8-24 of my first judgment. From that, it can be seen that in August 2021 U went with his mother to live in France. His father did not object to that move. Whilst in France, U was removed from his mother's care and placed into foster care. He remained in foster care in France until 18 July 2022. On that day, the Children's Court in France entrusted U to his father's care. Under that order, in August 2022, U travelled with his father to England. Since then, U has lived with his father in London.
4. The case first came before me on 31 October 2023. On that occasion I was required to determine two linked issues: -
 - (1) the father's application for the French orders to be recognized and enforced in this jurisdiction; and
 - (2) whether recognition and enforcement of the French orders should be refused under Article 23 of the 1996 Hague Convention.
5. Having heard submissions on behalf of all parties, on 1 November 2023 I gave judgment and recognised the Educational Assistance Order of the French judge dated 22 July 2022. At paragraph 42 of my first judgment, I said this:

“It appears to me that it may assist the parties and be beneficial to U if I set out in brief and plain language what this all means for U. Putting it simply it means that U has been entrusted to his father and lives with him by reason of the order of July 2022. The contact provision of that order has now been varied by this court. The interim contact order in force as I type this judgment is that of Mrs. Justice Knowles which she made on 1 August 2023, namely a spends time with order limited to a card or letter once a week which the mother can send to U. In addition, the prohibited steps order made by Mrs. Justice Knowles prohibiting the mother from removing U from his father's care and control remains in force. On 1 August 2023, Mrs. Justice Knowles made a Non molestation order to protect U and the father from the mother's behaviours. That has been replaced

by undertakings given by the mother on 20 September 2023 and which this court understands the mother will renew at the conclusion of this hearing.”

6. By 1 November 2023, the case had already been timetabled through to a Guardian’s report to be filed in January 2024.
7. On 1 November 2023, I proceeded to set down a final hearing before me on 19-23 February 2024. I directed that that hearing should be broken down into two parts: the first part shall be a fact-finding hearing, after which a short judgment will be handed down before the welfare part of the hearing commences. On 2 February 2024, I expanded the hearing dates to accommodate two further applications issued by U’s mother for his return to her care. This judgment relates to the fact-finding anticipated in my order of 1 November 2023.

The Applications

8. The applications pending before me to be determined after this fact-finding hearing are:

(1) the father’s applications for:

- i) a non-molestation order;
- ii) a Prohibited Steps order; and
- iii) a s.91(14) Children Act 1989 order.

(2) the mother’s applications for:

- i) access to U under Art. 21 of the 1980 Hague Convention dated 13 August 2023;
- ii) an order that U should live with her dated 12 January 2024; and
- iii) the return of U to her care under the Child Abduction and Custody Act 1985.

The Findings of Fact Sought

9. U’s mother and father have each produced a Schedule of the Findings of Fact they seek against the other. I have summarised the allegations each makes in the paragraph below. The fact that I have summarised them does not mean that I have not born in mind when writing this judgment their respective content in full. When summarising the allegations, I have not set out each party’s response to the allegations they face. However, when analysing the evidence before me and making my findings in the narrative at the conclusion of this judgment, I have engaged with the arguments each raises in their defence and kept them in mind.
10. The Schedule of Findings sought by the mother begins at page 191/797 in the Main Bundle. It was amended orally in closing. The findings the mother seeks can be summarised as follows: -

- (1) That on 28 February 2023 the father punched her multiple times. She fell to the ground and cut her head. U's mother says that she had no intention to abduct U that day. She had only intended to find out which nursery he was attending.
 - (2) That the father has always lacked empathy towards her in his language and his aggressive tone and has shown a lack of respect to her. The father has considered that just because she has mental health issues, she is unfit to care for U.
 - (3) That the father has actively tried to turn people against her including her sister and authorities.
 - (4) That the father has used constant allegations as a way to obstruct her relationship with her son.
11. The Schedule of Findings the father seeks against the mother begins at page 205/797 in the Main Bundle. They can be summarised as follows: -
- (1) The mother has hit him on more than one occasion and thrown heavy objects at him. In his evidence, the father was asked to identify a heavy object and he stated it was a mug.
 - (2) On an occasion when the father was making porridge in the kitchen with U, the mother came in, picked up a kitchen knife and pointed it at him. The father was convinced that she intended to kill him. After a few moments the mother pointed the knife at her wrists and made as if to cut herself.
 - (3) The mother has made false allegations of abuse against the father in the past.
 - (4) On 26 February 2023, the mother attended the home he shares with U and started banging and shouting through the letterbox. The father called the police who told her to leave and warned her that if she turned up at the address again, she could be arrested and prosecuted for harassment.
 - (5) On 28 February 2023, as the father was about to leave their home to take U to nursery, the mother banged on the front door and shouted through the letterbox. The father called the police again. The mother ran away, and he left the house with U. A few steps from the house the father noticed that the mother was following them. Suddenly she was standing right in front of them albeit on the opposite side of the road. The father tried to call the police again, but they did not answer. The mother charged across the road shouting your father is mad repeatedly. When she got too close, he stood between her and U. She kept trying to reach him. Consequently, he pushed her away.
 - (6) After this incident the mother is alleged to have falsely claimed that the father was an abuser to the police, social services and SOLACE, a woman's right organisation. She has falsely claimed that he forced her to have sex with him. She has called him a paedophile.

- (7) The mother fails to realise the seriousness of her mental ill-health.
- (8) The mother has wrongly claimed that the father has mental health issues. She has said wrongly that he has Asperger's syndrome and that he is autistic.
- (9) In September 2023, the mother called the police and claimed that the father was hurting U. The police conducted a welfare check.

The Hearing Before Me

12. This fact-finding hearing began on Monday 19 February 2023. The evidence concluded on the afternoon of Wednesday 21 February 2023 with oral submissions following. This judgment was handed down the next day electronically with a live link being available to the parties for any matters which arise.
13. At the hearing and throughout the proceedings before me, the mother has had the benefit of Counsel and a solicitor. The child is represented through his Guardian, and they have had the benefit of a solicitor and Counsel for this hearing. The father has represented himself throughout the proceedings before me. He last had legal representation in October 2022.
14. In order to determine the allegations that the mother and father seek to prove against the other, I have read and re-read an electronic bundle consisting of 767 pages of evidence. I have also read and re-read a supplemental electronic bundle of 112 pages of evidence. Any references to the bundles in this judgment are preceded by Main Bundle or Supp Bundle to distinguish between the two. The page references I have given are the electronic page numbers.
15. I have also heard oral evidence from the mother and father. Because of the mother's mental ill health and because she is an alleged victim of domestic abuse, protective measures were put in place for her throughout the hearing. When she gave evidence, she did so from the witness box with the father screened from her view. I had directed that the father should not cross-examine her and had appointed a QLR to put the essence of his case to the mother. I am extremely grateful to Mr Tear for acting as the QLR in this case and for fulfilling his task with skill. I consider that as a result of his expertise, he was able to put the father's case in full to the mother. There had been times during his challenge that the mother appeared to lose focus, however with regular breaks she was able to regain concentration and give her best evidence to Mr Tear. However, the toll of the process began to show just after the lunch adjournment on Tuesday 20 February when she was being cross-examined on behalf of the Guardian. The mother visibly appeared to crumble. To my eye, she did not look well. She lost focus and this time did not appear to be able to regain concentration. She told me she was exhausted. She had not been sleeping. From the way she told me of her exhaustion and from what she said, the mother appeared to me to be physically, mentally and emotionally exhausted. I asked if she would like a break. She declined that option. I asked her about her medication to see if the time of day when she gave her evidence was affecting her testimony. She told me in the evening and her obvious ennui did not appear to relate to her medication. Having spoken to her, initially the mother said she wanted to carry on and then she re-thought her position. She told me she no longer felt able to give evidence. Having watched her in the witness box, I

determined that even if a break were allowed, the quality of the mother's evidence that would follow would be likely to be affected by her obvious "exhaustion" and thus of little value. Whilst the mother was not able to answer all the questions the Guardian would have wanted to put, the mother did have the opportunity to answer all the allegations put on behalf of the father by Mr Tear. Given that this was a fact-finding between U's mother and father, I considered the main questioning had already taken place. In addition, the mother has had an opportunity to put her case in her statements to this court which she confirmed and to answer the questions posed on behalf of the father. Thus, I determined that a fair process (one that was fair to both the mother and the father) could be achieved without requiring her to continue to give evidence. I therefore decided that the case could be dealt with justly without requiring Counsel on behalf of the Guardian to continue putting his case or her own Counsel to re-examine her. Nevertheless, that the mother's evidence did not continue to the normal conclusion is a matter I factor into my decision making. I remind myself that cross-examination is not simply the opportunity for the other side to put the case but for the witness to answer it.

The law

16. Before I set out my findings and my reasons, it is important that I consider the law which I must apply to the evidence before me.
17. The burden of proof lies, throughout, with the person making the allegation - *Re B (Care Proceedings: Standard of Proof)* [2008] UKHL 35, at [2] and [70]. In this case, both the mother and the father make allegations against each other.
18. In private law cases, the court needs to be vigilant to the possibility that one or other parent may be seeking to gain an advantage in the battle against the other. This does not mean that allegations are false, but it does increase the risk of misinterpretation, exaggeration, or fabrication - *Re W (Children) (Abuse: Oral Evidence)* [2010] UKSC 12.
19. It is not for either parent to prove a negative; there is no 'pseudo-burden' on either to establish the probability of explanations for matters which raise suspicion - *Lancashire County Council v D and E* [2010] 2 FLR 196 at paragraphs [36] and [37].
20. The standard of proof is the civil standard – the balance of probabilities. The law operates a binary system, so if a fact is shown to be more likely than not to have happened, then it happened, and if it is shown not to cross that threshold, then it is treated as not having happened; this principle must be applied, it is reasonably said, with 'common sense' (*Re B* (above), at para [2] per Lord Hoffmann).
21. Sometimes the burden of proof will come to the judge's rescue: the party with the burden of showing that something took place will not have satisfied him that it did. But, generally speaking, a judge ought to be able to make up her mind where the truth lies without needing to rely upon the burden of proof - *Re B* (above) at paras [2] and [32].

22. The court can have regard to the inherent probabilities of events or occurrences - See Lady Hale in *Re B* (above) at 31. But this does not affect the legal standard of proof, as Lord Hoffmann emphasised in the same case ([15]): the more serious or improbable the allegation the greater the need for evidential 'cogency' - *Re Dellow's Will Trusts; Lloyd's Bank v Institute of Cancer Research* [1964] 1 WLR 451 at 455.
23. Findings of fact must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation - see Sir James Munby P in *Re A (A Child) (No.2)* [2011] EWCA Civ 12 at [26], confirmed in *Darlington BC v M and F* [2015] EWFC 11 at [8]; it is for the party seeking to prove the allegation to "adduce proper evidence of what it seeks to prove".
24. The court must consider and take into account all the evidence available. My role here is to survey the evidence on a wide canvas, considering each piece of evidence in the context of all the other evidence. I must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the person making the allegation has been made out to the appropriate standard of proof.
25. The evidence of the parties themselves is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability.
26. It is not uncommon for witnesses to tell lies in the course of a fact-finding investigation and a court hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear, and distress. I am conscious that the fact that a witness has lied about some matters does not mean that he or she has lied about everything (see *R v Lucas* [1981] QB 720). I have borne firmly in mind what Lord Lane CJ said in *Lucas*, namely that:
- "To be capable of amounting to corroboration the lie told out of court must first of all be deliberate. Secondly it must relate to a material issue. Thirdly the motive for the lie must be a realisation of guilt and a fear of the truth. The jury should in appropriate cases be reminded that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behaviour from their family. Fourthly the statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence from an independent witness."*
27. My function in resolving disputes of fact in the Family Court is fundamentally different from the role of the judge and jury in the Crown Court. As the Court of Appeal made clear in *Re R* [2018] EWCA Civ 198:
- "The primary purpose of the family process is to determine, as best that may be done, what has gone on in the past, so that that knowledge may inform the ultimate welfare evaluation where the court will choose which option is best for a child with the court's eyes open to such risks as the factual determination may have established."* [62]

28. At all times, I must follow the principles and guidance at PD12J of the Family Procedure Rules 2010.

29. I have reminded myself of Re H-N [2021] EWCA Civ 448, in particular that:

"... there are many cases in which the allegations are not of violence, but of a pattern of behaviour which it is now understood is abusive. This has led to an increasing recognition of the need in many cases for the court to focus on a pattern of behaviour and this is reflected by [PD12J]" [25].

30. I have also re-read Peter Jackson LJ's judgment in Re L (Relocation: Second Appeal) [2017] EWCA Civ 2121 (§61), cited with approval in Re H-N, to the general effect that:

"... not all directive, assertive, stubborn, or selfish behaviour, will be 'abuse' in the context of proceedings concerning the welfare of a child; much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour."

31. Finally in the context of this case, I have reminded myself of Judd J's judgment in M (A Child) [2021] EWHC 3225 (Fam):

"The reason it was so important for the judge to give very careful consideration to the question of vulnerability in this case is because a vulnerable person may not act in the same way as someone more independent or confident if they are exploited or abused in a relationship. Such an individual may be so anxious for the relationship to succeed that they accept treatment that others would not. They may be easy to exploit. They may not even realise what is happening to them, and will cling to the dream of a happy family and relationship ..."

The Mother and the Father

The Mother

32. Having heard her evidence, it is plain that the mother is an intelligent woman. She is now in her thirties. She lives with a new partner in France. In October 2023, the mother's capacity was assessed in accordance with a direction previously given by Mrs Justice Knowles. Dr Stein provided that report. He concluded that the presumption of capacity was not displaced. Indeed, he opined that he thought that she *"definitely had capacity"*. In relation to her mental ill-health, he stated accurately that *"she has seen a number of psychiatrists over the years and has been variously diagnosed as having ADHD and severe depression with psychotic features, and many years ago with a chronic psychosis"*. At the time Dr Stein assessed her, the mother was seeing Dr L in France. She was on quetiapine 300mg daily. She said it made her sleepy. The reason she had been given it is because *"she is suffering from major depression with psychotic features"*. She said, *"it all got much worse after her son was taken away"*.

33. Within these proceedings I gave permission for a Consultant Forensic Psychiatrist, Dr Bose, to provide a SJE report on the mother's mental health. He assessed the mother

on 28 November 2023. He properly sets out the “*severe limitations*” of his first report because he has not had access to the detailed records of Dr B and Dr L who have seen her many times in France. The mother has a long history of mental ill-health. Dr Bose in his reports sets out what he has been able to ascertain from the papers he has. For my purposes at this juncture, it is sufficient to record that the history recounted therein pre-dates U’s birth. After his birth, there has been psychiatric assessment and support. Whilst in France, the mother saw Dr L between February and April 2022. She was sectioned in France from 5 May 2022 until 14 June 2022. More recently during her admission to A&E after the incident on 28 February 2023 to which I shall return below, she was admitted under the Mental Health Act 1983. She remained on the ward for 9 days. In terms of diagnosis, Dr Bose states that “*the most likely diagnoses are ADHD, Bipolar Affective disorder and Borderline Personality Disorder*”. Those who represent the mother informed the court that the mother accepted this likely diagnosis. Later in his report, Dr Bose sets out that at the time of assessment the mother was in good mental health. He agreed with Dr Stein’s assessment of her. At main bundle 484/797 paragraphs 196-197 he tells the court that “*she is currently taking her quetiapine regularly [...] Regardless of the exact reason [the mother] is taking quetiapine, it has clearly stabilised her mental health*”. In his addendum report. Dr Bose again acknowledges the limitation in the records he has from the French psychiatrists. He however again notes that her health has improved “*dramatically*” on quetiapine and in essence tells the court that if she continues to take the medication and to be monitored by Dr L, she should remain stable.

34. I have set out the mother’s history of mental ill-health in this judgment because combined with the allegations made is relevant to her vulnerability, both within the court process and without. The vulnerability is the reason for the protective measures that this court has taken to ensure her participation in the process. Her mental ill-health is also relevant because the father is accused of lacking empathy and understanding of her ill health and its impact on her behaviours.
35. As a witness, the mother was engaging and charismatic. Her desperation to have U live with her was palpable. It is her overriding focus throughout her evidence. She described in evidence how she felt “*persecuted, attacked and provoked*”. She used those words individually to justify her actions. In fairness to the mother, it was clear that she was not proud of some of her actions, to which I return below. However, the response was that she had been provoked. Provocation in this context meant not that she was reacting to an immediately preceding event but that she felt provoked by the whole situation she found herself in, namely apart from U and not seeing him. In terms of her credibility, the mother often paused her evidence to reflect that other people would not tell of matters that were against their self-interest. In essence, she told me that others might be cannier and more calculated. I formed the impression that the mother would have liked to have avoided telling the court about matters which were contrary to her self-interest but that when asked a direct question, she did not lie. However, the mother did not see that failing to volunteer information which was pertinent to the court’s decision was effectively a lie by omission. I thus conclude that when asked directly a question, the mother was an honest witness, but I was left wondering what else had she not told the court because the direct question had not been asked.

The Father

36. The father has been impacted by the prolonged history of the proceedings in France and here. He is clear in his written and oral evidence. He has lost faith in the court systems. He does not consider that the courts have understood what he is going through and the impact on him and U. He is a litigant in person who I consider does not understand the boundary between submission and evidence. On occasions rather than give a free narrative of what has happened he has descended into argument. He told me he likes debate. In evidence and in terms he told me he likes to debate in everyday life and hold to his viewpoint. I saw that in the witness box. He told me that he rarely raises his voice but that he has sometimes shouted at the mother but not with the regularity or without cause as the mother claims. In evidence, he could see no fault in his behaviours. As he gave his evidence, I considered his inability to see fault in his own actions was itself a failing. All humans are fallible. It has been submitted to me that the father is prone to exaggerate. I consider that what I witnessed at play was more nuanced than that. I consider the father is someone who feels embattled and bewildered. He feels the need to argue his case and put it at its very highest for fear of not being believed. He too can be properly characterised as desperate. He is desperate to be believed because he cannot take any more.

The Narrative and My Findings

37. That leads me to the narrative which will set out the facts I have determined. Although this judgment is written in a linear fashion, in making my determinations I have considered all of the case and the interrelationships between all the evidence I have heard and read. This narrative is based on the evidence I have read and heard. The focus of these proceedings has been the Schedules of Allegations. However, where the consideration of those allegations has led to one or other of the parties making admissions then I have included those below.

38. I begin by considering the relationship between the mother and father. On behalf of the Guardian, I have been asked to describe it as toxic. In this judgment I wish to avoid labels such as a '*toxic relationship*'. That is not to say that the relationship between the mother and father was perfect when they were together. It was not, and shortly I will make the findings I consider relevant about some of the negative aspects. But I consider it necessary to make the point that labels are too generalised, and they do not capture the myriad aspects of everyday normal life and the effect of actions and reactions. I consider that there would have been good times between this mother and father. After all, they chose to be with each other, even though the relationship did not endure. One of the positives of their relationship is U. I am sure that they both love him dearly and that if I asked each of them who was the most important person in their life, each would tell me U.

39. In his evidence, the father told me that when together he and the mother would argue. By that he meant that he would debate. He admits that sometimes he would also shout but not with the regularity which the mother now asserts. He says rarely. Having considered all the evidence, I accept his account on this point. I find there were times in the relationship when he would '*debate*' his point of view. I also consider it likely that when he did so he irritated and frustrated the mother. I find that there also would have been times, as he admitted, when he would have '*lost it*' with the mother and her behaviours. By '*lost it*', I mean he would become frustrated and shout. However, in

evidence he told me that most of the time he endured her behaviours and went along with her to keep the peace. I listened intently as he told me this and I accept his evidence on this point.

40. I find that by 2 August 2019, the mother had disclosed to U's health visitor that she had hit the father. She told me in evidence that it was just a tap to his shoulder. She admitted she had tapped him whilst he was holding U. I do not accept the mother's evidence that this was a tap rather than having hit the father. This must have been significant for the mother to have told the health visitor about it at the time and it is to her credit that she did. In evidence, she told me the health visitor had asked her if the father was hitting her and she had responded no she had hit him. I consider that the mother now regrets the admission – "*other people have a filter*"- but I do not consider that she would have spoken of hitting the father at the time if that is not what actually happened. Accordingly and on all the evidence, I find that she did hit the father when the father was seated on the floor with U in his arms.
41. I also find on the basis of her own admission in evidence that there was another occasion during the relationship when she kicked the coffee table in their sitting room and the salad bowl fell. I find that happened in the father's presence.
42. I find on the basis of the mother's own admission against self-interest that there was another occasion when annoyed or irritated or angry with the father she threw a nappy from the top to the bottom of the stairs where the father was.
43. On the basis of the father's admission against self-interest I find that there was another occasion in the relationship when the mother had her mobile phone in her hand which was raised in front of him, and he slapped her hand away with sufficient force to cause her to drop the telephone and for that telephone to break. I find that it is likely that the father had lost his temper on this occasion, but I consider the mother's accusation that he had a "*total autistic meltdown*" is an exaggeration which I do not accept.
44. I find that the father's acceptance that he had broken her phone (which was swiftly followed by telling the court that she had broken his) is a sorry example of an embattled father trying to justify actions. I consider and I put it simply that two wrongs do not make a right.
45. In her statement to this Court in October 2022, the mother alleged that the father had been physically, emotionally and sexually abusive to her during the relationship (see Supp 13/112). Candidly, the mother stated in evidence that he had not hit her during the relationship and had not been physically abusive towards her. I accept her evidence on this point. She also told me, and I accept that he had not been sexually abusive to her and specifically told me he had not forced her to have sex with him. I accept that evidence. However, that has caused me to consider what I should make of paragraphs 1 of the statement of the mother made in October 2022. Set against the mother's own admissions, it is false and misleading in two important regards – sexual and physical abuse. The mother now says the solicitor drafted that and she agreed it. That does not address the point of where the solicitor got the information from. Given the plain words of paragraph 1 it is not a question of semantics, nor can it be explained, as the mother urges, by a misunderstanding between her and her solicitor.

It is too direct and too serious for that. She must have said something to form the foundation of those allegations. I find that paragraph 1 is based on the mother's then instructions. It paints a false and misleading picture of the father. It contains serious and false general allegations which are now thankfully withdrawn but it does provide an example of the mother making false allegations against the father.

46. On the basis of the mother's own evidence against self-interest, I do not find that there was ever an occasion when the father hit both hands either side of U who was in bed. I do not find that that was a catalyst for the mother removing U to France on the first occasion. I accept the father's evidence that she just was not there when he returned home and that after contacting family and friends who said they did not know where she and U were, he contacted the police. I find that this is likely to be an example of her impulsivity.
47. When the mother gave evidence, she concentrated on her intentions behind her actions. I find that the mother may not mean to cause harm but that she lacks insight into the impact of her actions on others. I find that during a period when U's parents were reconciling in February/April 2021, there was an incident as described by the father in the kitchen when the mother did run down the stairs in the home they were then sharing mumbling to herself, that she did take a knife from the draw and that she did point it at the father before making as if to cut her wrist. I find that whilst she may not have intended to frighten or threaten the father, her actions caused him to fear for his life and for that of U. The mother tells me in evidence that she stated straightaway that she intended him no harm, I accept that, but I also find that in the moment they did not understand what was happening. It had no objectively reasonable context; they had not even spoken that morning. I do not accept the mother's self-justifying evidence that the father had deliberately adopted a false fake victim persona. In the moment I find he is likely to have been genuinely frightened for himself and for U. The mother told me in evidence that the provocation for her was the entire situation she found herself in, but she did not give any evidence about anything that had happened that morning to have caused her to do what she did. The mother accepted in evidence that she was impulsive. I find that this event is an example of her impulsivity. I find that in the moment she did not think of the impact of what she was doing and how she was doing it on others. U was present in the kitchen that morning, preparing breakfast with his father. This event, for him, would have come out of the blue. Whether U cried or not, I find it likely that he will have been impacted by the scene he witnessed in the kitchen that morning.
48. I accept the father's evidence that for him the incident with the knife was the end of trying to make things work. Thereafter, he accepted that the relationship was over. He did not oppose U going to France to live with the mother in August 2021. He told me the French court system had asked him why he had not acted to protect U. I consider that is a good question. I find that by allowing the mother to remove U to France he did not act protectively given what by then he knew or ought to have known of the mother's behaviours.
49. I accept that when the mother and U left for France, the father expected to continue to have contact with U. I find that by October 2021 the father had found that expectation dashed and had contacted the Prosecutor's office in France.

50. I have set out the procedural history and what happened to U in France in my previous judgment. I do not repeat it herein. I find based on the mother's own admissions against self-interest that whilst in France her mental health deteriorated. I accept that she felt persecuted by the authorities who had intervened to protect U. Whilst that is how she felt, it is not a reasonable, objective standpoint to describe professionals.
51. In her written evidence to the court, the mother details an argument which she had within a contact centre in France in March 2022 which led to her contact with U being stopped (see paragraph 7 - Supp Bundle 14/112). Within the paragraph, the mother's anxiety and frustration at the intervention of the French authorities is clear. I find that she felt such emotions is understandable. I however find that they do not justify her actions.
52. In evidence, the mother accepted (paragraph 8 and 9 of her October 2022 statement - Supp Bundle 14/112) an account of the events of April 2022. The account the mother gives within her own statement is against her self-interests. I find that factually it did happen as she states. What I do not agree with is that the mother was provoked or justified in her actions. The professionals in France were acting as reasonable professionals carrying out their duty to protect children. I find that the episode she describes is another example of her impulsivity. I should make plain that I use the term impulsivity to describe the actions not as a psychiatrist would. This episode is, I find, also an example of the mother's perception not being objectively reasonable.
53. By August 2022, U was living with his father in London.
54. In October 2022, the mother tells me, and I accept, that she was in England for about two weeks. During this stay, she signed her October 2022 statement which is now before this court.
55. On her own admission and, again to her credit, contrary to her self-interest, the mother stated in evidence that she had used cannabis since about 2015. She told me and I accept that she had used cannabis recreationally up to and including February 2023 when she was admitted to hospital after the incident on 28 February 2023.
56. In evidence the mother was asked about the supervised contact she had with U on 7 January 2023. I have reminded myself of the contact recording for that day. It shows, and I find, a good bond between U and his mother. It demonstrates her interacting with and attending to U's needs. It is a lovely picture painted in words. Sadly, the mother argued with the manager of the contact centre and the service withdrew. The mother gives her reasons for arguing at Main Bundle 175/767. I find that all her reasoning and actions are driven by her overwhelming desire to see her son. That desire dominates and causes her to act in ways which she feels justified but are not objectively reasonable. She takes no account of the impact of her actions on others and self-defeats. As she said herself in evidence in answer to another point she does not think strategically.
57. On 26 February 2023, I find that the mother attended at the father and U's home without invitation or forewarning. I find that she was desperate to see her son but acted inappropriately by shouting for him through the letter box and banging the door. She was trying to peer through the glass panel. She did not consider the impact of her

actions on the father or on U who was present. The father called the police, and they advised her not to attend the property again and warned that they would arrest her for harassment if she did.

58. The mother did not heed the warning. Instead, the mother attended the home that U shares with his father again at about 8am on 28 February 2023. She justifies her actions by saying she wanted to know where U went to nursery and that she could not get the information she wanted from the father. Her response, however, was not reasonable and took no consideration of the impact of her behaviours on U. I find on the basis of the mother and father's account that on 28 February 2023 the mother attended the home without invitation. She shouted through the letter box and banged on the door. She left a kinder surprise and a packet of crisps/apple juice (it matters not) for U either outside the front door or posted them through the letterbox. The father called the police but whilst he was doing that, it went quiet. I find that he hoped that she had thought better of her actions and gone away. After about 5-10 minutes, he and U left for nursery. I find he reasonably thought the coast clear. It is common to the evidence of the mother and the father that the mother then followed U and the father. She may have been doing it slowly, but she was following them. At some point the father noticed and tried to distract U. The mother caught up with them to the point when she was parallel to them on the opposite side of the road. I accept the father tried to call the police again, but they did not answer and anyway, it was too late. The mother says at this point the father punched her multiple times. The father says otherwise, he says that the mother ran across the road to be with U. She was shouting, he says, "*your father is mad*". She admits she did say this but only after the father punched her. He says he did not punch her but stood between her and U. She persisted in moving towards U and each time she did, he shoved her away. He admits that he shoved her to the body and that she fell over, hitting and cutting her head. Standing back and looking at the evidence as a whole, I consider that on this occasion the father is right in his description of the mother's actions. I accept she was stalking them. I find that when he realised, she was following them, he was panicked and fearful. The father was aware of that and that the mother vehemently does not accept the order of July 2022 that placed U in his care and wants U with her. I find he was probably anxious that she would try to remove U from him. I also find that by this point the father had had enough of the mother's actions and their impact on him and U. I find that there would have been a catalyst to what happened next. I find that catalyst was the mother running across the road and making a beeline for U. I find that in the moment, the father acted to protect himself and U but I also find that, in the moment, he lost himself. He remembers shoving her and her coming back for more. He does not recall hitting her. The mother has given inconsistent accounts about punches to her head and to her stomach but has consistently said always said he punched her. I look at matters in the round, on the basis of his admissions, I find that the father did shove the mother more than once. I find that the mother would not desist from her actions and that the whole melee became out of control. This is not a criminal court and for me the issue is not whether it was a punch or punches or shoves, I consider that the relevance of this episode is that it resulted in both the parents being out of control. Each justifies their actions by their respective motivations. I find that in that moment as in their justification, U is lost. U was there. U saw the physical altercation between his mother and father. I find the mother's behaviour was not acceptable. I find that on this occasion the ultimate acts of the father were not acceptable. I find that the word provoked has been used very liberally by both parents in this case, but

in relation to this incident I find the father's behaviours can properly be regarded as a reaction to the context which led up to the affray and to his utter frustration at the situation he finds himself and U, where the mother does not respect court orders and does not consider the impact of her behaviours on others.

59. I do not consider that the father has always lacked empathy and sympathy for the mother and her mental ill-health. However, I do find, on the basis of the father's own evidence, that the father has lost both sympathy and empathy for the mother since the events of 28 February 2023. I find that he is at the end of his tether. However, that may be, U still has a mother whom he loves, and I agree that the aggressive tones and the labels the father has used about the mother, such as psychopath, and his total abhorrence of her and the impact of her actions on his and U's life are all too evident. I take into account his frustrations with the mother and the court process, but the bottom line is that the terminology he uses is just not appropriate. Thankfully, there is no evidence that the father speaks to U about his mother in this manner and accordingly I make no such finding. However, this court strongly indicates that it would deprecate the father ever speaking to U about the mother in the terms he has used in his written evidence to this court.
60. Equally, I find that the mother has referred to the father as a psychopath. She has accused him of going with prostitutes. She told me she had called him a paedophile, but she says she did so only to test him during the relationship. These are horrid words, and they are to be deprecated by this court when they come from the mother's mouth as they would were they to fall from the father's mouth. This court strongly indicates that it would deprecate the mother ever speaking to U about the father in such terms. That is not a finding that it has happened, but a warning that in the view of this court, it should not happen.
61. Returning to the chronology, the mother told Dr Bose that on 28 April 2023 she had tried to leave the contact session with U. As she said in the witness box, against self-interest, "*I just thought once I got him outside there was nothing to stop me in the UK taking U*". I find that this is an example of the mother's adamant refusal to accept the French order, her steadfast focus on gaining U's return no matter what and of her opportunism.
62. I find that on 22 July 2023 the mother again attended at the father and U's home without invitation. She shouted through the letter box again. Again, U was present. A clip of what occurred that day was shown to the mother in court. On being shown it the mother's despair is obvious. She is undoubtedly shouting. In relation to the clip, it was obvious that as the mother watched the clip, she was not proud of her actions. As she told me, "*I must have been ill at the time*". U, hearing the commotion, will have been impacted. He is too young to verbalise his reactions to what he has seen and heard but it would be naïve to think he has not been affected.
63. The last episode about which I make findings relates to 11 September 2023. On that day, the mother admits that at about 5pm she reported to the police that she had concerns for U's safety in the father's care. The police carried out a welfare check in response. When they attended the father and U's home, U was in bed. It was late. They found no concerns at all, and all was appropriate. When asked in evidence why she had made the report that day, the mother said she had received video content from

the father as a link in the updating reports he provided to her about their son. Her welfare concern was that she thought U looked sad in a video. I have viewed that video. He does not. The mother however believes that he was. She also said there was a second incident. The fact that there was a butter knife in the video had triggered a memory. The memory triggered was of taking U to his father's and turning her back for a moment. She recalls turning to find him with a knife and a carrot. He was little and should not have had access to sharp objects. His father was coking in the kitchen at the time. She also told me that she had perceived a message to be imbedded in the google link to the video, the link containing the numbers '911'. She took the reference to 911 as a request to call the police. The mother said she does not know whether the father manufactured the link. The father tells me that he could not. I have looked at the link in the context of other links sending videos of U from the father to the mother. The link is clearly a randomly generated link of random letters (capital and lower case) and numbers. The video itself is a video of a pleasant scene. I find that what the video shows, and the other links prove, is that in August and September 2023 the father did provide the mother with pleasant updating reports about their son. The mother saw something within the one link and the one video which caused her to react illogically and unreasonably. Using terms as descriptors and not as a psychiatrist, I find that the mother's perception of the content of the video and the link was distorted and simply wrong. The father has been severely impacted by her reaction, asking the court rhetorically if that can trigger her, how can he protect U? That, of course, is a question for me to answer having heard the welfare evidence in the case.

64. This, however, concludes the fact-finding judgment. I consider that I have made the findings that the evidence I have read and heard leads me to make on the balance of probability, always remembering that the burden rests on the shoulders of the party which asserts.
65. Whilst this is a difficult case, I commend both of U's parents for the manner in which they have conducted themselves in this hearing, namely with respect for the process and each other. I ask that this case should now proceed to welfare in the same vein. I ask that each party places themselves in the shoes of the other and moving forward has greater perception of their behaviours on the other for the future welfare of U.
66. That is my judgment.