

IMPORTANT NOTICE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on strict terms that those referred to in the judgment and locations are not identified other than by initials and the fact that they live in London. The anonymity of everyone other than the lawyers and independent professionals must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Neutral Citation Number: [2023] EWFC 165 number Case No: ZC21P01635

IN THE FAMILY COURT

The Royal Courts of Justice
Strand
London
WC2A 2LL

Date: 23 July 2023

Before :

Mr Justice Moor

Between :

AB

Applicant

-and-

CD

Respondent

Dr Charlotte Proudman (instructed by Hudgell Partners) for the **Applicant**

Mr Michael Gratton KC (instructed by Weightmans LLP) for the **Respondent**

Hearing dates: 17th to 20th July 2023

JUDGMENT

MR JUSTICE MOOR:-

1.

I have been conducting a fact finding hearing in slightly unusual circumstances. I am concerned with S, who is aged 9. The applicant is her mother, AB (hereafter “the Mother”). The respondent, CD, is her father (hereafter “the Father”). The original application was made by the Mother in November 2021 for permission to relocate permanently to India with S. She decided not to proceed with that application and I gave her permission to withdraw it on 19 May 2023. By then, however, it was abundantly clear that there was a serious issue as to S’s contact with her Father. Four days had been set aside for hearing the application for permission to relocate, commencing on 17 July 2023. I

decided that I should use the time available to determine the factual issues in the case, prior to a likely welfare hearing sometime later this year.

The relevant background

2.

The Mother was born in India and is aged 40. She is a home-maker and child-carer, having previously worked in hospitality sales. She lives with S at the former family home in London. The Father was also born in India and is aged 38. He works in banking. He lives in a rented property in London.

3.

The parties met in May 2009 via an online matrimony website in India. They married in India in 2010. The marriage was arranged in the sense that the respective families were involved in selecting a suitable match on the website, rather than the spouses just doing it themselves.

4.

In 2011, they moved to England for the Father's work. The Mother says the move was only intended to be temporary but the Father does not agree. There is no doubt that they applied for indefinite leave to remain in 2016 and took full British citizenship in 2021.

5.

S was born here in 2013. She attends a Primary School in London.

6.

There were clearly strains in the marriage from quite early on. The position appears to have been made worse by regular trips taken by the Father to India in 2019 and 2020 as a result of the serious ill-health of the paternal grandfather and his subsequent death in early 2021. There was undoubtedly friction between the Mother and the paternal family.

7.

The marriage broke down finally in July 2021. Unfortunately, S discovered that her parents were intending to separate on the Mother's mobile telephone. Perhaps even more unfortunately, the parents continued to reside together in London for many months. There were undoubtedly significant arguments between them. There is no dispute that S got caught up in these arguments, witnessing some of them; almost certainly overhearing others; and being involved in some of the disputes herself.

8.

The Mother applied for permission to relocate permanently to India in November 2021, with the intention of moving back to live in the maternal family home in India. I have no doubt that this will have exacerbated the tensions and difficulties inside the family home.

9.

The matter came before HHJ Gibbons on 16 December 2021. The case was allocated to a section 9 judge as the relocation was to a non-Hague Convention country. In the interim, both parents undertook not to remove S from the jurisdiction and not to discuss the proceedings with her. They were also not to denigrate each other. The social services department of a London Borough had become involved as a result of a referral from S's Primary School. There was a direction for the Local Authority to serve an assessment.

10.

The Child and Family Assessment is dated only some five days later, namely 21 December 2021. It states that the Mother alleges that she and S have suffered and have continued to suffer from emotional, physical and financial abuse at the hands of the Father. The Mother had raised some concerns of a sexual nature, such as that the Father watched S whilst she was showering and tried to change her clothes. I make it completely clear that these allegations were investigated and found to be unfounded. The Mother has not pursued them and accepts that the Father is not a risk to S in this regard. The Father, on the other hand, alleged that S was using age inappropriate language such as calling him a "psychopath". The Local Authority could find no signs that S had suffered significant harm but noted that children become very insecure if they witness their parents fighting. The Assessment goes on to note that there had been some complaints about S's behaviour from other parents at the school, along the lines that S was manipulative. It was noted that she is "very mature for her age". In relation to calling her Father a "psychopath", it may have been that she has imitated language being used at home. S was under a lot of stress. She is articulate and sensitive but absorbed by the inappropriate, disproportionate and hurtful interaction between her parents. In consequence, the Local Authority intended to institute a Child In Need Plan.

11.

The case returned before HHJ Gibbons on 28 March 2022. She reallocated the case to Keehan J, then the Family Division Liaison Judge for London. It was necessary to instruct an expert on Indian law and an Independent Social Worker to undertake a section 7 report. S was to be with her Father on Tuesdays, Wednesdays and Sundays. The Indian expert, Ravindra Kumar, reported on 27 April 2022 but I do not need to consider the report in the light of the Mother withdrawing her application to relocate.

12.

The Mother's first statement is dated 9 May 2022. She says that both parents come from very traditional Indian families. She struggled to adjust to married life. She felt the Father was trying to make her become a "traditional Indian wife". She says that he accepted a move to England without discussing it with her. She worked in hospitality in India. Whereas the Father excelled in his career in this country, her career fell apart. There was no communication between them. She alleges the Father told S that she, the Mother, was to blame for the divorce. She then makes a number of allegations against the Father, including that he physically twisted S's arm; gave S the "silent treatment"; made recordings of S and threatened to share them with S's school. She adds that, in her view, the Father's tough parenting style was impacting his relationship with S. She says that she would never deprive S of a relationship with her Father. It was not a happy home. S witnessed a lot of disagreements between the parents. Some of these ended with the Father arguing with S. He screamed and shouted at S on 14 November 2021. S locked herself in the kitchen and the Father tried to push the door open. S and her Father argued again on 7 December 2021. When S sought comfort from her Mother, the Father told the Mother to leave, saying that she was a horrible woman to use a child as a pawn to get his money. The Father has regularly given S "the silent treatment"; called her a liar; told her she needs to see a therapist; and shouted that the Mother will be living on the streets. He told S that the Mother was not allowed to participate in his Diwali celebrations. Later, he woke S up to tell her she made him very angry. The Father had told the Mother he was struggling with his mental health in 2019. He recorded conversations with S on his mobile telephone. On one occasion, he lied to her that he had stopped until she caught him continuing to record.

13.

In June 2022, the Father vacated the family home and moved into his rented flat. His first statement is dated 23 June 2022. He makes a number of very positive comments about S, saying she was thriving before the parental separation. She can have a fulfilling childhood if her well-being is put ahead of the parents' own interests. His rented flat is only ten minutes walk away from the family home. He and S were extremely close pre-separation but he acknowledges that his trips to India to see the paternal grandfather affected S. He alleges that the Mother held him responsible for the divorce and shared this with S. The Mother was often visibly upset with him, which S noticed, leading to her withdrawing from him. The Mother frequently involved S in their arguments. It became more difficult after he refused to allow the Mother to relocate. He felt excluded and rejected. He accepts that there were some unwanted reactions from him that he regrets. For example, he called S a "mummy's pet" which upset her. He regretted it and apologised. He complains that S still sleeps in the same bed as the Mother. The Mother would not leave the bedroom when he got S ready for school. The Mother exposed S to her hostility to him. S once told him to shut up so he stayed quiet. S was upset. He told the Mother to stay out of it. He complains about the unfounded allegations in relation to watching S in the shower and toilet, claiming malicious intent, whilst making the point that the Local Authority found no evidence of abuse. On another occasion, S said that she would "frame" him if he didn't listen to her. S had been copying the Mother's behaviour. S wanted him to lie about the good times they had together, saying that the Mother would get cross. S objected to swimming lessons even though she wanted to have them as she saw her Mother was not in agreement and therefore she said she didn't want to do it.

14.

The case was heard by Keehan J on 15 July 2022. He directed a report from an Independent Social Worker, John Power. The report is dated 3 October 2022. It has turned out to be very contentious. Mr Power does make it clear that his recommendations depend on whether the Mother has alienated S from her Father or if the Father is culpable in relation to the allegations made against him. Given that his report is so contentious, I do not propose to say anything more about it other than that he took the view that S was exposed to destructive parental conflict in the latter part of their marriage. S describes herself as a "peacemaker" but only reported negative things about her Father.

15.

Keehan J made further directions on 24 October 2022, including setting down this final hearing of what was, at the time, intended to be the Mother's application for permission to relocate permanently. Contact was to be supported in the community in accordance with Mr Power's recommendation.

16.

The Social Worker, SW filed a statement dated 25 November 2022. She confirmed that the Mother had told the Local Authority that she had suffered emotional, physical and financial abuse. S said she was concerned about sudden changes in her Father's behaviour. S added that her Father had told her that she was "passive aggressive" and the reason for the problems in the family. S was under a lot of stress. She is an articulate and sensitive girl. The Mother was seen as a protective factor. The Father had not been happy with the Local Authority involvement. SW said she could feel the tension and it would have been a hostile environment when both parents were living at home. S said she did not feel listened to by her Father. She did report that both parents were happier after the Father moved out as there were no longer arguments. S finds it hard to forgive the Father for some of the things he has said. She was upset that she had been called "mummy's pet", "passive aggressive" and "a liar". She did not want to see the Father's new flat, but wanted contact to take place at the family home. Her Father "doesn't listen", such as when she said she wanted to be a vegetarian. SW relates an incident

that is alleged to have taken place on 21 September 2022 when S was in her room. Her Father was pushing and kicking the door. S's finger and ankle got trapped. The Father simply said that she would "not get hurt if you let me in". S denied ever telling the Father to shut up or that she would "frame" him. She said she didn't even know what it meant.

17.

The Mother made an application dated 21 March 2023 for leave to withdraw her relocation application; for transfer of the case back to the Central Family Court and for directions, to include the appointment of a Rule 16(4) Guardian for S. Shortly thereafter, the Father had his last direct contact to S, in London on 28 April 2023, supported by Vivien Kenley. There had been some positives about contact that had taken place in the community with Ms Kenley up to this date. There is no dispute that, subsequently, contact has not gone at all well, such that it is now suspended.

18.

I heard the case for the first time on 19 May 2023. I decided to allocate the case to myself. I gave the Mother permission to withdraw her application to relocate with S to India but it was clear that the primary application now was the Father's for a Child Arrangements Order and, in particular, for S to have contact to him. I was clear that this could not move forward until there had been a factual determination of the rival contentions. I therefore determined that I would undertake a fact finding hearing to get clarity as to what had actually gone on. I considered that the Father's allegation of "parental alienation" of S against him by the Mother should actually be referred to as an allegation that the Mother has undermined contact, given that there is such contention around the concept of "parental alienation". The real dispute therefore has been whether the problems have been caused by the Father's behaviour towards the Mother and S, amounting, on the Mother's case to coercive and controlling behaviour or by the Mother undermining the Father in the eyes of S. I was of the view that interim contact did not constitute an unmanageable risk of harm, given that it was supported by Ms Kenley. I was clear that it would be in the interests of S provided she was not distressed as a result. There was, therefore, to be supported contact on alternate Fridays from 5pm to 7pm in the community in London but Ms Kenley was to decide, if S became distressed, whether to terminate the contact and, possibly, suspend it pending the fact finding hearing. I refused the Mother's applications to transfer the case to the Central Family Court or to appoint a Rule 16(4) Guardian.

19.

Very regrettably, the contact visit arranged for 22 May 2023 never even commenced as S was too distressed to see her Father. Moreover, Vivien Kenley refused to supervise further contact given how upset S was in the lead up to contact commencing.

20.

I had directed both parties to file statements in support of their respective cases limited to fifteen pages. For reasons that I simply do not understand, the Mother's statement ran to 26 pages and would have been even longer if it had been in 12 pt type with 1.5 spacing. The Father's response was a staggering 60 pages. I have regularly complained about the length of statements in cases such as this one. Practice Direction 27A at paragraph 5.2A restricts all statements to a maximum of 25 pages, although even that length is far too long in most cases. Indeed, statements of such length are entirely counter productive as the hard pressed judge will almost certainly miss something vital tucked away amongst the mass of irrelevant, repetitive detail. In this case, however, the failure to comply was far worse as I had stipulated 15 pages in a court order and my direction was blatantly ignored. I made it clear to both advocates at the Pre-Trial Review on 26 June 2023 that I had no intention whatsoever of

reading either of these statements. I therefore made the same direction a second time, namely for statements limited to fifteen pages.

21.

The Mother did file two statements from supporting witnesses, namely two friends of hers who are also local mothers, NB and PR. The vast majority of the information in both statements is hearsay, namely repetition of what the Mother had told both witnesses about the Father's alleged behaviour to her and S. I do accept the point that Dr Proudman makes on behalf of the Mother that this does show that the Mother has been consistent over a significant period of time in making these allegations, but otherwise I cannot see how they assist me. It is right to note that NB does say that the Mother was the main carer of S and that, in her view, the Mother did look very upset and scared. NB considered the Mother was really struggling and found it "heartbreaking". She gives the Mother a character reference as to her honesty and consideration and does say that S is an extremely thoughtful girl.

22.

Although the Mother's statement is dated one day after that of the Father, namely 10 July 2023, I consider it is more appropriate to deal with her statement first. She says that she found both the Father and the paternal grandmother to be very controlling. The Father was emotionally and verbally abusive to her. He attempted to hit her in 2010. He banged on the door, laughing and asked her if she was scared of him as she sobbed over the telephone to her mother, the maternal grandmother. She then accuses him of undermining her with S. The Mother had bought S a microscope as a gift but she says he made her return it to the shop. He shouted at both of them. When S was younger, he held her hand and twisted it until she screamed. She did not recall S trying to hit the Father in the run up to one of these incidents. He had erratic moods. In June 2021, he snatched the television remote control from S, when she said no to speaking to the paternal grandmother. In July 2021, the Father told the Mother that she was lazy and too comfortable spending his money. She asserts he told her to have some self respect and get a job on the tills at Aldi. As a result of this, S was shaking and in tears. On 30 July 2021, the Father tried to drag S away. He told the Mother that he was going to instruct a lawyer and "make sure you will never see S again" and that the Mother would be "on the streets". S was trembling and crying uncontrollably. On another occasion, he threatened to have the Mother arrested for abduction if she stepped outside the house with S.

23.

The statement goes on to allege that the Father told S he was taking her to school twice per week as his lawyer had asked him to do so. On Diwali, 4 November 2021, he wanted to exclude the Mother from letting off fireworks with himself and S, threatening to leave if the Mother joined the celebrations. The Mother says that the Father screamed at S and called her a "mummy's pet". It is then said that he woke her up later to say that she made him very angry. When S came downstairs crying, the Mother gave her a hug and the Father tried to prise S from the Mother's arms. On 14 November 2021, the Father told S, when the Mother suggested she go to play a game with the Father, that "you are only doing it because mummy asked you. I don't have time for you now". S tried to stop the Father from entering the kitchen. The Father demanded she open the door. The Father blamed the Mother for poisoning S's mind and ruining their relationship. During a disagreement on 20 November 2021, the Father recorded S on his telephone and threatened to send it to S's school. He then called S aggressive and violent. Although he then stopped recording, S was crying hysterically. Thereafter, the statement sets out the Mother's allegations of financial control of her by the Father. She says that she deeply regrets responding to the Father's aggression in S's presence. She outlines a number of further incidents in 2022. For example, on 10 April 2022, S is said to have noticed the Father

recording her. She asked him to take his phone upstairs but, when he came back, he lied that he had left the phone upstairs. On 18 September 2022, there was a further incident when S went upstairs and stood behind a door. The Father repeatedly pushed the door and shouted that she should open it as he was stronger than her. It is said that he pushed the door and S hurt her ankle and finger. S broke down but the Father just said she had anger issues. On 20 December 2022, it is said that he woke S up so he could have contact with her. He then cried when she said she wanted to attend her class instead. Later, he blamed the Mother for brainwashing her and said the Mother would pay for what she was doing.

24.

The Father's statement is dated 9 July 2023. He says that the parents tried to reconcile many times but were unsuccessful. He accepts that there were heated discussions in the house, which impacted on S. He adds that he and S always had a very loving relationship of father and playmate. They missed each other dearly in 2020 when the Father had to go to India. He contends that the atmosphere changed after he said no to relocation to India. The Mother was visibly upset with him and S began to withdraw from him. The Mother indicated her displeasure through her body language. He says that S would play happily with him but ask him to go away if she heard the Mother coming. He then deals with individual incidents. On 12 June 2021, he asked S several times to speak to the paternal grandmother. He says he was frustrated by her refusal but he denies shaking with intense rage. He asked her to give him the television remote control, saying that she could not watch television. He later apologised as he accepts he did not handle it ideally. S forgave him. There were, he says, many such incidents with the Mother and S as well. He accepts he refused to let the Mother have S's passport as he was concerned to avoid the risk of S being abducted to India. There were no problems with getting S ready in the mornings until the relocation application. He says that the Mother would not leave the room and would discourage S from getting ready. He did once tell S that her behaviour was "passive aggressive". Turning to the Diwali incident in 2021, he accepts he asked S to start the fireworks with him alone on the basis the Mother would join later. When she refused, he did say that she was being "mummy's pet". He denies screaming or slamming the door, although acknowledges that he left the room annoyed. He accepts his reaction was poor but says that S forgave him.

25.

On 14 November 2021, he did tell S, when she came up to his room, that she only came as her Mother told her to. Again, he apologised. The Mother called him a "fucking idiot" in front of S three times. He replied in Hindi that she was poisoning S's mind. He accepts that, on 20 November 2021, he said that he would record a video of S and send it to her class teacher. From December 2021, he started to keep his mobile phone on record due to the allegations being made against him. He denies saying to S that this was to show who the Mother really was. S did get upset and ask him to delete everything, which he did. Again, he apologised. In relation to the allegations of financial control, he said that the Mother spent money as she liked. He did not tell her to get a job on the tills at Aldi or that she was lazy or living off his money. In relation to verbal abuse, he accepts he did say he would report her for child abduction if the Mother took S without his consent. The Mother told S that he was not letting S go to India. He did get upset but he did not say that he would take S away from the Mother or that the Mother would not see her again. He did not use physical punishment or verbal abuse to discipline S. He held her arm once to stop her hitting him. Turning to the door incident, he says it was mock pushing of the door gently, in jest, with S trying to suppress laughter. He joked that he was stronger than her but, during the game, her finger did get caught in the door but it was an accident. S then mentioned that her ankle hurt as well, so that was also checked. The Mother commented that all he

cared about was himself and that he had no concern for S. He accepts that S was upset and asked him to leave.

26.

Both advocates filed Position Statements in advance of the hearing. Dr Charlotte Proudman, who appears on behalf of the Mother, said in hers that the Mother accepts the conclusion of the professionals that the Father poses no sexual risk to S. There had been mentorship for S at school, but not counselling. Comments by the Father such as that S was “just a pawn in the game” necessitated S asking him what it meant. She reminded me of comments from S such as that her dad does not change but just pretends to do so. It was the adults that should change, not the children. She also informed me that the Mother went to her GP in November 2022, with low mood, confusion, distress and anxiety.

27.

Mr Michael Gration KC, who appears on behalf of the Father, stressed that, prior to the summer of 2021, it is agreed that the Father had a good relationship with S. She found him fun and undertook activities with him that she enjoyed. She spent extensive periods of time with him, including on holiday without the Mother. S found the separation from the Father, whilst he was in India, difficult. The period after the breakdown of the marriage in the home was very difficult. The Mother does appear to recognise that both handled it badly. He then asks why S has rejected her Father and suggests that the Mother has either deliberately or subconsciously influenced her. It may be that the Father was set up as “the opposition” due to his opposing the move to India. He postulates that the Mother’s unfounded narrative of sexual abuse continues to play its part. There was some improvement in the relationship after the Mother abandoned her application to move to India and proposed a therapeutic approach but it deteriorated again after the Father asked for the therapy to be carried out. He ended by reminding me that I need to determine the truth or otherwise of allegations against the wider canvass.

The law I must apply

28.

The burden of proof in relation to any matter that is in dispute is on he or she that seeks to establish it [see Re Y (No 3) [2016] EWHC 503 (Fam)].

29.

The standard of proof is the civil standard, namely the balance of probabilities. The seriousness of an allegation makes no difference to the standard of proof to be applied in determining the truth of the allegation. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies (Re B (Children)(FC) [2008] UKHL 35; [2008] 2 FLR 141)

30.

If the evidence in respect of a particular finding sought by a party is equivocal then the court cannot make a finding on the balance of probabilities as the party seeking the finding has not discharged either the burden or standard of proof (Re B (Threshold Criteria: Fabricated Illness) [2002] EWHC 20; [2004] 2 FLR 200). There is no room for a finding that it might have happened (Re B (children) [2008] UKHL 35).

31.

My task, therefore, is:-

a.

To apply the civil standard of proof on the balance of probabilities;

b.

In so doing, to have regard to the seriousness of the allegations and the strength and quality of the evidence;

c.

To give the evidence “critical and anxious” examination; and

d.

At all times, to apply “good sense and appropriately careful consideration to the evidence”.

32.

Findings of fact must be based on evidence. The court must be careful to avoid suspicion or speculation, particularly in situations where there is a gap in the evidence. As Munby LJ observed in Re A (Fact-finding Hearing: Speculation)

[2011] EWCA Civ 12:-

“It is an elementary proposition that findings of fact must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation”.

33.

The court must have regard to the relevance of each piece of evidence to the other evidence and have an overview of the totality of the evidence. Evidence cannot be evaluated and assessed in separate compartments (Dame Elizabeth Butler-Sloss P in Re T [2004] EWCA Civ 558).

34.

I must take great care when faced with hearsay evidence. In R v B County Council ex parte P [1991] 2 All ER 65 at 72J, Butler-Sloss LJ observed that “ a court presented with hearsay evidence has to look at it anxiously and consider carefully the extent to which it can properly be relied on”.

35.

The evidence of the parents is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability (Re Y (No 3) [2016] EWHC 503 (Fam)). As Ryder LJ said in Re M (Children) [2013] EWCA

Civ 388:-

“When any fact-finding court is faced with the evidence of the parties and little or no corroborating material, it is required to make a decision based on its assessment of whose evidence it is going to place greater weight upon. The evidence either will or will not be sufficient to prove the facts in issue to the appropriate standard. As has been said many times in one form or another, the judge is uniquely placed to assess credibility, demeanour, themes in evidence, perceived cultural imperatives, family interactions and relationships”.

36.

However, in assessing and weighing the impression which the court forms of the parents, the court must also keep in mind the observations of Macur LJ in Re M (Children) [2013] EWCA Civ 1147 at [12] that:-

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

37.

I am reminded of the words of Munby LJ in Re A (No 2) [2011] EWCA Civ 12 at [104]:-

“Any judge who has had to conduct a fact-finding hearing such as this is likely to have had experience of a witness – as here a woman deposing to serious domestic violence and grave sexual abuse – whose evidence, although shot through with unreliability as to details, with gross exaggeration and even with lies, is nonetheless compelling and convincing as to the central core.”

38.

There are issues in the case as to the extent to which the parents have lied to this court and/or to professionals involved in the case. First, I must decide the extent of any lies in this case. If I find that there have been lies, I have to ask myself why the person concerned lied. The mere fact that a witness tells a lie is not in itself evidence that allegations made against that person are true. A witness may lie for many reasons. They may possibly be “innocent” ones. For example, they may be lies to bolster a true case; or to protect someone else; or to conceal some other disreputable conduct; or out of panic, distress or confusion. It follows that, if I find that a witness has lied, I must assess whether there is an “innocent” explanation for those lies. However, if I am satisfied that there is no such explanation, I can take the lies into account in my overall assessment of the facts of the case and the truth of the various allegations made against each parent.

39.

I have to remember the potential language barrier in this case. The first language of both parents is Hindi, although I make it clear that they both speak English to an excellent standard. They both gave evidence in English without the assistance of interpreters. I accept that I must take great care in assessing all such evidence, given that processing information provided in a foreign language may put the participant at a disadvantage. I must guard against the very real possibility that questions or answers or both are misunderstood or, at the least, nuances and shades of different meaning are lost in the process. I have taken all this into account in assessing the evidence in this case.

40.

I have paid close attention to the provisions of PD12J of the FPR 2010 as well as the guidance given by the Court of Appeal in Re H-N [2021] EWCA 448 (Civ) and, in particular, at [25]:-

“...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).”

41.

I entirely understand the harm that can be caused to children by coercive and controlling behaviour but also by parental argument and loss of temper in the presence of a child, or in the same household as a child even if the child is not directly present. Moreover, I accept that an intention to cause harm does not need to be proved to make a finding of abuse. I am also clear as to the need for great care in considering the effect on victims of domestic abuse. I remind myself of the judgment in Re M (A Child) [2021] EWHC 3225 at [82]:-

“The reason it was so important for the judge to give 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 happy family and relationship.

[83]...Further, it seems to me that the judge’s disbelief that the mother would have remained in an abusive relationship led her to conclude that the mother was lying about it. This tainted the whole of her evidence and was a threat which ran throughout the case.”

42.

In A & Anor v B & Ors [2022] EWHC 3089 (Fam), Knowles J highlighted the importance of a family judge guarding against applying myths and stereotypes about how a ‘genuine’ victim would behave in a domestic abusive relationship saying at [126]:-

“...The intelligence or otherwise of a victim of sexual assault or of any assault in the context of an intimate relationship is nearly always irrelevant to the reporting of an assault to the authorities. Victims of whatever age, race, sexuality, appearance, intelligence, and background often have the greatest difficulty in reporting when an assault has occurred because of shame, fear of being disbelieved or fear that the process of reporting an assault with itself be traumatic.”

43.

Finally, given the allegations of coercive and controlling behaviour, I ensured that Special Measures were available for the Mother to give her the best chance of giving her best evidence. The Father listened to her evidence from outside the Court via CVP and she sat in the curtained area during his evidence. I make it absolutely clear that, in making these arrangements, I had not in any way prejudged the issues in this case.

The evidence that I heard

44.

The Mother gave her evidence first, given that the burden of proof is on her. In answer to questions from Dr Proudman, she told me that she felt terrified giving evidence. She said she had a bit of a panic attack coming into court. She found it really hard speaking about the things they have gone through. It has been a very difficult experience. Dr Proudman took her to a letter from her Counsellor, Nicola Roche, dated 7 July 2023, which said that the Mother reported persistent symptoms of low mood, confusion, distress and anxiety. I entirely accept that this is the case. The Mother made the point that many incidents had been repeats of what had gone before and she doesn’t always remember correctly or mixes up events. This is only natural and happens regularly. She then suggested that part of the problem was that the Father would tell her things that did not actually happen. I have not, in fact, found any evidence of that, although the Mother told me that she started to question her own judgment and what was reality. She added that “they always watched his moods and reacted accordingly”. It is clear that she meant herself and S when referring to “they”. She said that the Father would take his anger out on S. He was very short tempered and was constantly getting angry. She was very terrified of him when his mood was bad. She felt that the Father’s relationship with S was quite difficult anyway following the Father’s trips to India but it had become extremely difficult by the time of the separation. The Father was extremely controlling of her.

45.

She was then cross-examined by Mr Gration KC on behalf of the Father. She said that she accepted that there was a time when S had a good relationship with her Father, particularly when she was young. S last wrote a message inside a card for him in December 2022 for Christmas although she could not remember if S gave it to the Father. Mr Gration KC asked her when she last sent a photograph of S to the Father. I suspect he was surprised to be told that it was the day before yesterday, namely 15 July 2023 and was of artwork produced by S at an activity class. The Mother also said that she sends videos to him when S is on the trampoline. This is all to her great credit, but she said that S does not respond to him when the Mother tells her to. She then accepted that the Father would take S on holiday alone, including to India to see his family. She thought the longest such trip was about two weeks. She did ask the Father not to leave for such long periods or at such notice when the paternal grandfather was ill, trying to explain S's point of view to him. She said that she has always maintained that S's relationship with her Father needs to be positive, meaningful and safe. It should not be forced and, unfortunately, she does not feel contact is safe, positive or meaningful, whilst she does feel it is forced. She added that S is struggling and is heartbroken. Their future relationship should be governed by S's wishes, feelings and safety. Her only request is that S's voice is heard.

46.

Mr Gration then took her to various points made by the Father, such as that the Mother complained to him in February 2022 that he had not showered S whilst she walked the dog. The Mother replied that she had asked S to get into the shower but she had not done so. The Mother therefore told S off. She was asked about a text message in which she reported that S had said "if daddy really loved us like he said he did, he won't break our family up". She said she agreed with S on both points. She then said that she was extremely threatened and abused by the Father during the marriage. I will have to make findings as to this. She was asked why she had told professionals that she thought the Father's relationship with his mother, the paternal grandmother, was incestuous. She said she was worried about his relationship with his Mother. Given that the paternal grandmother had treated the Mother very badly, I can entirely understand why she was upset with her but I do not consider the Mother should have been making allegations of incest with absolutely no evidence to support these allegations whatsoever. She was asked about text messages that she sent on 28 July 2021 about the breakdown of the marriage. She had said that she definitely did not want to live with anyone who doesn't want her and doesn't think they could be happy. She added that the Father made it sound as though their fights happened in isolation, but the most they have fought about is parenting and, according to the therapist, everyone fights over that. I cannot see why she would not be telling the truth in these texts, even making allowances for the effects of coercive and controlling behaviour. The texts certainly have the ring of truth.

47.

She then told me that all three of them sat down together to decide whether S should move with the Mother to India or stay in England with the Father. The Mother said that S said she wanted to move with the Mother, but she really wanted all three of them to be together. I have two criticisms of this. First, I consider the parents were both wrong to sit down with S and ask her to take such an important long term decision herself. Second, it was wrong of the Mother to present it to S on the basis that the Mother would go to India without her if S wanted to stay here. I am sure the Mother would not have gone without her. Indeed, she is still here today, despite having abandoned her relocation application. The Social Worker, MSW said that S told her, on 3 November 2022, that she felt to blame for the situation between her parents and she felt that she made them divorce. It is extremely sad that S feels this. She is certainly not to blame in any way and that needs to be made

crystal clear to her. The Mother was asked about S telling SW in June 2022 that it was better at home after the Father moved out as it means “mum and dad do not argue anymore”. I am sure she was right about that. The Mother accepted that S must have been angry to see her parents separating and “being abused”.

48.

She was asked about the allegations of sexual abuse. She said it was concerning that the Father had not been respecting S’s wishes and need for privacy but she accepted that the Father had never shown any indication that he was sexually attracted to his daughter or to children in general. She told me there was no sexual concern in her mind and it was a boundary issue, but it is clear that she did indicate her considerable concern to both the school and the Local Authority, such as in a text to SW dated 4 May 2022, when she said that S “believes he will touch her inappropriately...”. I can see why the Mother would have been concerned and, in fairness to her, she has now accepted that there is no truth in these allegations whatsoever, but I can equally see how distressing and worrying this must have been for the Father, something that the Mother does not appear to recognise. She was asked about a period in the autumn of 2022 when the relationship between S and her Father improved. She said she did not believe there was any correlation between her being less stressed and S’s attitude to her Father. I am sure she believes that, but I regret to say that I am clear that she is wrong. She was asked why it was that S called the Father a “psychopath”. She clearly did not believe that S had said this. Mr Gration was able to point to the SW saying that she had seen the recording of S saying this. The Mother made the reasonable point that she did not know the context in which this was said but I find that S did call the Father a psychopath. This is clearly not a word she would have known without hearing an adult saying it. The Mother denied ever calling the Father a psychopath but, on the balance of probabilities, I find that she did do so and S overheard this comment. I do not find that this was deliberate but it was damaging to S.

49.

She was asked why she told the Local Authority that the Father had issues with erectile dysfunction and she suspected he had mental health concerns for which he was taking medication. She accepted she was wrong to refer to erectile dysfunction and, quite properly, apologised for doing so, accepting it was irrelevant. She agreed that it had caused the Father a lot of distress and upset. She was asked why she had not raised all her allegations initially. She replied that she did refer to some of them in her first statement. Mr Gration suggested she did not pursue them at that stage as she did not want to jeopardise her relocation application. She denied that was the case but I find that it did play a role. It was put to her that S had also behaved very badly with her, including “arguing, kicking and punching”. Her text message said that S “shouted so much at her” and “she just lost it”. This does show that S can be a difficult child, but it does not excuse bad behaviour from either parent. She was asked about the incident when S refused to speak to her paternal grandmother and the Father took the remote control away from her. The Mother told me that she did not think S was pushing boundaries. In any event, the Father kept pushing S. He was screaming and shouting. The Mother said she would have to call the Police. I accept her evidence in relation to this incident. She was then asked about the time she asked S to go upstairs and spend time with her Father. She said that, when S came downstairs distressed, the Father threatened her. S replied that he should just leave her alone. He was pushing the door on S. I accept all of this but she then said she did not call the Father “a fucking idiot” but I find that she did. Although the language is to be deplored, particularly in the presence of S, the sentiment is correct. She was asked about the trip to One Aldwych for afternoon tea on 12 December. She said she did not recall if the Father had to carry S, but I find that he did. She said that S got tired but did not like being carried. I cannot accept that. She accepted that the Father

believes that she has undermined his contact with S. She told me that he said to mutual friends that S would have to go into care, unless the Mother withdrew her allegations, on the basis that they would both be deemed unfit parents. I accept the Father said this. She then denied that this was the same as her involving her friends by sharing with them her allegations of threats and abuse to get support, but I find that it was the same.

50.

The Father then gave his evidence and was cross-examined by Dr Proudman for the Mother. It has to be said that his evidence was punctuated throughout by numerous admissions of bad behaviour on his part. In one sense, it is impressive that he was prepared to be honest and realistic. In another, it is deeply unimpressive that there have been so many occasions on which he has done things for which he has needed to apologise, particularly to his young daughter, S. He began by accepting that the Mother has had a strained relationship with his family and that the paternal grandmother had been unpleasant to the Mother. He accepted that the Mother had been told by the grandmother that she was not welcome back in her home. This must have been very distressing for the Mother. The Father accepted this and that the Mother was very upset. He confirmed that the matter "did not blow over" and the tension continued for some time.

51.

He was taken through the various incidents alleged against him one by one. It did not make for impressive evidence. He accepted that, on 12 June 2021, when S refused to speak to the paternal grandmother, his voice was louder than it should have been. He told me S may have cried but he could not recall. I find that she did cry and he would have been aware of this at the time. He said he was upset and possibly angry. I find he was definitely angry. He said that he did not shake with intense rage. He said he does not recall the Mother asking him to stop, but he accepted that he asked her not to intervene. He would not have said that if she had not asked him to stop, so I prefer her account. He said he did not threaten anyone and he did not see any reason for anyone to be frightened, although he did, realistically say that S might have been frightened of him "in the moment". I am clear that losing his temper in this way would have frightened S. He said he did apologise to S and accepted it was not good behaviour. He accepted that shouting or abusing someone is not the right solution and he should not have done it. In answer to a question from me, he accepted that he had a temper. He said there had been some incidents when he has lost his temper but denied it happened regularly.

52.

He was asked about the Social Worker, SW saying, on 13 April 2022, that S sees the Father as "not respecting her wishes and feelings". His response was that S was not responding to any of his requests. Whilst that may have been the case, the Father accepted that he behaved in a way that he should not have and that he had made mistakes. I remind myself that he was the adult and he should not get himself into a position where he has to apologise to his young daughter repeatedly. He was asked about slamming doors. He responded that he did close the door a few times. I take this to be an admission. He accepted this would not make S or the Mother feel good but he did not think they were frightened. He was next asked about removing S's passport on 12 October 2021. He said that he was concerned about the Mother's relocation application and he feared she might abduct S. He said that Reunite told him to take the passport. Later, he said that his solicitor had told him to do so, although I was not clear if he was saying both had said so. I can, of course, understand that there is often fear of abduction in such cases, although I am clear that the Mother had done nothing to suggest she had any intention of doing so. The real problem, however, was that the Father did not tell her that he was taking the passport. Indeed, he lied and said he had not. He then returned it but removed it again the

next day. As a result, an appointment at the Indian High Commission to obtain Overseas Citizen of India status for S was lost. He did, at least, accept that he should have told the Mother he had taken it.

53.

He was then asked about taking S to school. He produced a document from Google that showed that, contrary to the Mother's assertion that he had not done so, he had taken S to school 17 times in April – May 2021. He denied that producing this schedule showed that he was controlling. He is clearly right about that. He claimed that the care of S had been joint up to the separation. I accept that he was fully involved, but it was not joint care. The Mother was the primary carer, even if he was working from home at times. He was asked about saying, in September 2021, that his lawyer had told him to do two drop offs per week at S's school. He denied saying it and claimed he did not have a lawyer, although he later accepted that he told S that he was allowed to do drop offs as a lawyer had told him he could. I find that he did say something along those lines, although it may have been in November 2021. He accepted that the reason was that S was refusing to go with him. He claimed she said that he was not allowed to do drop-offs to school. I accept his evidence as to that. It does mean that somebody must have told S he could not do drop offs. Realistically, that must have been the Mother. Neither party comes out of this particular incident well. S was only seven at the time, albeit rising eight. Indeed, the Father accepted it was not the right thing to say.

54.

He was asked about the Diwali incident on 4 November 2021. He accepted that S and her Mother had cooked some food. They were waiting for him to return home but he was tired and not in a very good mood. He told me that he came downstairs in his night clothes. He accepted that he said that there was nothing special about the day, which would have upset S. He agreed that he did nothing right that day. S got upset. The Mother told him to take the fireworks out. He said to S "let's start and mummy can join us later" but S wanted to do it as a family, which is both understandable and obvious. He tried to explain himself by saying that, two days before, S and the Mother had left him out when he wanted them to act as a family. He said that he felt the Mother did not see him as part of the family but he acknowledged that he took his feelings out on S. He accepted he did not eat with them. He denied waking S up but accepted he told her, after she was put to bed, that he was upset. She replied that she just wanted to sleep. He denied saying "you left me out of the fun" but I find that he did. He denied making her frightened but accepted that she was sobbing in her Mother's arms. He does not come out of this incident at all well.

55.

He was then asked about calling S "mummy's pet". He accepted he did and that it was cruel and wrong. For the only time in his evidence, he got upset and I had to adjourn the case for approximately fifteen minutes. He was asked about S telling the school that "I get sad because I don't like the fighting around me. I don't like the rude things dad says to me. Dad blames me for things when I haven't done anything wrong saying 'you have done this'. Dad interferes with what mummy does. When I was planning chocolate coins for my birthday with mummy, dad said no; I am doing it. I get sad when dad is angry with mum." This is a sad indictment of the way in which S has been affected by the parental breakdown and the Father's behaviour. The Father's response to Dr Proudman was to refer to four positive videos where S is seen to be painting his face; kissing him; and jumping on the bed, being happy in his presence. He said there is nothing positive in anything the Mother says about him. He did seem to be smiling at this point, which Dr Proudman criticised, given the serious nature of the questioning.

56.

He was asked about the phone recordings. He accepted he had been doing it from December 2021 to April 2022. He acknowledged he did not tell the Mother but said she knew, although it later became apparent that she only discovered in March 2022. He said S did not know until April 2022. He accepted that S was very distressed to find out. She was worried that there were other hidden recording devices elsewhere, such as in clothing. He said he deleted the audio recordings when asked. I find, however, that S asked him

to take the phone upstairs. He said he had but was still recording on it, when he came down, until she challenged him again. He accepted it made her feel paranoid and it was emotional harm but said he did not do it for the purpose of harming S, which I accept. He said it was because of his paranoia following the allegations of sexual abuse. Presumably he intended to use these recordings if he thought he had been falsely accused of something. Whilst this may explain why he did it, it will have distressed S enormously and had a lasting effect upon her. He was then asked about 21 November 2021, when he took S to gymnastics. He said she was playing up and he told her this was not ok. He accepted that he said he would video her and send it to her class teacher. He told me he was trying to get her to comply, as she was not listening to him and, as her teacher is an authority figure, she would be likely to comply if threatened with the teacher. He acknowledged that, if he had sent the recording, it would have humiliated and embarrassed S. He said that perhaps he should just have said he would tell her teacher she was behaving badly. He undoubtedly handled this incident very badly and, again, upset his daughter.

57.

He was asked about telling the mutual friends about possible care proceedings. He said he was worried that the result of all this might be S being taken into care. He told me that he did not do so to get the friends to put pressure on the Mother although I find this was part of his motivation. He also accepted that S did overhear him speaking to his lawyer and he lied, saying it was about work. It was not sensible to lie to his daughter. He acknowledged that S did witness some very bad arguments in the family home. He accepted this would be very distressing for her. The effect on children of witnessing such arguments is huge and very damaging to them indeed. He accepted that he did take his frustrations out on S. He denied saying that the Mother was alienating S from him but I find that he did. He said S enjoyed spending time with him. I accept that was the case in the past. He was asked about the incident when S went upstairs to ask the Father to play with her and he said "you are here just because your Mother told you to". I have to say that I consider this to have been both unforgivable and incredibly foolish. I cannot conceive what he thought he was doing. He told me it made S feel terrible. He is right. He acknowledged that he did say that the Mother was "poisoning S's mind" and S overheard. He told me, however, that he was not asserting parental alienation. Given all his admissions to me, I consider it is realistic for him not to be alleging parental alienation now, although he clearly has in the past. He said both parents need to take remedial action.

58.

He was taken to some messages he sent to the Mother, including "you are obstructing my access to her"; "S had agreed to meet and it's only because of you she changed her mind yesterday"; "Irrespective, I am coming and will see her shortly"; and "My messages to you yesterday were clear". These messages do not show him in a good light. He said he was challenging the Mother. He was then asked about financial control. He accepted that the Mother booked three sets of tickets for the theatre at £50 each, using his credit card. He denied saying the tickets were overpriced, but acknowledged that he said they needed to be more careful with the finances. Nevertheless, he took S to one of the

shows. He was asked about questioning a taxi fare of £13, particularly after he had told the Mother to take the taxi as it was late. He said all he did was question the surcharge and it seemed expensive. I have to say that I do not consider this was justified when he had suggested the taxi and I cannot see how the Mother could have refused to pay after taking the journey.

59.

Complaint was made about his Form E putting his Income Needs at £17,222 per month. He explained that £6,000 was periodical payments, presumably including the mortgage on the family home and its outgoings; £1,200 was his rental; part was solicitors' costs; and his own income need was £5,400 per month. He accepted that he did say in Hindi that the Mother was "stooping low for money and alienating S from him" and that S could have heard him say that. He was then asked about another serious incident that took place on 18 September 2022. He said they were playing and S got upset. She went upstairs and knocked on the door. She opened it briefly but wanted to be alone. He performed a "mock" pull on the door and she pushed it back. He said she was trying to be angry but was smiling at the same time. It was just playing. He said, as a joke, that he was stronger than her. She lost her balance and her finger got caught in the door. She later said she hurt her ankle as well. She ran downstairs and said that her daddy had hurt her. He was not laughing. He offered her an ice bar. Both the Mother and S were upset with him. He left. His behaviour in relation to this incident was incredibly foolish. Given all that had gone on before, he should never have put himself in a position where S might get injured or give the impression that he was trying to force his way into her room, even if he was not actually trying to do so. I do take the view that, in many respects, he is his worst enemy. Finally, Dr Proudman asked him about him telling the Local Authority about this incident in which he referred to S being "totally indoctrinated and under the Mother's influence". He accepted he did say that to SW but she never had anything positive to say and she spoke to him like a child. He ended by saying that he did not always find it difficult to take advice but he had a difficult relationship with SW.

My specific findings as to the Scott Schedule

60.

Although I accept that the Court of Appeal cast some doubts on the efficacy of a Scott Schedule in the case of H-N (above), I take the view that there is really no alternative if a court is to deal fairly with multiple allegations in a fact finding case. I therefore directed a Scott Schedule in this case, without any opposition from the advocates. I consider the resulting twelve page document worked well and enables me to make the relevant findings clearly and relatively concisely.

61.

The first main allegation is of "Coercive and controlling behaviour". It consists of a number of specific allegations against the Father, the vast majority of which are in relation to his behaviour towards S. In his response to the first incident, which is the time on 12 June 2021 when S refused to speak to the paternal grandmother, he says that "(the Mother) is using an isolated incident to present me in a bad light, completely ignoring multiple such events herself". He then proceeds to apologise for his behaviour on 12 June. The difficulty with this response is that there are so many such incidents where he has had to apologise for his behaviour.

62.

I accept that, on 12 June, he lost his temper with S. He grabbed the remote control and he shouted at her. This would have been frightening and distressing for her. The second allegation is that, on 20 October 2021, the Father removed S's passport twice without the Mother's knowledge and consent. I

accept he did that and that, at first, he lied that he had taken it. It prevented the Mother attending with S at the Indian High Commission to get S the OCI status, although I am sure that this could have been arranged subsequently. I do not find that this was coercive and controlling behaviour because it was done in the context of the Mother's wish to relocate to India but it was foolish and confrontational. It undoubtedly created mistrust and will have distressed the Mother significantly.

63.

The third allegation is that the Father controlled S's movements and did not let S spend time alone with the Mother. I do not find those two specific allegations proved, but I do accept that, on occasions, he pressured S to exclude the Mother from activities. The most obvious example is the very regrettable Diwali incident on 4 November 2021, in which he did just about everything wrong, as explained in my review of the evidence above. I do accept that he foolishly said that his lawyer had told him he could do two school runs per week. Although I accept he had done some school runs in the past, I find that he insisted on doing two school runs per week because he wanted to strengthen his position in relation to the relocation application. The final allegation in this section is that he asked that S be left alone with him and the Mother leave the family home during his contact. I accept that, on 28 March 2022, it had been agreed at court that S would be with him three days per week but it was wrong of him to try to get the Mother to leave the home on those three days. It is another example of how foolish it was for the parents to remain living together in the family home for so long after the breakdown of their marriage in what were very acrimonious circumstances. Again, however, I accept that the Mother really had no choice. The Father, however, could have moved out earlier than he did.

64.

It is then said that the Father made recordings of S and the Mother on a number of occasions between November 2021 and April 2022 without their knowledge or consent. He accepts he did this, albeit from December 2021. It was wrong of him to do so. It caused significant distress to S when she discovered. I accept that he was motivated by what he regarded as the completely unfair allegations of sexual abuse made against him and he wanted to protect himself by showing that nothing untoward was happening but it further undermined trust between him and his daughter, particularly when he said he had stopped recording and S discovered that he had not. I find, on the balance of probabilities, that he did make some disparaging remarks about the Mother's allegations against him and that nobody believed him, in the presence of S, when he was trying to justify this behaviour. I accept these incidents would have left S worried and distressed. I accept that he later demanded to read S's private diary which was completely wrong, although it does appear that the Mother did so as well on at least one occasion.

65.

The next allegation is that he discussed sensitive details of the case with his solicitor, his sister and his friend within earshot of S. I accept that S did overhear some conversations, although I fear that this pales into insignificance compared with S overhearing or being present at deeply distressing arguments between the parents. He did lie to S that he was speaking to his work when he had been speaking to his lawyer. He did say some unkind and hurtful things to S about the Mother, including something about the Mother stooping really low in a bid to win. The next allegation concerns withholding his consent to counselling for S. I take the view that I have not heard sufficient evidence as to this to enable me to come to any safe conclusions. Fortunately, this does not matter given the other findings that I am able to make.

66.

The next main category is "Emotional Abuse". A number of specific allegations are included such as that he refused to play with S on 14 November 2021 because the Mother had suggested it. This allegation is proved. Indeed, he admits it. It was the height of foolishness and, in the cold light of day, inexplicable. I accept that S ended up crying and he was shouting at her in the kitchen. She hid behind the door, which he pushed. The whole thing was unnecessary and extremely regrettable. On 16 January 2022, he said some unfortunate things about S co-sleeping with her Mother only an hour before her exam. I have to say that I have been troubled that S is still co-sleeping with the Mother. At her age, this should not be happening, even if it is more prevalent in Indian culture than in Western society. I again accept that S ended up crying as a result of the argument. Further unfortunate things were said in her presence by the Father on 24 October 2022 about Diwali. This was particularly insensitive given what had happened on the festival a year earlier. There was a similar incident on 31 October 2022, when the Father wanted S to celebrate Halloween with him and she said she had not requested that he postpone a trip away to celebrate it with her. When he challenged this, she asked him why he always called her a liar. This is a sad reflection of the way in which their relationship had deteriorated by this point.

67.

The next allegation is of financial control. I do not find these allegations proved although I do accept that the Father has made some insensitive and crass comments to the Mother. There was some criticism that the Father had provided the Mother with a credit card on his account. There is nothing in this complaint, even though it does, almost certainly, mean that the Father is able to check the bills to see what the Mother has been spending. It is commonplace in marriages to provide such additional cards to your spouse. It is not indicative of financial control, until, as happens so often, limits are put on the use of the card without the spouse being told and the card is then rejected in embarrassing circumstances. I have come across that regularly in cases but it has not happened here. Indeed, the Mother told me that she is provided with £2,475 per month general maintenance; the mortgage is paid; all the bills on the house are paid; he has provided her with coats and bags; and he has paid all her legal costs, which it transpires may be as high as £180,000, which even this family cannot afford.

68.

I do, however, accept that, as part of general parental arguments, he has said some upsetting and hurtful things. He did question the purchase of a watermelon for £1.15 and a taxi fare of £13. The latter was particularly unfair when he himself had suggested a taxi rather than public transport as it was late.

There have been rows in which he has accused the Mother of being lazy and living off his money. He did ask her to get a job on the tills in a supermarket. He did make unjustified criticism of the Mother booking theatre tickets, particularly as he then used one of the tickets himself. These comments will have distressed and hurt the Mother but I find they were part of the ongoing arguments between the two parents when they lived together. I am sure the Mother said some hurtful things to him as well. The effect of all of this on S will have been serious and profound but I am not able to find that the entire blame rests with the Father.

69.

The next main allegation is that of verbal abuse. The first allegation is that, on 31 July 2021, he threatened in S's presence that the Mother would be on the streets and would not see S. On the balance of probabilities, I find that, during an argument, he did say something along these lines. I do, however, take the view that the Mother did respond, as the Father said, by saying she would take S. The Father replied that this would be an abduction and he would call the Police. All of this would have

been very damaging to S. I further accept that, in November 2021, he called S “mummy’s pet” and said that she was “passive aggressive”. On 7 December 2021, he told S that she was being used as a pawn by the Mother to get his money. This was unforgivable.

70.

The fifth series of allegations is of a “Pattern of lies/false allegations against S and the mother”. I accept that he did accuse the Mother of withholding contact and alienating S from him. He did want S to undertake therapy, although I do not find that this is a matter for which he should be criticised. It is then said that the Father made false claims and started a smear campaign against S and the Mother. In this regard, I accept that he said that S told him she would “frame him” to the Police. S, not unreasonably, said that she did not know what this means. It is, of course, possible that she was repeating something her Mother had said in anger but there is insufficient evidence for me to find that proved.

71.

The Father responds to all of this by saying that the Mother has been making accusations against him that he has meltdowns; is unstable; has bi-polar disorder; and an incestualised relationship with his mother. I find that both parties have made allegations against the other. Some have been true. Some have been untrue. The Mother would have been justified in saying that the Father has had meltdowns because he undoubtedly has. I find that she would have said he was unstable. Some of his conduct would justify that comment although I do not, in fact, consider he is unstable in general. I do not know if she said he had bi-polar disorder but there is no evidence that he does. She did say that he had an incestualised relationship with his Mother. This was unjustified and she should not have done so.

72.

The sixth series of allegations is of “Physical Abuse”. It is said that, on multiple occasions, the Father has lost control after an argument and resorted to physical control and punishment. I have to say that I do not consider the Father to be a physically violent man, although he has regularly lost his temper. He has said some very hurtful things to S and the Mother. He has been extremely foolish to get himself into positions where S has been injured but these are not deliberate physical assaults.

73.

The first incident alleged dates back to 2010, which is a very long time ago. It is the sole occasion on which it is said that the Father was physically violent, although even then, it is not asserted that he actually did hit the Mother, just that he tried to do so. I am clear that there was a nasty argument in 2010. The Mother was sufficiently concerned that she did lock herself in her room and call her parents in tears. I find the Father did stand outside banging on the door, laughing and asking if she was scared of him. The Mother has proved all of that but has not discharged the burden of proof that he tried to hit her.

74.

It is said that, between 2016 and 2018/2019, he punished S by twisting her arm when S was being cheeky or difficult, making her scream in pain or cry. The Mother alleges that he only stopped when the Mother threatened to call the Police. He denies this allegation, although he accepts that he once held S’s arm whilst she was trying to hit him. He makes the point that, originally, it is said that these incidents occurred earlier, up to when S was three. It is clear that S now believes that these incidents did take place. I have found it quite difficult to make exact findings but, on the balance of probabilities, I find that the Father did twist her arm, rather than just holding it, during the incident that he accepts occurred. S would have been misbehaving. I am unable to find that there were any

other such occasions. The problem, of course, is that S now remembers the bad times rather than the good times and this incident has, almost certainly, assumed an importance in her mind far greater than the reality would justify.

75.

Finally, there was the very regrettable incident on 18 September 2022. I accept that S went upstairs to her room, closed the door and stood against it. The Father followed her and repeatedly pushed the door, demanding that she opened it or he was coming in. He did make the point that he was stronger than her. Inevitably, she pushed the other way and her finger and ankle did get hurt. Fortunately, neither seems to have been a serious injury but that may have just been fortuitous. On the balance of probabilities, I reject the Father's evidence that this was all play acting. I cannot see that S would have been injured if that was the case. Again, this has left a lasting impression on her and was reckless of the Father to say the least.

My overall conclusions

76.

There is no doubt that everything that has occurred has left a lasting impression on S. I am entirely satisfied that she had a good and loving relationship with her Father before the breakdown of the marriage. When unfortunate episodes occurred, such as the arm twisting incident, they were quickly overcome and forgotten with the assistance of the Mother. Since the breakdown of the parents' marriage, however, the incidents have become much more regular and, at times, concerning. The Father has not helped himself. These incidents have taken on a much greater importance in the mind of S, such that, at present, the relationship with her Father has completely broken down.

77.

The parental interactions have not assisted at all. I am absolutely clear that there were significant and unpleasant arguments in the house after the breakdown of the marriage but before the Father moved out. These were extremely damaging to S. Some were witnessed by her. She will have overheard others. The effect on her will have been very significant. I do not consider that the Father was entirely to blame for these arguments. I find that the Mother played her part in them. I do not find that the Father was deliberately intending to exert coercive control over the Mother, although she may well have felt that he was. It was just that their marriage had broken down very acrimoniously and neither could stop the arguments. I consider the Father's temper is worse than that of the Mother, but neither parent should have allowed this to happen.

78.

Given all my findings above, it is clear that the Mother has not been alienating S from her Father. Indeed, I find that she has been outwardly supportive of contact. The problem is that S has developed an antipathy to the contact that has proved to be quite incapable of being resolved. I consider it would have been resolved if the parents had still been on good terms but they are not. The failure to reach a rapprochement may well, in part, be because S understands the hurt her Mother is feeling. The Mother is undoubtedly very stressed by all that has gone on and S will have picked up on this. The Father, however, cannot blame the Mother given my findings as to his behaviour.

79.

At the end of the Mother's evidence, I did say to the Mother that I viewed this all as a terrible tragedy that had to be sorted out one way or the other. She agreed. The parents will have to discuss the way ahead but it is clear that, for all his faults, the Father loves S very much. Moreover, despite all his faults, S loves her Father very much. After all, she only has one father and I accept that he cares

about her deeply. This must be sorted out or it could have profound consequences for S in the years ahead. I am sure that expert assistance will be required. There is to be a directions hearing in August 2023 when I will consider the way ahead. Given the Mother's complete lack of confidence in Mr Power, I am sure he will not be able to play any further role in the case. It may be that I should direct the instruction of a child psychologist. Cafcass may have a role to play but this family desperately needs the conflict to ease, if only because that is overwhelmingly in the interests of the daughter that they both love so much.

Mr Justice Moor

23 July 2023.