



Neutral Citation Number: [2022] EWHC 108 (Fam)

Case No: CT18P00238

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/01/2022

Before:

THE HONOURABLE MR JUSTICE COBB

Between:

BY

- and -

BX

Re B-B (Domestic Abuse: Fact-Finding)

Daniel Mutton (instructed by **Direct Access**) for the Father (BY)

Dr Charlotte Proudman (instructed by **Beck Fitzgerald**) for the Mother (BX)

Hearing dates: 8-11 November, 6-7 December 2021

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
THE HONOURABLE MR JUSTICE COBB

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

The Honourable Mr Justice Cobb:

Publication

1.

It is agreed by the parties that this judgment should be published albeit in an anonymised form. I have therefore made sparing reference to features of the parties' lives which might otherwise tend to identify them. That said, I am conscious that some limited background information is already in the public domain, contained within the judgment of the Court of Appeal in *Re H-N* [\[2021\] EWCA Civ 448](#) ('*Re H-N*').

2.

Publication is authorised on the usual basis so as to protect the anonymity of the child and her family.

Introduction

3.

I am concerned, in these proceedings, with the welfare of one child, who I shall refer to in this judgment as 'Jane'; this is not her real name ¹. She is 4 years and 11 months old. She is the only child of the Applicant ("the father" or "BY") and the Respondent ("the mother" or "BX"). This judgment sets out my findings following a 5-day hearing in which I considered the parties' cross-allegations of domestic abuse. The proceedings were remitted by the Court of Appeal to the High Court for hearing following the conjoined appeals which were reported as *Re H-N*. This case was then known as B-B, and is discussed in particular at §79-115 of the Court of Appeal's judgment.

4.

Following the appeal, Keehan J gave case management directions, and in doing so resolved that the welfare decisions required in the context of the [Children Act 1989](#) applications needed to be underpinned by clear findings of fact. Hence this hearing was set up. No doubt considerably to the frustration of the parties, this is the seventh occasion on which this case has been listed for fact-finding hearing, and has been the first effective listing; the first such listing was in 2018. Previous attempts at a dedicated fact-finding hearing were thwarted by a range of difficulties: judicial unavailability, legal aid issues, and in December 2018 because the mother had only very recently made a new set of serious allegations (of sexual assault and/or 'rape') to the police. Unsurprisingly, at the pre-hearing review the parties expressed themselves keen to proceed at this hearing, notwithstanding that – to my considerable surprise given the history of the case – the disclosure of extensive police material had only recently been made available; indeed, in some respects it was still outstanding.

5.

I reserved judgment to reflect on all the material.

6.

This hearing, and the preparation of this judgment, has highlighted the following:

i)

The benefit of considering the evidence relevant to each different form of alleged domestic abuse in 'clusters': thus, it was useful to 'cluster' the evidence which went to the issue of alleged physical abuse; separately I considered the evidence of the allegations relevant to sexual abuse, separately emotional abuse, separately financial abuse and so on ². Inevitably, the evidence relevant to each form of abuse overlapped in places, but in looking at the evidence by reference to the different forms of alleged abuse, a picture was built up of the nature of the relationship under scrutiny, and it was

easier to see whether patterns of behaviour emerged. This may not have been so apparent had the matters been looked at by reference to individual / free-standing items on a Scott Schedule. I accept the Court of Appeal's view that it is the cumulative effect of individual incidents within each of those clusters of abuse-type, and of each type of abuse on the other, which give the clearest indication of the experience of abuse;

ii)

The importance of resolving these issues close in time to the events in question; this hearing took place between three and five years after the key events. The delay in resolving the issues has compromised the quality of the evidence itself, and the delay has inevitably taken a toll on the litigants who have not been able emotionally to get on with their lives;

iii)

The need for flexible arrangements to ensure that participation directions (rule 3AA FPR 2010) truly meet the needs of the parties and the case ³; the increased use of 'hybrid' hearings over the last 18 months (for all types of hearing in the family court) provides a useful template which worked well in this case;

iv)

The need for advocates to focus on those issues which it is necessary to determine to dispose of the case, and for oral evidence and/or oral submissions to be cut down only to that which it is necessary for the court to hear;

v)

The evidence of the principal parties is always likely to be far more valuable than the evidence of supporting witnesses; at the case management stage, judges should rigorously test with the parties and/or their advocates (and review for themselves) what (if any) real value is likely to be brought to the enquiry by the evidence of third parties;

vi)

The importance of judicial continuity in domestic abuse cases; unsurprisingly, I had no prior connection with this case before it was remitted for hearing by the Court of Appeal. But it struck me as I considered the case management of this case prior to the hearing, and indeed as I listened to the evidence itself, that continuity of judicial involvement would have enhanced the efficient and sympathetic management of the process;

vii)

That an abusive relationship is invariably a complex one in which the abused partner often becomes caught up in the whorl of abuse, losing objective sense of what was/is acceptable and unacceptable in a relationship. Like many abused partners, the mother in this case became immunised to the emotional volatility of the damaging relationship which she saw as normal and acceptable; like many abused partners, she clung to what she knew.

Preliminary case management

7.

Preparation for this hearing was regrettably adversely impacted by what I considered to be the rather casual adherence by the solicitors for the mother to the court-ordered directions; I note that earlier hearings before HHJ Scarratt had similarly been afflicted by non-compliance with court directions (see §91, 100, 110 of Re H-N). Until the fact-finding hearing itself, the father was acting in person; he

had, in my view, been rather more assiduous than the mother's solicitors in observing court directions, and in alerting the court to difficulties in compliance. Strict adherence to orders, and efficient management of family hearings, particularly given the current pressures on the system, is essential if the work of the court is to be done effectively.

8.

In the week before the hearing, I was compelled to convene an urgent hearing to finalise police disclosure issues; for a case which has been in train on and off since 2018 this was as surprising as it was regrettable.

9.

In the preparation of the case for this fact-finding hearing (following the appeal), quite apart from the fact that the trial bundle(s) did not comply with PD27A FPR 2010 (in aggregate the bundles exceeded 1,300 pages), there had been little thought given to rule 1 FPR 2010 and the President's 'Road Ahead' guidance (first published in 2020). As I pointed out to the parties, the 'Road Ahead' document remains of real importance in cases of this kind at this time; I repeat for emphasis some of the key passages:

"§43. If the Family Court is to have any chance of delivering on the needs of children or adults who need protection from abuse, or of their families for a timely determination of applications, **there will need to be a very radical reduction in the amount of time that the court affords to each hearing. Parties appearing before the court should expect the issues to be limited only to those which it is necessary to determine to dispose of the case, and for oral evidence or oral submissions to be cut down only to that which it is necessary for the court to hear.**" [emphasis added in the 2021 version of the Road Ahead]

§44 Clear, focussed and very robust management of cases will be vital in the coming months. The case management judge will have the difficult role of balancing the welfare of the child, the need for a fair and just process and the limited resources of space, time, and format with the need to conclude the proceedings.

§46 Parties will not be allowed to litigate every issue and present extensive oral evidence or oral submissions; an oral hearing will encompass only that which is necessary to determine the application before the court.

§47 It is important at this time to keep the 'overriding objective' as set out in Family Procedure Rules 2010, r 1.1 in mind. In these times, each of these elements is important, but particular emphasis should be afforded to identifying the '**welfare issues involved**', dealing with a case proportionately in terms of '**allotting to it an appropriate share of the court's resources**' and ensuring an '**equal footing**' between parties" (emphasis in the original)

10.

These observations were unsurprisingly reprised in the Court of Appeal's judgment in Re H-N at §56 / 57, the Judges explicitly recognising the challenges of imposing firm case management boundaries in cases of this kind:

"It is the responsibility of the individual judge or bench of magistrates in each case to set a proportionate timetable and to maintain control of the court process where it has been determined that a fact-finding hearing is necessary. It is, however, our expectation that, in cases where an alleged pattern of coercive and/or controlling behaviour falls for determination, and the court has made that issue its primary focus, the need to determine a range of subsidiary date-specific factual allegations

will cease to be 'necessary' (unless any particular factual allegation is so serious that it justifies determination irrespective of any alleged pattern of coercive and/or controlling behaviour).

How to meet the need to evaluate the existence, or otherwise, of a pattern of coercive and/or controlling behaviour without significantly increasing the scale and length of private law proceedings is therefore a most important, and not altogether straight-forward, question. ...”

11.

As earlier indicated, the hearing was, at the request of the parties, conducted in a hybrid form. Given the issues involved, I was required to assume (per rule 3A.2A FPR 2010) that the quality of the parties’ evidence and their involvement in the proceedings would be diminished in the absence of participation directions. The provisions of PD3AA FPR 2010 were engaged and appropriate adjustments were therefore made so that the mother could give her evidence from the witness box in the court room while the father was away from the court and participating remotely by video-link; I afforded her reasonable breaks. When the father gave evidence from the witness box, the situation was reversed, and the mother participated remotely. The parties could not see each other when they gave their evidence as the camera was turned to face counsel. I believe that this worked reasonably well; no party raised any dissatisfaction with the arrangement.

12.

In addition to the parties themselves, I heard evidence from Jane’s maternal grandmother (“MGM”), from Jane’s maternal great-grandmother (“MGGM”) and from a friend of the mother (“Ms A”). I also heard from the father’s sister (“Ms B”), a friend of the parties (“Ms C”), and from one of the father’s oldest friends (“Mr D”). I was fortunate to have the assistance of counsel who presented their cases with considerable skill.

13.

Fact-finding in cases concerning alleged domestic abuse are almost always time-consuming and challenging for judges and magistrates; the responsibility placed on the lay and/or professional judiciary to conduct a fair, thorough and above all a considerate and respectful hearing is indeed “weighty”⁴, particularly where the factual issues are often complex, emotions are invariably raw, and the stakes are so high. The exercise in which I have been engaged, as many judges up and down the country daily are involved, is “neither an easy task nor a precise science”⁵. It is right that these challenges are fully recognised by those who have a responsibility for resourcing the family justice system. I recognise that I have been afforded the indulgence of time (five days) to hear this case, and have been fortunate that both parties have been ably represented. I am more than conscious that many judges, coping with extensive and difficult lists, have much less time for these hearings, and must manage the challenges which arise in dealing with unrepresented parties. For all these reasons I wish to emphasise the imperative for judicial continuity in cases of domestic abuse.

Background facts in outline

14.

In the section of the judgment which follows, I have sought to summarise the essentially uncontroversial history. I believe that I have faithfully identified where there is a conflict between the parties on the written/oral evidence. If I make findings, I have done so applying the law as I set it out at §26 of the judgment below.

15.

The mother is now 27 years old; she was raised in Kent. At the time of the events in question she was on an apprenticeship scheme for a major supermarket; she is currently training to be a staff nurse. The father is now 34 years old; he was born in Uganda but has lived in the United Kingdom for some time. He is a health care assistant by training and qualification and in the relevant period was working with mental health patients. He now works for a care agency owned ⁶ and run by his family of which his sister (Ms B) is a director.

16.

It is reasonably clear to me from the evidence, and I so find, that the parties began their relationship in August 2015, and for periods of time over the next 20 months they cohabited possibly as early as late-2015. They have just the one child, Jane. Materially, this was the first serious relationship for the mother, though not for the father who told me that he had had two previous serious relationships. The mother said in her witness statement, with some conviction it seemed to me, that:

“I had no real understanding of what it was like to be in a relationship, what to expect from a partner and what was normal” (emphasis in the original).

17.

The evidence of both parties reveals that the relationship was at times volatile (the father uses the word ‘chaotic’) from the outset; each has made separate allegations against the other about their respective conduct which relates back to the early days of the relationship.

18.

The mother alleges that during the relationship the father abused alcohol, cannabis, and cocaine and that, on one or more than one occasion, he forced her to take cocaine; that he controlled her financially, relying on her income to support him; that he was repeatedly verbally, physically and sexually abusive towards her; that he was controlling in a number of ways, that he wanted to know where she was at all times and that he was unsupportive, unfaithful (conducting relationships with other women) and in many respects irresponsible.

19.

It is the father’s case that the mother was verbally and physically abusive towards him; he alleges that she was mentally unstable in that she often threatened to harm herself with medication and knives. He asserts that she was obsessive about him – repeatedly accusing him of cheating and checking his phone; he maintains that she was violent with Jane; that she drank excessively and had taken cocaine on two occasions, once when pregnant with Jane.

20.

When the couple lived separately, the evidence strongly suggests (there was little dispute about this) that at times they enjoyed disparate standards of living; when the father became financially solvent in 2016, he acquired his own well-appointed and comfortable rented apartment, leaving the mother in relatively squalid conditions which the father accepted was damp and seriously affected by mould. When the mother fell pregnant, the couple acquired the rental of a top floor flat in Southeast London. At one time in the relationship, when the mother was pregnant with Jane, and following a significant argument, the parties agree that the mother spent some weeks sofa-surfing with a number of friends.

21.

The relationship lasted less than two years; the parties separated in May or June 2017 when Jane was about three months old. The mother moved out of the shared accommodation with Jane, who then did not see her father for a period from September 2017 to February 2018, and then again from March to

June 2018. Although contact resumed, it was plainly somewhat unpredictable and both parents issued proceedings under the [Children Act 1989](#) in July 2018; the father initially sought an order that Jane live with him, though has never actively pursued this; the mother, having obtained a 'without notice' non-molestation injunction, opposed his application. On 21 August 2018, directions were made for a fact-finding hearing in respect of the parties' cross allegations of domestic abuse. As I have earlier indicated, between then and August 2019, on no fewer than five occasions, the matter was listed for trial but was adjourned without a hearing.

22.

Some considerable time after the end of the relationship (late 2018), the mother for the first time alleged that the father had sexually assaulted and/or raped her multiple times during their relationship, often following an argument, during which, she said, he used force on her and refused to use contraceptive protection; she also alleged that she had been unlawfully imprisoned by friends of the father over a period of 24-hours some five months earlier in July 2018. I return to this incident later.

23.

The father last saw Jane in February 2020, when Jane was about three years old.

General principles of law

24.

I have considered the allegations of 'domestic abuse' in this case by reference to the definition contained in §3 of PD12J FPR 2010, namely:

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

'coercive behaviour' means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim;

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

25.

While not concerned with the criminal implications of either parties' conduct here I observe that controlling and coercive behaviour has been a criminal offence since 2015 (section 76 of the [Serious Crime Act 2015](#)) and I have reminded myself that the ingredients of the offence were recently discussed in the judgments following the appeal in the case of *R v Chilvers* [\[2021\] EWCA Crim 1311](#).

26.

I distil the principles below on which I determine the issues in the case as follows:

i)

The burden of proof lies, throughout, with the person making the allegation ⁷. In this case, both the mother and the father make allegations (in some respects overlapping) against each other on which they seek adjudications;

ii)

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 ⁸;

iii)

It is not for either parent to prove a negative; there is no 'pseudo-burden' on either ⁹ to establish the probability of explanations for matters which raise suspicion;

iv)

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' ¹⁰;

v)

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 his/her mind where the truth lies without needing to rely upon the burden of proof ¹¹;

vi)

The court can have regard to the inherent probabilities of events or occurrences ¹²; the more serious or improbable the allegation the greater the need for evidential 'cogency' ¹³;

vii)

Findings of fact in these cases must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation ¹⁴; it is for the party seeking to prove the allegation to "adduce proper evidence of what it seeks to prove";

viii)

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;

ix)

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;

x)

It is, of course, 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."

xi)

That 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] *Re R*).

A point which I myself considered in *F v M* [2019] EWHC 3177, in a judgment which was referenced with approval in *Re H-N* (see §69/70).

xii)

At all times, I must follow the principles and guidance at PD 12J of the Family Procedure Rules 2010.

27.

Counsel rightly pointed me to the relevant sections of the Court of Appeal's decision in *Re H-N*, 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).

They further referred me to the decision of Poole J in *Re JK (A child)* [2021] EWHC 1367 (Fam), and the decision of Hayden J in *F v M* [2021] EWFC 4. While those judgments are of real interest, I see no benefit to the parties here in reproducing large sections of those judgments herein.

28.

I was further reminded of Peter Jackson LJ's comments in *Re L (Relocation: Second Appeal)* [2017] EWCA Civ 2121 (§61), cited with approval in *Re H-N* at §32 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."

29.

Counsel helpfully referenced the case law on similar fact evidence (*Re R-P (Children: Similar Fact Evidence)* [2020] EWCA Civ 1088). This is said by Dr Proudman to be of relevance in the instant case given the two sets of disciplinary proceedings to which the father has been subject through his work during the period under review (I address this evidence at §56-60XX below).

30.

Finally, for present purposes, I was taken to Judd J's judgment in *M (A Child)* [2021] EWHC 3225 (Fam) in which she made these extremely astute and helpful observations which I do consider are worthy of rehearsal given its resonance on these facts:

"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. ...

Here it is quite clear from reading the transcript of the hearing and judgment that in rejecting a number (although not all) of the mother's allegations against the father the judge relied very much on the fact she wanted to be in a relationship with the father, she tried to get him back when he rejected her, and that she engaged in sex with him after occasions when she said he had raped or abused her. These reasons may well hold good in many cases, but most definitely not all. In some cases it is a very unsafe premise upon which to base findings of fact, especially if the alleged victim is vulnerable or dependent as the mother said she was here. Further, it seems to me that the judge's disbelief that the mother would have remained in an abusive relationship led her to conclude the mother was lying about it. This tainted the whole of her evidence, and was a thread which ran throughout the case." (emphasis by italics added).

The allegations

31.

The fact-finding hearing had originally been set up with each party filing Scott Schedules; this was obviously before the judges of the Court of Appeal in *Re H-N* had expressed their scepticism about the value of Scott Schedules in cases of this kind (see §42-49). The Court of Appeal offered some 'pointers' as to how to deal with allegations of abuse (§58) and in light of this, the case has been presented by counsel on the basis that I should consider the issues in a more holistic way ¹⁵, considering the patterns of behaviour of both parents during the length of their relationship. I have done so, as earlier indicated, by 'clustering' them into forms of alleged abuse.

32.

In essence, both parties here complain of coercive and controlling behaviour by the other, manifested in a number of different ways; I have treated that assertion as the primary issue for determination. Adopting the Court of Appeal's steer:

"Any other, more specific, factual allegations should be selected for trial because of their potential probative relevance to the alleged pattern of behaviour, and not otherwise, unless any particular factual allegation is so serious that it justifies determination irrespective of any alleged pattern of coercive and/or controlling behaviour (a likely example being an allegation of rape)." (§59)

33.

In order to make an assessment of those alleged facts, it is necessary first to review the general credibility of the parties and their supporting witnesses. I have then reviewed the history of the relationship, and have taken the broad categories in which it is said that the father coerced or controlled the mother, and have singled out some individual allegations for discrete determination. I have done the same for the allegations which the father makes about the mother before reaching my conclusions.

Assessment of the parties and the key witnesses

34.

The mother. The mother gave evidence in court (in person) over a number of hours, interspersed with breaks, including one overnight break. I also had the chance to read a great deal about her, in evidence filed by the father and by supporting witnesses on both sides.

35.

Her evidence reveals, and my impression confirms, that when she arrived in London in or about 2015 (or a little earlier) she was a naïve, unworldly, and in the circumstances a vulnerable young woman. It appeared to me from the evidence that she had probably led a rather sheltered life in Kent with her parents and her much younger sister; her relationship with her own mother had probably been a difficult one although neither she nor her mother acknowledged this (I return to this later at §46). She had only a very few friends in London, and no family support network. She did however have the benefit of a reasonable job, working on a management apprenticeship scheme.

36.

I saw a report from her general practitioner which referred to her as depressed to a 'moderate degree' three years after her arrival in London in 2018; significantly, the medical notes reveal that she had developed this low mood as early as December 2015, a few months after the beginning of the relationship with the father. Depression was formally diagnosed in June 2016, and she was prescribed regular anti-depressant medication from then through to early 2018. The GP opines "it looks like her depression is all centred around her relationship problems over the last 2-3 years". My assessment is that more than mere vestiges of her depression remain. I return to her emotional state later.

37.

In her oral evidence the mother was very confused over the dates, and the sequence, of certain events. The father attributed this to a fundamental lack of honesty; I do not share his view. I find that she was genuinely confused about the order of events, which have become muddled in her mind, possibly because of the passage of time since the events occurred, and possibly because of the intense emotional and possibly psychological turmoil associated with them. I acknowledge that her anxiety in trying to remember things accurately in the pressure of a court setting will only have served to aggravate her confusion. Further, I accept that she has probably tried over the years since the end of the relationship to banish memories of her experiences with the father, and this in itself will undoubtedly have affected her capacity for recall. I find that many aspects of the mother's evidence were credible, and feel able to make a number of the findings she seeks, particularly those supported by extraneous evidence. She was, for much of her evidence, extremely distressed and at times she sobbed uncontrollably. I find that her distress was genuine.

38.

Although her distress was and is almost certainly rooted for the main part in the fact that she has been required in this fact-finding hearing to relive her experiences in her relationship with the father, its breakdown and its aftermath, her distress was not in my finding all attributable to the father. I am satisfied that she was truly intimidated by the family court process, and in all likelihood carried with her considerable distress from her earlier experience of a family court hearing (August 2019) in which the judge threatened the removal of her child, and whose utterances essentially founded her successful appeal to the Court of Appeal ¹⁶ .

39.

On the other hand, there were aspects of the mother's evidence which I found difficult to accept. For instance, although I accept her admission that she took cocaine on only a very few occasions, I find that she underplayed the occasions when she drank alcohol to excess during the relationship. I was told of a number of occasions when she drank to excess, and assume that I had not heard of them all; when drunk, her behaviour (particularly towards the father) became more volatile and erratic. I accept that her periodic abuse/bingeing of alcohol may have been an escape route for her; it may have been her coping strategy.

40.

On at least one occasion, I find that the mother brandished a knife at the father while drunk (May 2017), and (as she admits) on the same occasion she pushed a TV off its stand. On another occasion, I find that she became extremely drunk in a nightclub and was then escorted from the club by a group of men, some of whom were probably unknown to her; they drove off with her in a car. The father's friend (Mr D) rescued her and in the process became involved in a fight with the group. I reject the mother's denial of this incident, and accept Mr D's account, which is indeed corroborated by the mother's social media messaging with Ms C at or about that time.

41.

I also found unconvincing her repeated assertions that documentary evidence filed by the father showing (variously) screenshots of exchanges of text / WhatsApp messages and bank statements had been altered by being "stitched"; she further alleged that they had been "annotated" and "manipulated". There was no good evidence that the evidence had been tampered with in this way, particularly as some of the documents were photocopied and stamped with authenticating images.

42.

I further find that the mother deliberately misled the court about an allegation that the father had been responsible for malicious communications towards her in 2017; only on further enquiry during (and indeed after) the hearing, was it revealed that while the mother had indeed made a complaint to the police about malicious communications, it was not the father who had been threatening her but a former work colleague. The mother well knew this in fact. It is particularly troubling that the mother ostensibly advised her legal team that the allegation related to the conduct of the father, yet it transpired (after his cross-examination and following late police disclosure) that it did not in fact relate to him.

43.

Having indicated in the previous four paragraphs the features of the mother's evidence which I have found less than satisfactory, I confirm that it is not of course at all uncommon for witnesses to tell lies, and I know that I must look at each aspect of the evidence carefully; lies told on some but not all issues should not cause the rejection of their entire testimony (see what I said above at §26(x)). I find that the mother's minimisation of her drinking and drug-taking was probably caused by embarrassment. It may be that she realised the hypocrisy of criticising her own mother for excess drinking. Further, it seems likely that she thought that it would serve materially to discredit her in the eyes of the court; perhaps she did not wish to acknowledge that conduct to her own family who she knew were to take part in this hearing. I find that other aspects of her false testimony were motivated by a wish to demonise the father before the court, to bolster her case.

44.

Turning to the supporting witnesses for the mother, the evidence of the MGGM and MGM was predictably partisan, unquestioningly supporting the account of the mother, and taking every

opportunity to disparage the father; neither displayed any real objectivity or impartiality in their accounts of the past. That said, of the two, I preferred the evidence of the MGGM whose short, largely factual, evidence did not jar materially with other evidence I had heard. The MGGM gave me her impression of the father as a:

“... well spoken person... clever... There are two people here; I learned that through the relationship.”

This was a view which over the course of the hearing I myself formed. I felt that the MGGM also gave an essentially truthful account of the many occasions on which her grand daughter (the mother) had phoned her during the relationship in a state of distress, recounting upsetting situations which had been caused or created by the father – such as, taking the mother’s keys and effectively locking her out of the flat (which I find that he did, notwithstanding his denials), taking her credit card and using it, telling the mother that he was ‘adding an hour’ to his return time home every time the mother telephoned him at work (see elsewhere in this judgment). Her view, which I consider had legitimacy is that the father “almost seemed to enjoy discussing and goading her.” She told me that the father went to great lengths to present himself favourably to her, and to the family, and added:

“I feel that the relationship was destructive, and she [the mother] suffered a great deal. She wanted to emulate the long and stable happy marriage of my husband and me. She [the mother] thought that he [the father] would come round to loving [Jane] as much as she did...”

45.

The MGM also spoke of the father’s dual personality, presenting her with wine and flowers when he visited her home for the first time in December 2016, but then (only shortly after his arrival) speaking “very aggressively” to the mother when he believed that no one was looking or listening. I accept that account. She told me that she saw “the red flags” in the relationship from an early stage. She felt that the father was not to be trusted, and said that she had caught him out telling lies more than once.

46.

It was notable that neither the mother nor the MGM told me of the difficult relationship which they had during the period under review ¹⁷; I accept Ms C’s evidence that the mother had often confided in her that she “hated” her mother, who (she said) drank to excess (see above). This evidence was corroborated by text messages passing between the mother and father in 2016 (“Fucking hate her, just brings stress to me all the time!!!! How come every time I stay here she has to make me cry ... she makes me depressed”). I accept, moreover, that this is indeed what the mother probably felt having seen the MGM and heard her evidence.

47.

There were aspects of the evidence of the MGM which I found extremely disturbing. In cross-examination, she was shown copies of her Facebook and other social media posts which reveal, to my mind, clear and highly inflammatory evidence of racist and religiously intolerant views. She was, to some extent, contrite about her media profile/posts, and sought (unsuccessfully) to persuade me that she had been driven to express herself in this way because of the pressure of court proceedings. I do not accept this, at least in part because the MGM also volunteered in her evidence that she had been accused of racism in other aspects of her life. She told me that she acknowledged that her grand-daughter is “a girl of colour”, adding that:

“... she is just an ordinary person; I see one race and dual heritage. She has asked me questions about her colour and I have told her it is all like mixing paint.”

48.

In the media posts referred to above, it is notable she explicitly refers to the father as a “menace to society” and expresses herself in trenchant (and in my finding bigoted) terms on a range of political and social issues. She at least was able to acknowledge that she had put things on Facebook which she “should not have done”.

49.

Ms A gave evidence from her home abroad. She was a confident witness, giving her evidence in her second language. She was disciplined in speaking only about matters of which she had close personal knowledge. I found her to be an impressive witness doing her best to assist the court.

50.

The father, like the mother, gave evidence over more than one court session. He was an articulate and ostensibly self-disciplined man, whose evidence was polished and clear; he came across to me, as he had done to the MGGM (see §44 above) as “well spoken person... clever...”. In his cool and unemotional state he presented very differently from the mother. It was very easy to see how the impressionable young woman, newly arrived in London, could fall for his apparent charm, and how easily she could then become infatuated with him – which, in my finding, she was.

51.

During his evidence, he was anxious to score forensic points about the mother’s lack of credibility, and I was increasingly convinced that he did so in part to distract the court from assessing his own evidence and his account of himself. While the ‘defence’ of asserting and maintaining bald denials to matters raised against him is not always easy, I found him to be unconvincing in this exercise. Moreover, he showed minimal empathy in his evidence, for the mother who, on any view, was obviously very distressed; he was brazenly self-justificatory in his explanations of his own behaviour. He showed little insight or contrition in relation to the incidents which had led to the disciplinary process in his prior employment which I consider below.

52.

I found the evidence of the father’s sister, Ms B, to be unsatisfactory too; as with the maternal family members, her evidence was obviously biased and the less reliable for it. I note an early text message from the mother in August 2017 in which she told the father how she experienced the ‘hate’ from his family (“your sister hated me from day 1”); this was consistent with the content and manner in which Ms B gave her evidence. She told me of an event in July 2018 when the mother was alleged to have punched and kicked Jane; given the tone in which all of her evidence was given I found it hard to credit her with accuracy of this account and I reject it. Not only is Ms B the father’s sister, she is also a director of the family company for whom the father works. This is a care agency working with vulnerable people in the community. I was astonished that she showed no knowledge, nor indeed any interest, in the fact that her brother had been disciplined and then dismissed from his previous employment arising from serious safeguarding incidents.

53.

Ms C was very clear that she had a good relationship with the mother until July 2018; she described how the events of 24 hours in which the mother stayed with her (21-22 July 2018) changed all that (see below). Ms C was clearly, and in my finding to some extent justifiably, angry that the mother had acted so inappropriately in her home which she lives with her partner and two young children. She refuted (again justifiably) the mother’s allegation that she had been locked in Ms C’s house. Perhaps predictably, Ms C had ‘taken sides’ in this dispute and her evidence – strongly supportive of the father,

and overtly critical of the mother – has to be seen in this light. Dr Proudman suggested that Ms C and the father had conspired together to remove Jane from the mother’s case on the evening of 21 July 2018; I reject that suggestion (I return to this below).

54.

Mr D is a close friend of the father and a police officer. There were technical difficulties in hearing his evidence clearly (and the video function failed altogether), which may have affected how he presented. It was nonetheless a considerable surprise to me that he was not able to identify the key issues of domestic abuse clearly or at all. While rightly pointing out that “all cases are different”, he struggled to articulate or identify even common themes or indicators in domestic abuse cases. Surprisingly for a man who claimed to be one of the father’s closest friends, he appeared to have no knowledge of the father’s disciplinary history or his dismissal from work. If this is right, it shows the ease with which the father can apparently lead a ‘double life’, shielding his disagreeable side even from those close to him.

55.

As I have summarised above, (see §6(v)), the evidence of the parties was in the end the most revealing and instructive. The Court of Appeal in *Re H-N* made clear (§6) that the outcome of such cases often turns on the word of the mother and the word of the father even if “the evidence may not be crystal clear”. This was my experience exactly. This case shows well that the evidence is likely to be significantly more nuanced than either parent would have the court believe.

The findings of father’s conduct at work

56.

The mother, through counsel, has invited me to consider the father’s disciplinary history at work as probative evidence of the allegations which she makes in these proceedings. I turn to this next, before turning to the core allegations in this case.

57.

In March 2015, the father was disciplined by his employer for harassing and bullying a work colleague; he was found to have sent, through the corporate email system, messages which were “offensive in nature and completely unacceptable in this work setting” (letter: March 2015: setting out outcome of disciplinary hearing). To his credit then, the father was said to have accepted full responsibility for his actions and apologised for his behaviour; he was recorded to have had (at that time) an unblemished work record. He was issued with a first and final written warning, and was transferred within the organisation away from the particular mental health unit where the incident took place.

58.

In July 2018 the father was further disciplined at work following an incident or incidents in which he had sent inappropriate “coded” messages with a sexual content and other inappropriate communications to a 16 year old (and obviously extremely vulnerable) female mental health in-patient, for whom he had a nursing responsibility. The evidence provided by the father’s employer appears to indicate that there were two incidents of confirmed inappropriate language with a young person or people; the indications from the evidence are that there could have been up to three separate females who complained of the father’s behaviour. The father denied this incident or incidents, asserting that the female patient(s) was/were “infatuated” with him and that the allegations were untrue.

59.

When giving evidence to me about this second incident, the father described how he and a colleague held conversations about the types of women whom they “preferred”, and about female genitalia, and did so in the rooms in which group therapy in the mental health unit in which they worked generally took place. He told me that “at the time, I would not have thought anyone could have heard it [i.e. their conversation]”. He explained how he and a colleague had also played cards and had written “stupid notes” to each other; he told me that he must have dropped one of the cards in the group therapy room by accident. His account of how the patient received the message was not believed by his employers disciplinary panel and he was dismissed from his employment. The father told me that he believed that the disciplinary process was unfair but did not appeal the decision to dismiss him.

60.

These disciplinary findings are plainly not determinative of the issues presented in the case before me. Insofar as they add to the enquiry in which I am engaged at all, they lend support for the contention that the father is a man who has a history of inappropriate attitudes towards vulnerable females, and of crossing personal boundaries with such vulnerable people. His responses in evidence to me when describing these disciplinary incidents show a low level of acknowledgement or insight into the same.

The mother’s allegations against the father

61.

In accordance with the general guidance of the Court of Appeal, and consistent with Poole J’s comments in *Re JK*, I consider these allegations within the context of a wider narrative. I found it useful to consider the evidence in subject headings:

i)

Emotional control/coercion;

ii)

Physical abuse;

iii)

Infidelity;

iv)

Financial control;

v)

Sexual abuse;

62.

Emotional control/coercion: The mother’s complaints about the father’s emotional control of her, and his coercion over her, cover a range of incidents and behaviours. At one point in her evidence she simply said that he “played with my emotions”, adding “he played my depression to his advantage”, and in my finding – having heard all of the evidence – I find that she was justified in that assessment. She referred to the fact that he would call her “woman” rather than her name, and would shout and scream at her. The father did not dispute that he called the mother “woman” but did so as “a joke”. I find that it was neither intended nor received as a joke. I find that at times they both shouted at each other.

63.

She complained that he isolated her socially and from her family; on occasions she said that he took her phone, her house keys and money leaving her with no means to visit friends or her family out of London. I find on a review of all of the evidence that is all probably true. Once Jane was born, she complains with justification that he was unsupportive to her: "he did his own thing, I was left to raise [Jane]". The mother at times threatened to leave the father – which she now describes as a "cry for help"; all of that rang true too, both in the manner in which the mother delivered the evidence and in the context of the relationship as a whole. The mother told me (the father confirmed) that she would regularly call the father on his mobile phone; it seemed to me that she probably called excessively while he was at work, and the father reacted badly to this. She told me, and I accept that:

"When I rang him to find out where he was he used to say to me that every time I ring 'I[he] will add an hour onto your [my] waiting time' for him to give me our keys. [The father] would ignore my calls and he would only answer when he wanted to".

Although the father denied that he had said this, I find that this was one of the ways in which he exercised control over the mother.

64.

The mother referred to the fact that the father called her 'names' (i.e. unpleasant names); I was shown a great deal of social media messaging in which they both are offensive to one another, with much 'name-calling', and I cannot find that this was specifically evidence of abuse of the mother. That said, the mother told me that the father compared her sexual performance to his other sexual conquests, particularly unfavourably with black women with whom he had shared intimate relations. I accept this; it has the ring of truth. She told me that he made her feel ugly, and unattractive.

65.

An element of this emotional control included the father's claims to her and to others (including to the police (1 May 2017: see below) and to the MGM) that the mother was suffering from a bipolar mental health disorder. I noted in particular one of the police log entries records the following report from the father about the mother:

"...she has an issue with alcohol in general. It completely changes her personality. She used to have an issue with cocaine in the past. She is diagnosed with type II bipolar however she has been missing appointments. ... On Monday 24 April, [the mother] took an overdose of the medication she is currently taking called sertraline."

Almost all of that report is completely false. That said, on the occasion in question when the police attended the home mother was

"... crying and looked distressed. It was clear she was heavily intoxicated and unable to hold a coherent conversation for more than a minute or two. [The mother] wasn't shouting not to take her baby away from her and generally being quite emotional without good reason."

The father had further reported:

"She is irrational when she has had a drink. With her mental health, it's not a good mix.... Her mental health is becoming more of a problem."

66.

I am satisfied on the evidence that the father did indeed repeatedly allege that the mother suffered from bipolar disorder; I further and significantly find that there was no clear medical evidence that she did suffer such a condition. Although there was a provisional diagnosis at one time (though unclear on what basis), the mother's GP explicitly reported that he did not consider that she had a bipolar disorder. On the evidence which I have seen, it seems to me likely that the mother did suffer from depression, anxiety, and mood swings; her mood was affected by excessive drinking and/or very occasional drug-taking and/or by the inconsistency of the father's relationship with her. In this state, at times she threatened to self-harm. I find that the father made this purported diagnosis in an attempt to characterise her to third parties as mentally unstable and/or unreliable; I find that it was immensely disparaging and undermining of the mother, damaging to the mother's self-confidence and self-esteem, and caused her to doubt her own mental health ("he made me believe that I was mentally unwell ... He convinced me that I had bipolar when I was never diagnosed with it... He made me out to be mentally ill"). Dr. Proudman's use of the term 'gaslighting' in the hearing to describe this conduct was in my judgment apposite; the father's conduct represented a form of insidious abuse designed to cause the mother to question her own mental well-being, indeed her sanity. The assertion to the mother and others were ostensibly given greater credibility by the fact that at the time the father was a mental health nurse; he may be thought (and doubtless wanted to be thought) to have drawn on specialist expertise or experience to make his diagnosis/assertion.

67.

Physical abuse: The mother alleged that from time to time the father 'pushed' her about in the flat, but I heard little or no evidence about this, and on the limited material I could not make any findings. I deal with the issue of sexual abuse separately. Therefore, in this section I focus on an incident about which I heard much evidence from the mother, father, and Ms C, namely the mother's allegation that the father and his friends (Ms C and her partner) physically falsely imprisoned the mother in the friends' home in July 2018 for a period of about 24 hours, having removed Jane from her care.

68.

In relation to this incident, I find that the parents went to the home of Ms C and her partner for an evening; possibly for a barbeque. During the course of the evening the mother became very drunk indeed; it is likely that both the mother and the father took cocaine. I am satisfied that the mother's state of inebriation caused her to be unable to care for Jane; indeed, on the father's case the mother pushed Jane away and swore at her during the evening but I am unpersuaded of this and make no finding. When the mother fell asleep "half on the floor and half on the sofa" the father removed Jane to his own flat for her own safety in the middle of the night. The mother woke and reacted hysterically to finding that her daughter had been removed; she threatened suicide. This reaction was in my finding provoked or exacerbated by the effects of drink/drugs, and/or her sense of shame at having neglected Jane. The mother claims that the father's friends denied her access to a phone to telephone the father; this is not supported by the evidence and I reject this. I nonetheless find that the father then wrongly manipulated the situation by failing to respond to the mother's desperate attempts to contact him and Jane, and declined to hand Jane back to her mother when requested. The father's friends were so concerned about the mother that they called the ambulance service as they felt that she needed medical help. The police attended the home; significantly, although the mother later alleged that Ms C and her partner had falsely imprisoned her, she did not ask the police to help her to leave. The police concluded that the "character of the complainant (the mother) called into serious question" ... "She was not of clear mind". The mother further alleged that when she went to retrieve Jane from the father's home later that day, he locked her and the MGM into the house. I reject this

too. I have seen photographs of the door. The door could easily be opened from the inside; there was no separate key.

69.

I note that Jane's nursery teacher had reported that she was unsettled in nursery after this incident. Although the mother to some extent contributed to the disruption in Jane's life over this period, I am satisfied that the father took advantage of the mother's vulnerability and manipulated events to his own advantage.

70.

Infidelity: The mother complained that during the relationship the father degraded her by being unfaithful to her during their relationship. She pointed to the fact that at a time when he claimed to have been at work on 31 October (Hallowe'en) 2016, he was in fact photographed at a party semi-naked being massaged by a woman. The mother was waiting up for him, at home; she was 5-6 months pregnant at this time. The father accepts that he was at the party and accepts that he was massaged, but claims that it was impromptu invitation (hence he had not advised the mother of his intention to go), and the woman massaging him was an old friend with whom he was not in a relationship. The father told me that he should have kept the mother informed of his whereabouts, and acknowledged that, in relation to this incident, he could have been "a better boyfriend". I find that the father did attend the party, and both at the time, and in his evidence to the court, he was wholly inconsiderate about the impact of this revelation on the mother. I make no finding that the father had any sexual relationship with his 'masseur' on that or any other night. But this incident was illustrative of the father's chauvinistic attitude to the mother and to their relationship which I find underpinned much of his attitude, and his lack of sensitivity, towards her.

71.

The mother further pointed to an apparent relationship which the father was said to be having with a woman in Uganda. The mother had found messages for the father from this woman. The father again accepted that he knew the woman in question, but disputed a current relationship (he claims that she was an ex-girlfriend, and had "assumed that the relationship [with her] had come to an end"). The father told me that he accepted that his ex-girlfriend in Uganda thought that she and the father were still in a relationship, albeit he assumed that it had come to an end. He told me that he could understand why the mother thought he was being unfaithful with this woman. I find that the woman probably was an ex-girlfriend given that the father had limited scope for maintaining the relationship with her long-distance.

72.

It seems likely, on the evidence that I have seen and heard, that the father had sexual relations with the mother in 2018 after he had commenced a relationship with a woman who is now his fiancée; this was at a time when the mother was still craving a resumption in her relationship with the father (and she had no relationship with anyone else). I find that the father knew that the mother wished to rekindle the relationship, and by having sexual intercourse with her at this time he wrongly led her to believe that he still had feelings for her. This also illustrates the father's lack of moral code and his capacity to prey on those who he sees as vulnerable.

73.

Financial control: The mother alleged that the father exploited her financially. She told me that during the relationship she paid his rent for quite a period (when they were living in separate flats), at a time when she said that she was struggling to pay her own rent. She told me that she regularly gave him

cash. She told me that she had to pay bills which she felt were primarily his responsibility. The mother explained that the father had told her that he was unable to work at the early stage of their relationship because his DBS checks (for his employment) had not been completed; it is now known that he was in fact probably in receipt of an income throughout the relevant period but he may not in fact have been working because he had been sanctioned at work (awaiting transfer to another unit) or (later) dismissed (see above).

74.

The father denied that he had abused the mother in this way; Mr Mutton pointed me to entries on the father's bank statements which by contrast showed him making payments to the mother, and making his own payments of rent to his landlords. I saw no evidence of cash withdrawals from the mother's statement to support her contention that she gave the father cash, either regularly or at all. That said, I accept her evidence that it was she who more often than not bought food for the couple. I further accept, as the mother alleged, that the father often took the mother's bank card from her (nicknamed the 'goldfish' doubtless because of the image on the card) and used it for his own purposes, including his own personal entertainment.

75.

I find that the mother paid her own rent and I accept that there were probably short periods of time in which she paid or contributed to the father's rent too; save for my finding about the use of the credit card, I reject the mother's allegation that she funded his "drug and alcohol habit".

76.

I am satisfied that the father was thoughtless and uncaring about taking money from the mother but am not satisfied that he abused her financially to the extent that she claims. However, I do note that during a period in which the father was making no financial contribution for the upbringing of Jane and indeed was in arrears, he made at least two trips to Uganda, ostensibly for family events. Contemporaneous social media messaging suggests that the father was planning to enjoy, while in Uganda, "a few weeks of absolute degeneracy... breaking the laws of decency one party at a time...". Though he claims that his family funded the trips, this provides a very strong clue about the father's financial irresponsibility, his lack of empathy for the mother, and his general absence of moral integrity.

77.

Sexual abuse: The mother asserts that on several occasions when the father was angry with the mother, he would force her into sexual intercourse. On these occasions father would be rough with her, choking her and pulling her hair during sex. On occasions he would require her to give him oral sex. The mother claims that these events happened from early in the relationship through to the end. The mother first reported this late in 2018. She said that it was "a control thing".

78.

In her statement of evidence, she said this:

"I did not realise that [the father] forcing me to have sex and perform oral sex against my will was in fact rape and sexual abuse. I thought that because [the father] and I were in a relationship, even when I told him no and that I did not want him to do these things to me that it wasn't rape or abuse. I always felt physically violated, scared, and emotionally distressed after he did these things to me. I just didn't know I could do anything about it."

The mother gave me a detailed account of an occasion when the father forced her against a table and overpowered her, forcing his penis inside her.

79.

The father pointed out to me that the mother complained that an act of forced oral sex was said to have taken place in January 2015, when – on her case – the parties had not yet commenced their relationship. Mr Mutton, on the father's behalf, challenged the mother's recollection of dates and occasions when she says the father had been abusive to her sexually, and referred me to text exchanges where she refers to the lack of sexual relationship (on one occasion, she asks him why he is "not horny", and on another asks whether the father is "going off her" because they "never do anything" at all). I am persuaded (as I have earlier found) that the mother had a poor recollection of dates and sequence of events. I am not satisfied that the text messages contra-indicate the mother's allegations of sexual abuse; they tend to show the father's changeability, and unpredictability.

80.

The father accepts that the parties did engage in 'rough sex', but he says that it was the mother who asked him to be rough with her in that way, and that this form of sexual relation was consensual; he told me that it was not a sexual preference for him and only ever happened when she asked. He further pointed to the fact that the mother's account of forced sexual intercourse given to this court was inconsistent with the account she gave to the police. Further he reminded me that none of the allegations of sexual abuse feature in the mother's evidence until late September 2018, notwithstanding that she had filed two reasonably detailed statements of evidence prior to that date. Although the father denied that he forced the mother into sex at any time, or that he "raped" the mother or assaulted her sexually, his case about this was to some extent undermined by his failure (or indeed possibly his inability) to identify the mother as a vulnerable woman.

81.

As I said in *F v M* [2019] EWHC 3177 at §29, in a passage endorsed by the Court of Appeal at §69 of *Re H-N*:

"There is a risk in a case such as this, where the alleged conduct at the heart of the fact-finding enquiry is, or could be, of a criminal nature, for the family court to become too distracted by criminal law concepts. Although the family court may be tempted to consider the ingredients of an offence, and any defence available, when considering conduct which may also represent an offence, it is not of course directly concerned with the prosecution of crime."

82.

Although the mother's account of sexual abuse is in some respects lacking in detail, is in some respects inconsistent with what she told the police, and is plainly inaccurate on dates, I am satisfied on the evidence which I have received that:

i)

On occasions the father forced himself on the mother for sexual intercourse, uncaring whether she was consenting or not; this sometimes happened after arguments, as a false display from the father that 'all was forgotten';

ii)

The father initiated 'rough sex' with the mother; I reject the father's account that the mother had initiated this. I am satisfied that it was for his own gratification. The mother was a vulnerable and naïve woman who was inexperienced in relationships and inexperienced sexually. Both parties told me

(and I accept) that the mother was self-conscious about her body. All these factors lead to me to the conclusion that sexual intimacy which involved physical abuse of the mother ('rough sex') was initiated by the father and was probably not consensual;

iii)

The father at times expected the mother to give him oral sex; materially, he told me that he knew that she did not enjoy this experience, but he regarded it as a 'treat' for himself;

iv)

I am not satisfied that the mother overtly or clearly protested at the father's sexual demands at the time. She was desperate for the relationship to succeed and did not question his conduct in this regard until much later. The delay in voicing her unhappiness, and reporting it to the police, is likely in my judgement to be attributable to a combination of her lack of appreciation that her experience was not 'the norm', coupled with shame and embarrassment.

The father's allegations against the mother

83.

It is the father's case that the mother has been verbally and physically abusive towards him and has demonstrated controlling behaviour, in particular by using contact as a form of control. The father points to a number of inconsistencies across the mother's various witness statements, and across the police disclosure which he says cast serious doubt on the veracity of her allegations. He has analysed these inconsistencies with care in his most recent statement. He uses this in an attempt to buttress his own case.

84.

Verbal abuse: It is of note that the mother does not deny that she has at times been verbally abusive to the father during arguments, but asserts that she was only ever acting in a retaliatory way; she accepted that she had shouted at him so as "to defend myself". I am not persuaded that the mother 'abused' the father verbally any more than he 'abused' her in this regard. Both parents were verbally abusive to each other at times, and it would be wrong for me to ascribe blame to one rather than another. The voluminous reams of printed text exchanges which I was taken through abound with examples of expletives and obscenities which the parents hurled at each other; while the father is seen to be insensitive and at times aggressive in his correspondence, the mother is equally shown to be capable of insulting father, mocking his sexual performance, the size of his penis, and insulting his family.

85.

Physical abuse: I am satisfied on the evidence that, when drunk or under the influence of drugs, the mother was physically abusive towards the father, and on at least one occasion (May 2017) threatened him with violence using a knife. I am satisfied that she threw water over the father in July 2017, and punched and kicked the father in the following year when he told her that he would not reconcile with her. I emphasise that these incidents occurred when the mother was drunk, and in a heightened state of arousal.

86.

1 May 2017 specific incident: The father referenced the events of 1 May 2017 to illustrate his case that the mother had been abusive towards him. On 1 May 2017, the mother and father had a night out to celebrate the father's birthday; I find that the father was (as the mother alleges) inattentive to the mother, and flirted with other women. The evidence reveals that the mother became drunk (she was

later described by the police as “highly intoxicated” and incoherent), and on return home, she was angry, and they argued; she behaved irrationally and aggressively and threatened the father. I am satisfied that the parents were verbally abusive to each other; I am satisfied that the mother pushed over a television in the argument; I am satisfied that the mother threatened the father with a knife. The father called the police and quite wrongly told them that the mother suffered from a bipolar condition. I do not regard this incident as illustrative of “domestic abuse” of the father by the mother; I find both were responsible for the ugly scene and their behaviour towards each other.

87.

21-22 July 2018: The father cites the events of this overnight stay as further evidence of the mother’s verbal and physical abuse. He alleges that the mother behaved in an irrational way at the home of Ms C and her partner; I have dealt with this incident earlier, and broadly agree that she did. However, I am satisfied that the father obtained cocaine for his use and the mother’s use at that time, and he encouraged the mother to take it and to that end must shoulder some of the responsibility.

88.

Dr Proudman suggested that there was a prearranged plan hatched by the father with Ms C and her partner to remove Jane from the care of the mother overnight in July 2018, and that causing her to be under the influence of drink or drugs was the agreed method to achieve this. I reject the allegation of this form of conspiracy, and conclude on the evidence that the father merely removed Jane from the home opportunistically when he saw the state the mother was in.

89.

When the father made an emergency application to court a few days later, it is notable that he failed to refer to his recent dismissal from work on safeguarding concerns; he referred to the mother’s drinking and cocaine use, but failed to mention his own; he applied for an order requiring the mother to disclose the child’s whereabouts when he knew exactly where she was; he applied for a Prohibited Steps Order to prevent removal of Jane abroad, notwithstanding the absence of any evidence of such a threat. The form of application was revealing of the father’s capacity to mislead the court on matters of importance.

90.

Using contact to control the father: The father complains that the mother used his relationship with Jane to control and punish him. He complains that he had no contact with her from September 2017 through to February 2018, and from March to May 2018. The father told me that the mother had said to him that “they [the mother and Jane] come as a package”, and that if he wished to see Jane, he would have to see the mother too. I accept this evidence which is consistent with my view that the mother was desperate to reconcile with the father after May 2017 and wanted to deploy any strategy available to her to be with him. The mother told me that she had at times threatened to “cut off” the father’s contact with Jane (“when I got annoyed... I said a lot of stuff that I did not do”).

91.

At the time, the father turned to social services to help him to resurrect the relationship with Jane; I wondered whether the fact that he had engaged social services contraindicated his abusive conduct towards the mother over the relationship as she alleged, but concluded that it simply reflects his lack of insight into his own behaviours. The father could have pursued contact through the courts, but he did not do so. Nor did the father make any financial contribution towards the maintenance of his daughter in the relevant period, nor did he send her gifts or cards. So, although the mother did use contact as a form of control, the father did not avail himself of effective remedies to address this.

92.

I should say by way of completeness that the mother complained that the father failed to attend Jane's birth, and (she asserts) this was illustrative of his lack of interest and/or commitment to Jane. I reject this specific allegation. Jane was born in Kent; the father was working in London. There had been one 'false alarm' and the father had indicated his readiness to set off then to the hospital. When Jane was actually born in the middle of the night, I am satisfied that the father was working (night shift) and then had a prearranged commitment to care for his nieces and nephews the following day. I am satisfied that he visited Jane as soon as he reasonably could.

93.

Control: The father complained that the mother would constantly monitor his whereabouts and be demanding of him; I have seen the phone records which shows that she often tried repeatedly to phone him while he was at work; she texted him often in increasing state of agitation requiring his attention. The mother was forced to accept this, and further accepted that on occasion she threatened to harm herself; she described this as a *Cri de Coeur*. I find that the mother did indeed become paranoid about the relationship. She was desperate to cling onto the relationship, albeit that it was – as she now sees in hindsight – a thoroughly dysfunctional and unhealthy one.

Conclusion

94.

I have been careful to consider the evidence relevant to each specific incident to which my attention was brought; but I have treated the incidents not as 'free-standing' events but as part of a wider pattern of alleged abuse or controlling or coercive behaviour. In this judgment, I have not sought to deal with every argument or detail of the case; it has not been possible to do so. I proceed, as the Court of Appeal contemplated I should, on the basis that the court should consider whether a pattern of coercive and/or controlling behaviour can be demonstrated on the evidence, and have not merely focused on any singular particular factual incident (see *Re H-N* §31).

95.

The mother spoke in her evidence of the 'power imbalance' in the relationship, and I am satisfied that the evidence amply reveals this. The father is several years older than the mother and considerably more worldly; I find that he was manipulative of the mother during their relationship and this tapped into her vulnerability. I am satisfied that during the relationship the mother was caused to live at times in a state of worry and anxiety, and, as she put it herself:

"... often terrified and deeply confused by constant contradictions, not able to speak my mind or think clearly. I was controlled through fear, intimidation and bullying."

96.

I find that the father was abusive to the mother in the relationship in a number of different ways as I have described it above. The father was selfish in the relationship. I am aware 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." (*Re H-N* §32).

In this case, I am satisfied that the father's behaviour went beyond the "directive, assertive, stubborn or selfish behaviour" which is occasionally seen within relationships. I felt that he cynically paid little heed to the vulnerabilities of the mother, to his responsibilities as the mother's partner and his

responsibilities as an imminent father. I find that he exploited the mother's naivety and relative youth; he was patronising and dismissive of her.

97.

I am satisfied from the medical evidence filed, which entirely corresponded with my own assessment of the mother, that by reason of the father's conduct towards her and in the relationship she has been caused severe anxiety, depression, and trauma.

98.

It is obvious to me that when the mother came to London, she was both young and naïve. She was (and is) a vulnerable young woman with low self-esteem. She had plainly had a difficult relationship with her own mother. The mother had no support network in London, with neither family in London nor friends. In my judgement, the father took advantage of the mother's youth, vulnerability, and naivety and the relationship was one (from the outset) where he was the dominant partner. The mother was, I sensed, quickly infatuated with him, and perhaps particularly because of the inconsistency in which he treated her, and his changeable attitude to her, she became obsessed with him and with keeping the relationship going, defaulting to jealousy and anxiety if he was not physically with her. She became possessive of the father. This does not mean that she was not abused by the father, as he sought to persuade me. Indeed, the mother's description of the relationship is to my mind entirely recognisable as the behaviour of someone caught up in the whorl of abuse, who has lost any objective sense of what is acceptable and unacceptable in a relationship. I remind myself that she had no experience against which to judge this relationship and in all likelihood become co-dependent on her partner in an unhealthy way. I find that her self-esteem and sense of worth has been eroded to the point where she could not look beyond the relationship with the father; she became immunised to the emotional volatility of a relationship which she had come to believe was normal and acceptable. She simply sought to cling to what she knew.

99.

Given my findings of domestic abuse, it will be necessary for me to consider the impact which that abuse has had on the mother and on Jane. To some extent I have been able to see the effect on the mother already given her obvious and extreme distress in court. In light of that evaluation, it will be necessary for me to determine what orders are to be made for the future protection and welfare of the mother and Jane.

100.

In this regard the findings above will need to be considered, bearing in mind that:

"Domestic abuse is harmful to children, and/or puts children at risk of harm, whether they are subjected to domestic abuse, or witness one of their parents being violent or abusive to the other parent, or live in a home in which domestic abuse is perpetrated (even if the child is too young to be conscious of the behaviour). Children may suffer direct physical, psychological and/or emotional harm from living with domestic abuse, and may also suffer harm indirectly where the domestic abuse impairs the parenting capacity of either or both parents." §4 of PD12J.

101.

This is an issue on which I will require further evidence and submissions.

102.

That is my judgment.

- ¹ It is agreed by the parties that the subject child of the proceedings should be given a forename rather than an initial. The name 'Jane' was proposed by the parties at the hearing.
- ² Poole J referred to 'lists' (rather than 'clusters') of the forms of abuse in Re JK.
- ³ A point emphasised by the Court of Appeal in A v A Local Authority, X, Y, S[2022] EWCA Civ 8, handed down shortly before this judgment, especially at §38-41
- ⁴ Per the Court of Appeal in Re H-N at §6.
- ⁵ Per the Court of Appeal in Re H-N at §11
- ⁶ At least in part. I have not investigated the shareholding.
- ⁷ Re B (Care Proceedings: Standard of Proof), [2009] 1 AC 11, [2008] 3 WLR 1, [2008] 2 FLR 141, at paras [2] and [70].
- ⁸ Re W (Children) (Abuse: Oral Evidence) [2010] UKSC 12
- ⁹ Lancashire County Council v D and E[2010] 2 FLR 196 at paras [36] and [37];
- ¹⁰ Lord Brandon of Oakbrook said in The Popi M, Rhesa Shipping Co SA v Edmunds, Rhesa Shipping Co SA v Fenton Insurance Co Ltd [1985] 1 WLR 948, 956; Re B (Care Proceedings: Standard of Proof), at para [2] per Lord Hoffmann.
- ¹¹ Re B (Care Proceedings: Standard of Proof) at paras [2] and [32]; Rhesa Shipping Co SA v Edmond and Another: The Popi M [1985] 1 WLR 948
- ¹² See Lady Hale in In re B (Children) (Care Proceedings: Standard of Proof) (CAFCASS intervening) [2008] UKHL 35, [2009] 1 AC 11, para 31. But this does not affect the legal standard of proof, as Lord Hoffmann emphasised in the same case (para 15):
- ¹³ Re Dellow's Will Trusts; Lloyd's Bank v Institute of Cancer Research[1964] 1 WLR 451 at 455;
- ¹⁴ 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]
- ¹⁵ See Peel J in K v R [2021] EWFC 106 at §22 (published following the submissions in this case).
- ¹⁶ At a previous family court hearing, the Judge had said to the mother that 'if this goes on the child will be taken into care and adopted'. See §110 of Re H-N.
- ¹⁷ It is said to be better now...