The Judgment in this matter is being distributed on a strict understanding that in any report no person other than the attorneys (and any other person identified by name in the Judgment itself) may be identified by name or location and in particular the anonymity of the child and the adult members of their family must be strictly preserved.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION

CAUSE NO: FAM 2022-0069

BETWEEN:	**SC**	**Appellant**
AND:	**JW**	**Respondent**

Appearances:	**Ms. Yvonne Mullen of Hampson & Company for the Appellant** **Ms. Louise Desrosiers of Travers Thorp Alberga for the Respondent**
Before:	**Hon. Mr. Justice Richard Williams**
Heard:	**25-26 July 2023, 17-18 October 2023, 31 October 2023, 1-2 November 2023, 13 December 2023**
Written submissions Received:	**Appellant - 20 November 2023 & Speaking Note 13 December 2023;** **Respondent - 4 December 2023**
Draft Ruling circulated:	**27 March 2024**
Judgment provided:	**2 April 2024**

HEADNOTE

Appeal by mother from Summary Court s.10 Children Act orders - Application for Father for variation of Summary Court contact and child maintenance order – Allegation by Appellant of coercive and controlling behaviour - Fact finding hearing at request of Appellant

JUDGMENT

Introduction

1. This judgment follows a finding of facts hearing concerning allegations made by the Appellant of a pattern of coercive and/or controlling behaviour by the father during and post the parties' relationship.

Background – The parties and the child

2. The proceedings concern the six-year-old daughter of the Appellant mother and Respondent father. The father is aged 32 and is a Caymanian national. The mother is aged 43 and is a Canadian national. The mother is a permanent resident in the Cayman Islands, and she is also a British Overseas Territories Citizen. I will herein refer to the parents as "the mother" and "the father" and to their daughter as "the child."

3. The parents had a brief relationship which started in July 2016 and the child was conceived unplanned in September 2016. The father lost his employment, as his employer was unhappy that he was having a child out of wedlock. The father moved into the mother's home in May 2017, the same month in which the child was born. The relationship ended shortly thereafter upon the parties' separation in December 2017 when the child was about 6-7 months old. The mother states that the father had entered into a relationship with someone else at that time. The mother added that during their relationship the father did not provide her with the support she needed, and his conduct resulted in her feeling isolated from her friends and family. The father said that his other relationship did not become official until February 2018.

4. The father said that when it came to care arrangements, he was not the controlling parent. Instead, it was the mother, who he said was *"self-assured and assertive"* and who would not allow him to make any decisions about the child, and it is this that caused the relationship to suffer. He stated that an example of this was when the mother, in November 2017, paid him $1,500 to be the child's nanny and that he felt degraded by the way she treated him. The father said that the mother physically struck him and threw things at him. On the evidence before me I am unable to make findings about his allegations (which the mother denies and claims are examples of him controlling her by making false allegations), but what is evident is that their still embryonic relationship was a difficult one characterised by arguments and disagreements between them. Unfortunately, the difficulties in their communication and lack of cooperation about the child which emerged when

they were cohabiting has continued from the end of their relationship to date. From seeing and hearing from them in Court, it stands out that the parties have very different personalities and backgrounds. Although the relationship was a short one, one might conclude that it only lasted as long as it did due to a child being conceived a handful of months after it had commenced.

Background – The proceedings

5. Before the Court can consider the facts that it is asked to make findings about, it must consider the background to put them into context. At first it appeared that the parents may have been able to make workable child contact arrangements. Regrettably, after the initial agreed child contact arrangement had concluded, the mother *"halted"* contact and there seemed to be little scope for them to agree it without Court intervention. The mother from that stage onwards has expressed that her position surrounding contact has been driven by her concern about the safety of the child whilst in the father's care. The father feels that throughout, for the mother to agree his contact, he had to be *"compliant"* with the mother's *"wants and needs"* and if he sought contact inconsistent with her wishes, she would strategically make allegations against him.

6. As a consequence of the breakdown in contact arrangements, these proceedings began in the Summary Court[1] by Forms C1 and C3 Applications filed on 13 February 2018 by the father[2] ("the Forms") seeking a defined contact order and a prohibited steps order. The Forms plead no basis upon which a prohibited steps order could be grounded. Unfortunately, in many children cases involving an expatriate parent, prohibited steps applications are often made without any evidence or foundation, due to being wrongly perceived as being a standard application in such circumstances. Although it is not an appropriate approach, I would not elevate such an application made at the outset of proceedings and soon after a relationship breakdown as evidence to be relied upon in support of an allegation of litigation abuse. In fact, as mentioned in paragraph 8 below, the making of the application turned out to be the vehicle which enabled the parties to put in place a mechanism for travel requiring the mother to provide the father with notice and details of the child's travel.[3]

[1] Case No. SCL 02/2018.
[2] The father was acting in person.
[3] Later, on 4 December 2020, the father added, by Form C3 Application for Shared Residence - see paragraph 18 below.

7. On 20 February 2018, the mother, by a Form C3, filed an application for: (i) a sole residence order in her favour; (ii) defined contact orders; and (iii) a Schedule 1 financial provision order. In her contentions, the mother alleges that the father had her served with his application at her work despite her then having legal representation, and that this is an example of conduct by him amounting to litigation abuse. However, the evidence on the C8 Statement of Service Form indicates that service was effected by Mr. Bradley Robinson on 15 February 2018 by personally providing the documents to Lenisha Ebanks (a secretary at McGrath Tonner) after Mr. Robinson had spoken to the mother and she had informed him that they were her lawyers.[4] The Court did not hear from Mr. Robinson and I do not make a finding about where the service occurred, but even if it was at the mother's work place, the serving was carried out by a court appointed process server and not by the father.

8. On 26 March 2018, an Interim Residence Order was made by Magistrate McFarlane in favour of the mother with defined contact granted to the father on Wednesdays from 5:30 p.m. to 7:30 p.m. and on Saturdays from 7:00 a.m. to 12:00 p.m. noon The Magistrate's Order recorded that the father withdrew his prohibited steps application on the basis that the mother agreed to provide him with advance notice and travel itineraries of any proposed travel out of the jurisdiction with the child, which was a sensible resolution. A referral was made for a Court Welfare Officer's Report to be filed by 7 May 2018. The matter was listed for Case Management on 10 May 2018.

9. Following genuine concerns relating to the child's health, the mother sought an urgent listing of an application to vary the contact order. Both parents were making accusations that the other may be poisoning the child. On 6 April 2018, Magistrate McFarlane amended the contact order to require that: (i) the Saturday contact be supervised by a member from DCFS; and (ii) the child only be fed types of food approved by the child's paediatrician. The Magistrate adjourned the matter to 20 April 2018 for further consideration with an updated Welfare Report.

10. On 19 April 2018, the father filed a C3 Application Form seeking: (i) a shared residence order for himself and the paternal grandmother; (ii) a discharge of the supervision condition for the Saturday contact; and (iii) a variation of the interim contact order to one for him and his mother to have

[4] It is not clear when the mother instructed McGrath Tonner as their Notice of Acting was dated 20 February 2018 and was filed on 21 February 2018.

contact every weekday from 2:00 p.m. to 6:30 p.m. and every Saturday from 7:00 a.m. to 12:00 p.m. noon. At the time, the father was aggrieved that, despite there being no determination as to who or what was causing the child's medical issues, it was being inferred that he was the more likely cause, resulting in his contact being curtailed due to the variation being made to the 26 March 2018 contact order.

11. On 20 April 2018, Magistrate McFarlane, after considering the content of an Interim Welfare Report filed on 19 April 2018 by Ms. Carol Robinson, removed the supervision requirement and restored the 26 March 2018 Contact Order. The supervision requirement was removed after the child's doctor had stated that the child's health issues might be caused by her having an egg allergy. Although the nature of the ill-thought out and poorly brought shared residence application was questionable, the father should not be criticised for making the variation of contact application because, without it, the restoration of the earlier order may not have occurred. I accept that the making of the shared residence application would have been unsettling to the mother, especially after she read the content of the Form C3 Application. The father's Form C3 Application failed to mention that the father had also made allegations of poisoning against the mother. There is a duty to give full and frank disclosure in such applications and it was misleading to fail to comment that he had made the same allegations about the mother. This is particularly so when he sought to use the mother's alleged actions to ground his submission that there were mental health concerns relating to her. It is understandable that the father's emotions were raw at the time because the Court had recently changed his contact to be supervised following an application made by the mother due to her concerns that the child's ill-health was caused by his care of the child. The father knew that he had not done anything wrong to cause harm to the child's health and it may also be understandable that, at such an emotional time after the relationship breakdown, he would form a view that the mother was seeking to obstruct his relationship with the child. It is correct to say that the shared residence application with the paternal grandmother (and the grandmother's leave to apply application) appears not to have been withdrawn, but it is evident that it has 'fallen away' as it has clearly never been pursued after that hearing.[5] That said, having regard to the nature of that shared residence application, it is important that, when I consider the later applications made by the father in the proceedings, I scrutinise them to see whether there might be a pattern of behaviour

[5] The Magistrate stated at that hearing that: *"The matter of leave as it concerns (the paternal grandmother) will be considered by the Court at a subsequent hearing, subject to the outcome of the mediation process."*

developing emanating from him, whereby applications are being used partly or greatly to put emotional pressure on the mother. The parties were reminded about their mediation (MIAM) appointment and the Magistrate adjourned the matter for further review on 10 May 2018.

12. On 9 May 2018, a more detailed Welfare Report was filed by Ms. Robinson. In the report the Court was better informed that, following allergy tests undertaken by the child, Dr. Watkins had concluded that the child had a low tolerance for egg white and that this is what had caused the vomiting. At the request of the parties, the 10 May 2018 Case Management hearing was vacated to enable them to attend mediation.

13. On 30 December 2019, the father's attorneys (KSG Attorneys) filed a Form C3 Application dated 23 December 2019 to vary the contact orders. He sought an increase in the level of contact citing that he had set up a bedroom and playroom for the child at his mother's property and that he would like to have more time with her *"to foster a better relationship with her"*. He proposed: (i) daily unsupervised contact on Monday to Friday from 4:30 p.m. to 7:30 p.m.; and (ii) alternate weekend contact from Friday at 4:30 p.m. to Sunday at 12:30 p.m. or alternatively every weekend from Saturday at 12:30 p.m. to Sunday at 1:00 p.m. He sought additional orders including: (i) orders about contact on special days; and (ii) specific issue orders concerning the child's activities and temporarily removing the child from the jurisdiction. Although a court may not have varied the order to the degree sought by the father, he should not be criticised for asking the Court, over 18 months after the original fairly limited order had been made, to again review the contact arrangements.

14. The father's application was listed to come before the Summary Court on 13 January 2020. It appears that the matter was administratively removed from the list by the Court, because there was no confirmation from the attorney that the application was proceeding. As that had been done, on 23 January 2020, the father's attorney sought a listing of his application as a *"matter of urgency"*. Having regard to the fact that a hearing had been vacated there is nothing inappropriate in seeking a more expedited hearing shortly thereafter. The hearing was relisted for 21 February 2020, but the parties agreed to reschedule that to a new date on 20 March 2020 to enable the parties to again attend mediation. However, due to the Covid-19 Regulations being put in place, the March hearing could not take place.

15. Issues concerning contact arose due to the Covid-19 restrictions and the parties' differing views about how the contact arrangements could then operate. The mother's position is that it had been agreed on 16 March 2020 that she would self-isolate with the child *"whilst the Covid-19 crisis was going on"* and that the father's contact would vary to being just regular Facetime contact. The father attended the mother's home on 11 and 15 April 2020 seeking direct contact with the child. Therefore, on 20 April 2020, the mother filed an application by Summons for protection orders prohibiting the father from attending at her home until the *"Covid-19 crisis"* was over. She also sought an order prohibiting the father from publicly posting pictures of the child or narrative about the proceedings. In addition, the mother applied, filing a Form C3 Application, for a variation of the 20 April 2018 contact order to cease direct contact with the father.[6]

16. The matter came before Magistrate McFarlane for a remote hearing held on the same day as the mother's application was filed. The Contact Order was varied to enable contact to take place in the common area of the mother's property on Mondays, Wednesdays, and Fridays for one hour from 3:30 p.m. to 4:30 p.m. commencing on 4 May 2020. That Order was to last until there was an official end to the social restrictions imposed by the Government. An order was also made prohibiting the father from making any posting on social media of the child or in relation to these proceedings. There is no criticism to be levelled at the mother for filing the application, due to the father's inappropriate attendances at her home and because it was clear that the Court's assistance was required to review what the contact arrangements should be considering the prevailing circumstances and changing Government restrictions. I note that the mother benefited from the Court giving her a hearing on extremely short notice.

17. On 4 May 2020, just over two weeks after her previous application had been heard, the mother made a further urgent application. Her attorneys required the application to be dealt with on the same day as the day upon which her application was filed because she was seeking an order to stop the contact visit which was scheduled to take place that afternoon. Magistrate Hernandez heard the matter on 4 May 2020 at 12:45 p.m. and her Record of Hearing shows that the mother filed *"documents…in relation to contact…"*. I have not seen those *"documents"*. The Magistrate's Record states that oral evidence was taken from the father in which he indicated that: (i) he had

[6] These events in April 2020 and resultant applications are expanded upon at paragraphs 104-109 below.

been on a short warm-up bike ride on 20 April 2020; (ii) he understood the Health Service Authority isolation requirements; and (iii) he understood: *"That contact is with understanding that exception to isolation is visit to see child only and to return back to his residence."* The Magistrate said that she was satisfied that contact *"can and will proceed"* as per the 20 April 2020 order. I note the manner in which this application was made, and the outcome of the application when I consider whether there is any merit of the mother's criticisms about the manner in which the father has arguably similarly litigated this matter.

18. Despite the Government's rigid Covid restrictions ending in early June 2020 and public places opening up[7], the contact remained at the restricted one hour three times per week level. If restrictions had been lifted, it is unclear on what basis the mother now relies upon a requirement to attend Mediation in July 2020 as forcing her to *"break isolation"* and constituting an example of litigation abuse by the father. Having regard to the clear provision in the 20 April 2020 Order that the more limited contact arrangement was only intended to temporarily remain in place until the restrictions were lifted and the mother's reluctance to vary that restricted order, it is understandable that the father sought to bring the matter back to Court for a review of the child arrangements. A desire to attend Mediation in such circumstances, which could if required be by video-link, was not inappropriate. On 4 December 2020, his new attorneys[8] filed a Form C3 Application for a shared residence order with the mother and to vary the contact order. In the short term, he sought contact during the school term between 4:30 p.m. to 7:30 p.m. on Mondays, Wednesdays, and Fridays and from 8:00 a.m. to 7:00 p.m. on Saturdays or Sundays. In the short term, for the school holiday period, he sought contact on every weekday from 8:30 a.m. to 4:30 p.m. and from 8:00 a.m. to 7:30 p.m. on either Saturday or Sunday. In the long term he sought contact: (i) between 4:30 p.m. to 7:30 p.m. on Mondays, Wednesdays, and Fridays; (ii) alternate weekends from Friday 4:30 p.m. to Monday school drop off; (iii) alternate special occasion days; and (iv) an equal sharing of the school holiday periods.

19. On 23 December 2020, Magistrate Hernandez varied the Interim Contact Order. The Order provided for term time unsupervised contact from 3:30 p.m. to 6:15 p.m. on Mondays and

[7] Prevention, Control and Suppression of Covid-19 (Partial Lifting of Restrictions) Regulations, 2220 (SL 76 of 2020).
[8] On 28 September 2023 Travers Thorpe Alberga came on the record for the father and replaced KSG Attorneys. The mother was still represented by McGrath Tonner.

Thursdays and from 9:00 a.m. to 6:00 p.m. on Saturdays. The Order contained provisions about contact over the Christmas period as well as for the February mid-term break. Directions were given which included: (i) a Welfare Report Referral; (ii) the filing of updated Statements of Means; and (iii) the setting down of a full hearing of the Residence, Contact and Schedule 1 Applications to be held on 10 March 2021. However, the March 2021 hearing was later vacated, possibly due to the late filing of the Welfare Report. On 3 February 2021, Brooks & Brooks Barristers and Attorneys-at-Law came on the record for the mother in place of McGrath Tonner.

20. On 26 March 2021, following the receipt of a written request from both parties, Magistrate Hernandez administratively made an Interim Contact Order to cover the Easter holiday period. She rescheduled the Final Hearing to 27 April 2021. A further Welfare Report was filed by Ms. Kernita-Rose Bailey on 31 March 2021. On 31 March 2021, the mother's attorney wrote to the father's attorney expressing a concern that the father had moved, without informing the mother, to the paternal grandfather's home. The letter included a threat that, if they did not receive a satisfactory and timely response to their request for details about the father's living arrangements, an urgent hearing would be sought for 1 April 2021 to consider a variation of the contact order. This illustrates an approach of the mother again seeking to litigate by potential urgent applications, something she criticises the father for doing.

21. On 12 April 2021, following a sage suggestion made by Magistrate Hernandez, the parties agreed to vacate the 27 April 2021 hearing to enable them to attend 10-week Co-Parenting classes. On 10 May 2021, Magistrate Hernandez administratively fixed the new hearing date for 9 July 2021. It does not appear that the hearing took place on 9 July 2021, but instead was rescheduled for 20 July 2021, which was 4 days after an Addendum Welfare Report was to be filed by Ms. Bailey on 16 July 2021.

22. As reflected in Magistrate Hernandez's Form C22 Interim Order signed on 28 July 2021 which had arisen from the 20 July 2021 hearing, the parties agreed interim contact arrangements for the summer period, namely from 22 July to 17 August 2021. Further directions were given including: (i) for an updated Welfare Report to be filed by 11 August 2021 which was to assess other persons living at the father's home; (ii) requiring the father to file an updated Statement of Means; and (iii) fixing 13 August 2021 as the date for the continuation of the Final Hearing. Shortly after the hearing

the mother sought to add unagreed additional detail in the still to be perfected court order. On 28 July 2021, Magistrate Hernandez communicated to the parties that:

> *"The parties agreed, and the Court ordered, the Summer access. The Court will not be changing anything. Kindly send the Order as was indicated to the Court on that day without further delays."*

Further correspondence was sent to the Court by the Attorneys about the contact arrangements, and this included a five-page inter-partes letter sent by the mother's attorney. On 29 July 2021, the Learned Magistrate, who was justifiably frustrated by the conduct of the parties, had the following commendable and important observation sent to the attorneys:

> *"Magistrate Hernandez has asked that her disappointment and displeasure be expressed to both sides. None of this is about gaining points or victories. A young child is involved. Orders for contact are minimum guidelines not track lines.*[9] *She urges a realistic and reasonable solution to the matters outstanding once again."*

This firm communication appears to have persuaded the parties to agree to amendments to what had been agreed at the 20 July 2021 hearing. That led to the Magistrate administratively making an Order on 11 August 2021 varying, by agreement, parts of what had been agreed at the 28 July 2021 hearing. A further Welfare Report was filed by Ms. Kernita-Rose Bailey on 11 August 2021.

23. For the purpose of this Judgment, the appealed order ("the Order") arises from a written Ruling delivered by Magistrate Hernandez on 13 December 2021[10] following the above-mentioned substantive 'child arrangements' hearing held on 20 July and 13 August 2021.[11] Five Welfare Reports prepared by two different social workers were before the Summary Court at that hearing and provided ample background details for the Magistrate. Case law was placed before the Learned Magistrate dealing with intractable contact disputes and alienation of children.[12] Whilst noting the mother's contention that the father would use a residence order to *"further control, bully and manipulate herself and (the child)"* and that there may be a shared residence order in the future not

[9] My emphasis by underlining.
[10] The Learned Magistrate gave her Ruling on 3 December 2021.The Order from her Ruling was approved on 10 December 2021.
[11] The mother was represented by Brooks & Brooks at the hearing. The father was represented by his present attorneys.
[12] ***Re S (Contact: Intractable Dispute)*** [2010] 2 FLR 1517.

at that stage because the father *"needed to exhibit a more mature and responsible position,"* the Learned Magistrate made a Shared Residence Order, thereby bringing the mother's Interim Sole Residence Order to an end. I note that the Magistrate did not feel that there was any evidence before her to support the mother's contention that the father was not mature or responsible. Having now received more detailed evidence from the parties, there are instances where the father may be viewed as having acted immaturely and insensitively. I will remark on that later herein.

24. Magistrate Hernandez also ordered an increase in daily and overnight contact of at least one night on a weekend to start with, which would gradually increase to alternate weekends. The specific contact was to be in the term time up to Easter break 2022: (i) at least three days per week after school or extracurricular until a 6:30 p.m. return to the mother; and (ii) overnight on either Friday from after school/extra-curricular activity or Saturday from 1:00 p.m. with a return to the mother at 4:00 p.m. on the following day. The Magistrate ordered that, for the Christmas school break 2021, the father's contact would be at least three days during the week from 10:30 a.m. to 6:30 p.m. with one overnight on the weekend from 1:00 p.m. to 5:00 p.m. on the following day. The Christmas day contact would be from 3:00 p.m. on Christmas Day until 4:00 p.m. on 26 December 2022. The Magistrate ordered that, by the time Easter 2022 arrived, the arrangements would be as per the general Christmas break 2021 schedule, but with one overnight contact taking place during the week to enable the father to assist with homework, night routines and morning routines. She ordered that, after the Easter 2022 break, the term time contact should include an additional overnight on the Wednesday after school/extracurriculars, with the father then taking the child to school in the morning. In relation to the summer break 2022, the Magistrate ordered the parties to work on a schedule which would include increases to the weekly overnight contact for the father to two consecutive nights/three full days and providing the father with the opportunity to have short vacations with the child. The Order provided for either parent to have brief daily indirect contact with the child at times less stressful for the child and respecting the time that the child is having with the parent that the child is staying with at that time.

25. In her Order the Learned Magistrate then included a rather unusual provision, namely that the contact arrangements set out in the Order:

"will be adapted and continued until (the child) reaches age of 7 years at which time the parents will move to longer overnights with father and a more equitable distribution of time."

Unfortunately, the rather imprecise phraseology used in this clause in the Order and how each party has sought to interpret it has been a root cause of the ongoing dispute about contact from that time to now. At the time of the Ruling, the child was just over four and half years old and it is unclear from the Ruling what the reasoning was for mentioning, what may be seen, if not looking at the other sentiments that have been expressed by the Magistrate, as being a seven-year-old trigger date. Two and half years is a substantial amount of time in such a young child's life and covers a period of its development when the child should be afforded the opportunity to properly bond with her father. Such an interpretation of the Magistrate's Order does not promote the natural development of such a bond. It may well be that the Magistrate had intended the approach to the contact ordered, adopting a phrase she made at a later hearing, to regard it as being a *"minimum guideline and not track lines"* and that she expected the parties to sensibly develop and *"adapt"* contact over that period in a more flexible child centric and not overly rigid manner. In her Judgment, the Learned Magistrate did say that the father's:

"Continued and gradual increase in his time and involvement with (the child) is encouraged as being in the (child's) best interests."

The Magistrate also stated therein that:

"The goal is that the parents can eventually reach a rolling 2 days on and off with alternate weekends…. Shared vacation time is not something I will be pushing at this stage so that (the child) is given time to adjust and not having long periods of separation from Mother. However, there will be increased time with Father during vacations, and as R gets older, the goal is shared vacation."

This provision in the Order, in circumstances where it is submitted on behalf of the mother that *"the Order was clear that it should remain in place until the child is 7 years old",*[13] has led to uncertainty and is a contributing factor for the present s.10 applications being made by the father in relation to the child who is now over 6½ years of age.

[13] Paragraph 4 Closing Written Submissions for the mother.

26. For completeness' sake, I note that a Schedule 1 Maintenance Order for $500/month was made[14] in the Order, as well as orders for equal responsibility for school fees, extra-curricular activities and medical fees.

27. Following the October 2021 hearing, the mother discharged Brooks & Brooks as her attorneys. The mother stated in her Affidavit sworn on 23 October 2023 that she then engaged an attorney who was at the time working at Broadhurst, but who was due to start at Nelsons in January 2022. Although not clear, it appears that she engaged Broadhurst between October and December 2021 and then changed to Nelsons in January 2022[15]. However, following emails from the Listing Officer to the mother seeking her dates to avoid which were required to enable her to fix a date for the hearing of her appeal, in a reply email to the Listing Officer sent on 14 January 2022, the mother stated that she was *"in the process of engaging appellate counsel"* who would provide the requested details. On 24 December 2021 at 11:30 a.m., Broadhurst unsuccessfully tried to electronically file a Notice of Appeal[16] to challenge the Residence and Contact Orders contained in the Order. It appears that although the filing fee had been paid, the electronic filing system at the time was unable to receive appeals. On 7 January 2022, the Family Proceedings Unit confirmed to the mother that the Notice of Appeal had been processed. Although Nelsons came on the record for the mother on 28 January 2022, the 'mother's team' failed to diligently progress her appeal during 2022. The mother states that the initial delay was caused by Nelsons *"making significant efforts to obtain the audio recording from the December hearing"* and that when they were unsuccessful in that they then sought a copy of the Magistrate's notes. I do not see any correspondence on file to verify that claim. I note that Rule 3.22(3) The Children Law (Grand Court) Rules, 2013 requires an appellant to file and serve the notice within 14 days after the determination against which the appeal is brought. Rule 3.22(2) requires a certified copy of the order appealed against, a copy of any notes of any evidence and a copy of the reasons for the decision on the Respondent as soon as practicable after the filing and service of the Notice of Appeal.

[14] The amount is subject to increase every 2 years in line with the published average Cost of Living Index for the preceding 2 years.
[15] Nelsons came on the record on 28 January 2022.
[16] The Notice of Appeal was filed under number GCL 1/2022 and is dated 24 December 2021. The case number was later corrected to FAM 2022-0069.

28. The mother says that she continued to follow up with her attorney to obtain an early listing date for the appeal. The mother says that she understood that there were without prejudice discussions taking place in early 2022, but that she did not recall giving any instructions concerning that. She does not say whether the negotiations were about the appeal or about contact generally or other child matters. She said that her lawyer had Covid for two months, between March and April 2022. The mother said that she and the child had Covid between May and June 2022. She said that there were then discussions between the parties in July about the summer contact. She accepts that it was not until December 2022 that she requested that "*all outstanding matters*" be progressed. There then followed a dispute between the mother and her then attorneys about unpaid fees and she said that assurances were still given to her. In April 2023 she found out that the appeal had still not been progressed. She submitted that, following her present attorneys coming on the record in May 2023, this aged appeal has proceeded promptly. The mother stated that she shares the Court's concerns about the delay in progressing "*the matter*." The mother lays the blame for the inordinate delay in the progress of her appeal primarily on her former attorneys.

29. On the Court file there is no correspondence concerning the appeal from the mother after the 14 January 2022 email (in which she said that she was engaging appellate counsel) until Nelsons write on 22 December 2022. That communication concerned a separate new appeal, but also contained a statement that:

> *"The First Order is in as of itself under appeal with a date for the listing of the appeal still pending."*

From January 2021 until Hampson and Co came on the record on 9 May 2023, which was after the father had filed a contact summons on 12 April 2023 for a variation of the December 2021 contact order, the mother's team failed to progress the appeal in any meaningful way, and it appears to have sought to properly progress it only after the father's recent application spurred them on to do so.

30. Ordinarily, any fresh applications (non-appeal) to be determined at this time relating to this child would be dealt with in the Summary Court, with that Court reviewing the relevant present circumstances of this family to decide what arrangements are now best for the welfare of the child. The consequence of the historically dilatory manner in which the mother's appeal has been progressed, in circumstances where the father was arguably entitled due to the passage of time to,

until recently, believe that the appeal was not being proceeded with, is that all the present child applications are having to now be heard in the Grand Court. This does not mean that this case should not and will not be remitted to the Summary Court after the appeal and the father's present summons have been heard and determined. These proceedings have already disproportionately occupied over eight days of Grand Court time, with the Court having to dissect voluminous evidence relating to an increasing and not previously predicted number of disputed facts upon which findings are now being sought. Although the mother blames her former attorneys for the delay in prosecuting the appeal, in a child case, especially one in which the child's relationship with the father was and remains at a crucial time of development and which the Summary Court envisaged would be promoted, the mother and her legal team(s) had a responsibility to pursue her appeal in a far more efficient and timely manner than they have done in this case. I note that, despite the above, it is the mother who feels that criticism can only be levied at the father and his legal team's approach when it comes to litigating these child proceedings and as such she relies upon an allegation of *"litigation abuse"* when seeking to establish her contention that the father behaves in a coercive and controlling manner. I disagree with the mother's attorney's submission that the *"delay in progressing the appeal is not a material factor to be taken into account"*.[17]

31. The matter returned to the Summary Court on 14 December 2022 following an "emergency" application made by the father relating to Christmas travel. That application was correctly filed in the Summary Court where the substantive child proceedings had commenced and been heard for these unmarried parents consistent with the Children Law (Allocation of Proceedings) Order 2013. The application concerned contact proposals made in writing by the father on 24 November 2022 after he had received an email the previous day from the mother setting out her plans for the period 16 to 23 December 2022. His proposals were not replied to until 15 days later, namely on Friday, 9 December 2022. The mother again blames her former lawyers for the delayed reply, citing that they did not show her the letter until 6 December 2023. If she is right, the delay still emanates from her side and was not caused by the father. This delayed response made it inevitable that an emergency application would be required if the Court was to consider the contact arrangements to be put in place from 16 December 2022. Hearings dealing with leave to remove a child from the jurisdiction for a short period of time during a school holiday, or to add one or two extra days to a

[17] Paragraph 38 Speaking Note dated 13 December 2023.

parent's contact schedule to enable that take place, do not necessarily amount to *"a significant change and variation of the arrangements requiring a welfare hearing with evidence (written and oral) from the parties and possibly evidence from the school and perhaps a social worker"*.[18] I accept that sometimes written and/or oral evidence may be required and that parties must be permitted to make their submissions. The mother is entitled to be aggrieved if: (i) an insufficient opportunity was given for her to give her evidence or for her Counsel to make submissions; or (ii) the evidence she filed was not reviewed by the Magistrate. To a degree both parents, who share parental responsibility, are at fault, as the plans that would impinge on the contact arrangements should have been negotiated and resolved well before the mother's belated reply on 9 December 2022 or even before her initial above-mentioned email of 23 November 2022. This is so, even if the mother, wrongly but genuinely believed, that *"under the current order..., the mother has a right to do what she is seeking to do, the father does not"*.[19]

32. Magistrate Hernandez gave leave for the child to travel with the mother from 16 December 2022 to 23 December 2022. She also set out the dates for the child's contact with the father over the holidays and she permitted the father to travel with the child to Chicago for up to three consecutive nights for any period after 26 December 2022 with a return date on or before 30 December 2022. If the father had not brought the application, this disputed holiday contact issue could not have been resolved.

33. On 22 December 2022, the mother filed a Notice of Appeal[20] indicating an intention to appeal against the Summary Court Order dated 14 December 2022 and reiterating the appeal of the Order.[21] This was the first time since January 2022 that the mother's team(s) had done anything to actively progress the December 2021 appeal. On the same day, the mother filed a Summons in the Grand Court seeking to stay some provisions of the 14 December 2022 Order. I note with interest that the mother's then attorneys expressed in the twenty-five-page Application for a Stay and to appeal that the Order had been made *"after extensive consideration by the Magistrate"* and that it

[18] Paragraph 21 of mother's *"Application for a Stay of the Child arrangements Order dated 14 December 2022"* and *"Application for to Appeal the Order Dated 14 December 2022"*. The Applications are in one document and dated 22 December 2022.
[19] Emails from the mother's then attorney to the Court on 13 December 2022.
[20] The Notice of Appeal is number G 269/2022. It appears that this appeal was wrongly filed as a Civil Division appeal rather than as a Family Division appeal.
[21] The Notice of Appeal incorrectly refers to the 13 December 2021 hearing as being 13 December 2022.

was a *"carefully crafted child arrangements order"*. This is clearly inconsistent with the view now being expressed about the Magistrate's handling of the matter in 2021 and is inconsistent with the grounds being relied on in the appeal proceedings before me. On 23 December 2022, the mother's stay Summons came on before Chief Justice Ramsay-Hale who dismissed the application. The Chief Justice ordered that the father must make arrangements for the child to call the mother at least every evening when away with him on the permitted Chicago trip between 27-30 December 2022. The Chief Justice also made a slight variation to the wider contact order. Upon my review, having regard to the actual Order made, I question the merit and what the motivation was of appealing and seeking a stay of the decision of the Magistrate, even if the mother felt that the Magistrate had reached a decision after an overly summary approach. The arrangements envisaged by the Magistrate seemed to be fair and within the bands of reasonableness if one had considered the 'welfare checklist', prioritising the mother's stated arranged dates whilst also providing the child with an opportunity to spend limited additional time with the father and some members of his family overseas. It seems, from the face of the Order she made, that the Chief Justice formed a similar view to mine.

34. As had appeared to have happened between January 2022 to December 2022, apart for the unsuccessful written requests made on 29 December 2022 and 30 January 2023 for a copy of the recording of the hearing before the Chief Justice[22], the matter then again went rather dormant from December 2022 until April 2023. It was the father's Summons filed in the Grand Court (case number G269 of 2022) on 12 April 2023 that brought the matter back into Court. It is not clear why this Summons seeking a variation of the December 2021 Summary Court Order was filed in the Grand Court and why it was filed in the appeal proceedings related to the December 2022 Order. The Summons should have been filed in the Summary Court, coupled with a request to transfer the Summary Court file up to the Grand Court to enable the Summons to be heard at the same time as the appeal *de novo* hearing.[23] I informed the parties that, as this Court had already agreed to hold a fact finding hearing relating to issues which may be relevant to both the appeal in FAM 2022-069 and the variation Summons, in circumstances of this case, the Summons should proceed in the

[22] The mother felt that the recording *"may have a direct impact"* on the appeal of the December 2022 decision. It clearly had no relevance to the December 2021 appeal. On 19 April 2023, the Chief Justice's Acting Personal Assistant wrote to the mother's attorney to inform them that her application for a copy of the recording of the hearing was refused.

[23] See the Children Law (Allocation of Proceedings) Order, 2013.

Grand Court with a separate FAM number and the files be cross-referenced. That said, I can understand why the father felt that his application would have to be dealt with by the Grand Court, as the mother had indicated in December 2022 that she was now going to progress what had previously appeared to the father to be a dormant appeal. The submission by Ms. Mullen made before me that the Summons should have been issued in the Summary Court so that the father's application could have been heard there whilst her client was still seeking a *de novo* hearing via the appeal route in the Grand Court is not meritorious. It would be a nonsensical state of affairs, inconsistent with the Overriding Objective, to have a Magistrate review the evidence and make a substantial contact order based on what she concluded to be in the best interest of the child at the time of the hearing before her, only for a Grand Court Judge at around the same time to be asked to conduct a *de novo* hearing and make potentially inconsistent orders in appeal proceedings which were grounded on criticisms about how a matter was dealt with in December 2021. As already mentioned, because of the relevant Rules, the role of the Judge at this hearing is not to concentrate on determining whether the Magistrate erred, but it is now to conduct a *de novo* hearing and then make his own decision as to what orders are in the best interests of the child at this time.

35. In the above-mentioned Summons, which will be heard at the same time as the appeal proceedings if they proceed after this fact-finding hearing, the father seeks a variation of the Summary Court Contact Order and a downward variation of child maintenance. The father seeks an order that, during the school term time, the child should spend alternate weeks with each parent with handovers being on Friday after school (or 8:00 a.m. if the Friday is not a school day). He seeks an order that, in the school holidays, the child should spend equal time with each parent and that the parents should seek to agree the dates with the mother proposing the dates for even numbered years and he for the odd numbered years. Although it would be inappropriate for me to now comment on the merits of the actual orders sought by the father, the Court is rightly asked to determine what arrangement would be in the child's best interest moving forward and whether there should be a variation to further develop the child/ father relationship.

36. After the mother's present attorneys came on record on 9 May 2023, there was some confusion because an attorney had initially indicated in the Listing Form that they were not available for a mention hearing in the month of May and in the first half of June. However, on 23 May 2023, the father sought an urgent hearing of his Summons due to events that had occurred surrounding the

child being cared for by the paternal grandfather in Grand Cayman during the period of the mother's absence on business in New York. Whether rightly or wrongly, the father was of the view that the child was upset and told him that she would prefer to be with him rather than with the maternal grandfather and therefore he retained her after the agreed contact had ended. The father states that he had no knowledge, until he had his contact on Friday, 19 May 2023, that the mother was going away on that weekend for a week. It was not until 21 May 2023 that the mother provided the father with more details. Although there is no requirement for her to inform the father of her travels if it does not impinge on ordered contact, it is unfortunate that the mother did not inform the father earlier of her plans for the child as she clearly knew in advance, given she had made the arrangements with her father. Although it was a matter for the mother to arrange cover for care of the child during the period of her absence, it is also unfortunate that the mother did not see it fit to explore or even consider whether she should approach the father and ask him to care for the child in her absence. It is a further example of her inflexible approach to the Order, rigidly refusing to consider any variation of the contact arrangements which might enable the child to benefit from additional time with the father. Her overly rigid approach to child contact is summarised concisely at paragraph 92 of her Affidavit sworn on 10 July 2023 where she states that there are *"no rights of first refusal stipulated in the Order (the father's) contact is not to increase again until (the "child") reaches the age of 7"*. It is common, and commendable co-parenting, in a situation where a parent has a work commitment preventing that parent from caring for a child, to approach the other parent to enquire whether that parent might be able to 'step in' and care for the child in their absence, even if it is for a period outside the dates set out in a defined contact order. In such circumstances and where the parties could not agree the arrangement, where the father felt it was in the child's best interests for him to retain a child when he believed that the child was indicating to him a wish to stay with him in the mother's absence, it cannot be characterised as being litigation abuse for the father to then bring an application to prevent him being in breach of a court order at a time when the mother was overseas and could have attended a hearing remotely. It was the mother's choice to depart New York early to attend the hearing. If the father had been informed in good time, which ideally should have happened, that the mother had the work commitment in New York and about what arrangements were going to be put in place for the child, and if the father then delayed making any application until shortly before or after the mother had left for New York, then the appropriateness of his conduct may be viewed differently.

37. The parties eventually indicated that they were able to attend a mention hearing on 16 June 2023 after the attorney agreed, by email on 26 May 2023, that they would also come on the record in FAM 2022-0069 which is the December 2021 appeal of the December 2021 hearing.

38. At the June 2023 mention hearing, the mother commendably indicated that she would not be pursuing the December 2022 appeal[24] as the relevant Order concerned events that had already passed. The mother withdrew that appeal. The father, although reserving his position about the consequences of the delay of the January 2022 Notice of Appeal, indicated that he did not require the mother to file an intention to proceed with that appeal. This meant that the live applications before the Court were and remain the mother's appeal from the Order and the father's April 2023 variation Summons.

39. At the mention hearing, the parties stated that the appeal hearing should be a *de novo* hearing. The mother requested that there be a fact-finding hearing due to her allegation that she and the child had been victims of controlling and coercive behaviour by the father. It is regrettable that the mother did not introduce her fact-finding application by filing a Summons with supporting Affidavit. Such an approach would have better enabled the Court and the father to comprehend the extent of the allegations the mother sought determination on. It was submitted that, as the Court had indicated that an up-to-date Welfare Report may well be required due to the passage of time, findings of fact contained in a ruling would assist an allocated Welfare Officer when carrying out her assessment. The Court expressed a view that, unlike in England and Wales, fact-finding hearings had rarely been sought or utilised in private law child proceedings in the Cayman Islands and that careful consideration needed to be given before establishing a precedent for future such hearings in the absence of legislation and local Practice Directions. The Court also highlighted that the Court of Appeal in England and Wales had made it clear that *"not every case requires a fact-finding hearing even where domestic violence is alleged"*. However, although expressing a view that he did not feel that a fact-finding hearing was necessary, the father did not oppose such a hearing. He did not oppose it based on the two-day time estimate for that hearing given by the mother. It is fair to say that, due to the manner in which the application for a fact-finding hearing was made and due to the limited detail shared by the mother at the mention hearing, neither the father nor the Court could

[24] Appeal No. G 2022-0269.

have possibly foreseen the breadth of the allegations and facts upon which allegations are being sought that have since been presented by the mother to this Court.

40. Unfortunately, the mention hearing at which the Court acceded to the mother's request for a fact-finding hearing was one with only limited time available because it came on for consideration in the middle of a full family mention day list. With hindsight, the Court should have listed the matter for a lengthier hearing at which it could have considered in more detail whether such a hearing was necessary and proportionate. More thought should have been given to ascertaining from the mother with more particularity the facts upon which she sought findings to be made. This is because the Court is now being asked to make findings about a large number of facts which have arisen in an unstructured way and are clearly far more numerous than one would ordinarily expect at a fact-finding hearing, especially in this case when the mother had originally estimated a two-day hearing. By the end of the fact-finding hearing, it became increasingly evident that it had been used by the mother as a vehicle for her to seek findings on almost every act of the father, no matter how small, which she has interpreted as inappropriate or which she has a grievance about. This may be driven by her evident frustration born from her belief that, since these were proceedings were commenced in the Summary Court by the father's application on 13 February 2018, the Magistrates have not afforded her a proper opportunity to rehearse her allegations and concerns. Although historical allegations may be considered, the mother's very wide-ranging approach is not consistent with the designed purpose of a fact-finding hearing and this Court should have been invited to 'hone-in' on the events that really go to the core of the exercise that I must conduct when considering whether the father's conduct amounts to controlling and coercive behaviour. In fact, the fact-finding hearing should be used to make findings that are most relevant to the determination by the Court about what child arrangement orders will be in the child's best interests.

41. The father rightly now highlights that in children cases:

> *"There will almost inevitably be emotional fall out"* and that *"it is not for the Court to hear about much less to resolve, issues between the parents relating to their time together, unless to do is likely to be necessary for and proportionate to the resolution of a dispute relating to the protection and welfare of a child."*[25]

[25] As per Lord Voss at paragraph 89 in ***K v K*** [2022] EWCA Civ 468.

Only the mother was in a position to say in an informed way what the length of her requested fact finding hearing would likely be. Alas, the mother's estimate was highly inaccurate, resulting in the hearing being spread over different dates and inconvenience to the Family Division court lists. The oral evidence from the mother and her witness was spread over four and half days. The fact that the hearing lasted for eight days, in circumstances where the mother's estimate of only two days had been relied upon by the Court and by the father when permitting a fact-finding hearing, is a factor to consider when she is seeking to criticise the manner in which the father has litigated these proceedings. Although, in light of my observations shared in **paragraphs 39 and 40 above**, the mother's Counsel may be able to say, when remarking on the fact that the fact-finding proceedings could and should have been executed more effectively, that is *"not a cross that sits only on M's shoulders"*[26], but I would add that the cross is primarily on her shoulders. With the above concerns in mind, I will make wider observations below herein about the use of fact-finding hearings in Grand Court private children law proceedings.

42. At the mention hearing, directions were given to the fact-finding hearing. As the use of Scott Schedules appears no longer to be the preferred approach in England and Wales[27], the Court directed that the mother's Affidavit limited to the findings of fact be filed and served by 7 July 2023 and that the father's Affidavit in reply be filed by 14 July 2023. However, the Court did not discourage the presentation of an umbrella schedule. It was hoped, as it turns out wrongly, that the affidavit would have been a one-stop evidential pleading tailoring the evidence before the Court to that required to determine the case, rather than the Court being provided with several bundles containing well over a thousand pages.

Background – The hearing

43. The fact-finding hearing, with a two-day estimate, was fixed for 25 and 26 July 2023. As already highlighted, the time estimate for the hearing was a wholly unrealistic one due to the number of facts in relation to which findings are now being sought by the mother and which were later raised and resulted in a large number of additional days having to be found which were spread over many

[26] Paragraph 36 of the mother's Speaking Note dated 13 December 2023.
[27] The judgment in ***Re H-N*** [2021] EWCA Civ 448 (paras 41-49) cautioned against allowing a Scott Schedule to distort the fact-finding process (by becoming the sole focus of a hearing), but the Court of Appeal did not rule out the use of an 'umbrella' schedule as a structure to assist in analysing specific allegations.

months.[28] The fact-finding route in this case may have inadvertently failed to promote the mission contained in the Overriding Objective and may in the end be shown to have overly extended these proceedings, occupying an excessive amount of court time which could have been better used to reach a swifter determination about what orders are required to meet the best interests of this child at this time and which has increased costs disproportionally having regard to the core issues that should be concentrated on in this private law child case.

44. The evidence stage of these proceedings eventually concluded on 2 November 2023. Thereafter the parties submitted written closing submissions upon which they made oral representations on 13 December 2023. During the hearing, oral evidence was received from the mother, the maternal grandfather, and the father. I was provided with a hearing bundle that includes as many as five affidavits from the mother, two from her father and one from her mother. There are four affidavits from the father. The allegations of fact requiring my consideration are mostly set out in the affidavits and summarised in the final version of the provided schedule prepared by the father rather than the mother who seeks the findings of fact ("the Schedule")[29]. There are affidavits in the bundle from other persons who did not give evidence at the hearing, namely: (i) Chelsie Iness (exhibiting child's medical records); (ii) Glenda Enlangan (the child's nanny from January 2018 to March 2022 employed by the mother); and (iii) Manilyn Panugaling (the mother's helper since April 2020). The mother indicated at paragraph 21 in her Speaking Note that the mother does not rely on the helper's written evidence.

45. After receiving the oral representations made relating to the parties' written closing submissions, I adjourned for a reserved Judgment to be provided. This is my reserved Written Judgment. When determining the issues dealt with in this Judgment, I have considered the fully transcribed oral evidence, the written/oral submissions made as well as the content in the parties' affidavits and the additional exhibits provided during the hearing.

[28] The first day of the fact-finding hearing was on 25 July 20203 and it did not conclude until the oral submissions were made on 13 December 2023.
[29] The mother did not provide a schedule prior to the fact-finding hearing commencing. The father's attorneys prepared a draft umbrella schedule on 18 July 2023 with detail extracted from the mother's written evidence. The Schedule now before the Court is an updated version prepared by the father's attorneys which was slightly amended by the mother and attached to her Speaking Note dated 13 December 2023.

The Law - The approach when an allegation of coercive and controlling behaviour is raised

46. The present case concerns the mother's allegations of domestic abuse, namely coercive and controlling behaviour. As found by Mangatal J at paragraphs 7 and 8 in her Judgment dated 16 June 2015 in ***KN v MN*** FAM 123/2014, I may be assisted by the principles and guidance at Practice Direction 12J of the Family Procedure Rules 2010 ("the PD")[30] issued in England and Wales. Mangatal J also indicated that assistance may be derived from cases dealing with the approach to fact-finding cases in England and Wales. With that in mind, I may be helped by the guidance given by the Court of Appeal in ***Re H-N and Others (children) (domestic abuse: finding of fact hearings)*** [2021] EWCA 448 (Civ). At paragraphs 25 to 27 in ***Re H-N*** the Court of Appeal noted that the PD remains *"fit for the purpose for which it was designed"* as it enables the Courts to recognise domestic abuse and how to approach such allegations in private law children proceedings. When dealing with the recognition of domestic abuse in the form of coercive and/or controlling behaviour, the Court of Appeal said at paragraphs 25 and 26:

> *"[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).*
>
> *[26] PD12J paragraph 3 includes the following definitions each of which it should be noted, refer to a pattern of acts or incidents:*
>
> > *"'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*

[30]Mangatal J highlighted that the PD incorporated and superseded advice issued by the President of the Family 20 Division, then Waller LJ, in 2010 about fact finding and split hearings. This PD was revised and came into effect on 22 April 2014 and applied to both public and private 22 law proceedings in the Family Court under the Children Act 1989 where a question about contact between a child and a family member arises.

means needed for independence, resistance and escape and regulating their everyday behaviour."

47. The Court of Appeal then set out at paragraph 31 in ***H-N*** the harm to children that can be caused by coercive and controlling behaviour:

"The circumstances encompassed by the definition of 'domestic abuse' in PD12J fully recognise that coercive and/or controlling behaviour by one party may cause serious emotional and psychological harm to the other members of the family unit, whether or not there has been any actual episode of violence or sexual abuse. In short, a pattern of coercive and/or controlling behaviour can be as abusive as or more abusive than any particular factual incident that might be written down and included in a schedule in court proceedings (see 'Scott Schedules' at paragraph 42-50). It follows that the harm to a child in an abusive household is not limited to cases of actual violence to the child or to the parent. A pattern of abusive behaviour is as relevant to the child as to the adult victim. The child can be harmed in any one or a combination of ways for example where the abusive behaviour:

(i) Is directed against, or witnessed by, the child;
(ii) Causes the victim of the abuse to be so frightened of provoking an outburst or reaction from the perpetrator that she/he is unable to give priority to the needs of her/his child;
(iii) Creates an atmosphere of fear and anxiety in the home which is inimical to the welfare of the child;
(iv) Risks inculcating, particularly in boys, a set of values which involve treating women as being inferior to men."

48. At paragraph 31 in ***H-N***, the Court of Appeal highlighted the case of ***F v M*** [2021] EWFC 4 in which Hayden J made reference to paragraph 60 in the statutory guidance published by the Home Office pursuant to s.77(1) of the Serious Crime Act 2015 which gave examples of controlling and coercive behaviour, and said:

"'Coercion' will usually involve a pattern of acts encompassing, for example, assault, intimidation, humiliation and threats. 'Controlling behaviour' really involves a range of acts designed to render an individual subordinate and to corrode their sense of personal autonomy. Key to both behaviours is an appreciation of a 'pattern' or 'a series of acts', the impact of which must be assessed cumulatively and rarely in isolation."

49. Importantly, at paragraph 32 in ***H-N***, the Court of Appeal stressed that:

> *"It is equally important to be clear 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. We would endorse the approach taken by Peter Jackson LJ in Re L (Relocation: Second Appeal) [2017] EWCA Civ 2121 (paragraph 61):*
>
> > *"Few relationships lack instances of bad behaviour on the part of one or both parties at some time and it is a rare family case that does not contain complaints by one party against the other, and often complaints are made by both. Yet not all such behaviour will amount to 'domestic abuse', where 'coercive behaviour' is defined as behaviour that is 'used to harm, punish, or frighten the victim…' and 'controlling behaviour' as behaviour 'designed to make a person subordinate…' In cases where the alleged behaviour does not have this character it is likely to be unnecessary and disproportionate for detailed findings of fact to be made about the complaints; indeed, in such cases it will not be in the interests of the child or of justice for the court to allow itself to become another battleground for adult conflict."*[31]

50. If a court is satisfied about some or all of the allegations of domestic abuse that are made, the Court of Appeal set out, at paragraph 37 in ***H-N***, how it should then approach the allegations:

> *"The court will carefully consider the totality of (the PD), but to summarise, the proper approach to deciding if a fact-finding hearing is necessary is, we suggest, as follows:*
>
> *i) The first stage is to consider the nature of the allegations and the extent to which it is likely to be relevant in deciding whether to make a child arrangements order and if so in what terms (para 5 of the PD).*
>
> *ii) In deciding whether to have a finding of fact hearing the court should have in mind its purpose (para 16 of the PD) which is, in broad terms, to provide a basis of assessment of risk and therefore the impact of the alleged abuse on the child or children.*
>
> *iii) Careful consideration must be given to (para 17 of the PD) as to whether it is 'necessary' to have a finding of fact hearing, including whether there is other evidence which provides a sufficient factual basis to proceed and importantly, the relevance to the issue before the court if the allegations are proved.*
>
> *iv) Under (para 17(h) of the PD) the court has to consider whether a separate fact-finding hearing is 'necessary and proportionate'. The court and the parties should have in mind as part of its analysis both the overriding objective and the President's Guidance as set out in 'The Road Ahead'."*

[31] My emphasis by underlining.

51. At paragraph 58 in ***H-N***, the Court of Appeal gave some guidance as to how otherwise the courts might case manage and hear allegations of domestic abuse when stating:

> *"a) (The PD) (as its title demonstrates) is focused upon 'domestic violence and harm' in the context of 'child arrangements and contact orders'; it does not establish a free-standing jurisdiction to determine domestic abuse allegations which are not relevant to the determination of the child welfare issues that are before the court;*[32]
>
> *b) (The PD), paragraph 16 is plain that a fact-finding hearing on the issue of domestic abuse should be established when such a hearing is 'necessary' in order to:*
>
> *i) Provide a factual basis for any welfare report or other assessment;*
> *ii) Provide a basis for an accurate assessment of risk;*
> *iii) Consider any final welfare-based order(s) in relation to child arrangements; or*
> *iv) Consider the need for a domestic abuse-related activity.*
>
> *c) Where a fact-finding hearing is 'necessary', only those allegations which are 'necessary' to support the above processes should be listed for determination*[33]*;*
>
> *d) In every case where domestic abuse is alleged, both parents should be asked to describe in short terms (either in a written statement or orally at a preliminary hearing) the overall experience of being in a relationship with each other.*
>
> *Where one or both parents assert that a pattern of coercive and/or controlling behaviour existed, and where a fact-finding hearing is necessary in the context of (the PD), paragraph 16, that assertion should be the primary issue for determination at the fact-finding hearing. 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)."*

Application of The Guidance in Re H-N

52. Consistent with what appears to be the more recent approach adopted in fact-finding hearings in child arrangement cases in England and Wales, it was agreed that a Scott Schedule was not required. It became evident that it was accepted that it would be helpful to have, in addition to the witness evidence, a document setting out: (i) the general headline allegation; (ii) the facts sought in support of the general allegation; (iii) reference points for each party's evidence in chief in their affidavit concerning the factual incidents; and (iv) reference points in the transcripts for each party's evidence at the trial in relation to the factual incident. Such a schedule was produced by the father's attorneys which has been modified.

[32] My emphasis by underlining.
[33] My emphasis by underlining.

53. After the evidence was concluded, a final schedule was provided which had eight General Headline Allegations. The Schedule of Allegations includes what the mother claims to be specific examples of the father's coercive and controlling behaviour and she argues that it is the cumulative effect of those that amount to that type of abuse. The general headline allegations are:

(i) Litigation abuse (there are around thirteen facts sought in the schedule to support this general allegation);

(ii) Defamation and isolation (there is one fact sought in the schedule to support this general allegation);

(iii) False allegations (there are around six facts sought in the schedule to support this general allegation);

(iv) Neglectful parenting (there are around five facts sought in the schedule to support this general allegation);

(v) Emotional abuse (there are around seven facts sought in the schedule to support this general allegation);

(vi) Financial abuse (there are around three facts sought in the schedule to support this general allegation);

(vii) Breaches of court orders (there are around six facts sought in the schedule to support this general allegation); and

(viii) Harassment and stalking (there are around nine facts sought in the schedule to support this general allegation).

54. The father's position is that, although he may have made some mistakes, the majority of the allegations made by the mother are based on fabrication, misrepresentation and/or exaggeration. He accepts that on some occasions he acted unwisely, but he does not agree that the behaviour was abusive. He contends that even if one looks at the allegations cumulatively, they do not support a conclusion that his behaviour has been controlling or coercive. The father is critical about the mother's conduct. He says that the mother may be seeking to minimise the role that he can play in the child's life and that she has been abusing the fact that she has the financial resources to spend greater amounts on the litigation due to her much higher income. He submits that the mother has benefited from delaying the progression of the proceedings, for example by her appeals, and from making many unfounded allegations as her intention is to *"cement her position"* as the child's primary care-giver. Despite this, it is stated that that he has not sought to obtain findings of fact

relating to his concerns, as he has concentrated on trying to move contact forward by taking *"a more proportionate approach to their disagreements"* rather than airing every grievance that he has.

55. The approach to coercive behaviour cases is a recognition that patterns of behaviour are formed from individual incidents of conduct. It is difficult therefore to separate the pattern from the specific events said to establish the pattern. A court must first evaluate the evidence in relation to specific incidents that allegedly contributed to that pattern before making findings about a pattern of behaviour. The difficulty for the court is in identifying a limited number of incidents that would, if proved, establish a pattern of behaviour. Some specific instances of behaviour will not constitute abuse themselves and may appear to be relatively trivial if looked at in isolation but may be important evidence of a pattern of abuse, or the effects of abuse, when set alongside other findings. That said, the Court must try to keep a finding of fact hearing within proportionate and manageable limits without filtering out what might be highly relevant evidence of coercion or control. The problem the mother faced in this fact-finding case was to present it in a way that was proportionate and manageable, but without giving a day-by-day account of the whole relationship and every child-care event.

56. Therefore, following ***Re H-N***, the primary issues requiring my determination are the allegations of patterns of behaviour said to constitute coercion and/or control. However, although I will look closely at the content of the schedule, which contains a far greater number of facts sought than one would expect even where there is a cumulative approach to be taken in coercion and control cases, I need not slavishly address all issues raised therein.

The principles to be applied at a fact-finding hearing:

57. The principles that I apply to this finding of fact hearing are:

a) The burden of proof lies on the party that makes an allegation of fact and identifies the findings they invite the court to make. (Williams J at paragraph 22 in ***X v Y*** FAM 143 of 2016, 25 August 2020).

b) The standard of proof is the balance of probabilities. (Williams J at paragraph 22 in ***X v Y***)

c) Findings must be based on evidence, not on suspicion or speculation - (Lord Justice Munby in ***Re A (A child) (Fact Finding Hearing: Speculation)*** [2011] EWCA Civ.12). The Court must decide whether the event did or did not happen, it cannot find that it might have happened.

d) The Court must take into account all the evidence and consider each piece of evidence in the context of all the other evidence – (see Dame Elizabeth Butler-Sloss, President observed in ***Re T*** [2004] EWCA Civ 558, [2004] 2 FLR 838).

e) It is not uncommon for witnesses in these cases to tell lies in the course of the investigation and the hearing. The Court must be careful to bear in mind that a witness may lie for various reasons, such as shame, misplaced loyalty, panic, fear, or distress. The fact that a witness may have lied does not necessarily mean they are guilty of the matter alleged against them and the fact that the witness has lied about some matters does not mean that he or she has lied about everything - (see ***R v Lucas*** [1981] QB 720 and Williams J at paragraph 22 in ***X v Y)***.

The evidence - The delivery of the parties

58. The mother is intelligent, articulate and highly organized when amassing her evidence covering many years for the hearing. She was able to present her evidence in a clear and firm manner, her memory no doubt assisted by the contemporaneous notes she has been keeping. She was not evasive when questions were put to her. Whilst she was seemingly assured when giving evidence, and that it was evident that she was driven by a desire to do what she felt was necessary to protect the child, there were indications that her expressed views and actions were on occasion dominated by: (i) her distress at the manner in which the relationship had ended; (ii) her at times over-protective approach to parenting; (iii) an overly rigid reliance on her interpretation of the Court orders; (iv) her approach that her views and opinions relating to child related matters 'trumps' any views that the father may put forward; and (v) an inability to see any positives in the father's character or conduct concerning the child. She came across as someone with a lack of insight about how this young child should and could be able to develop a proper relationship/bond with the father and a lack of recognition about how a child's parents should co-parent with some flexibility, using a court order as a baseline when developing or nurturing the relationship.

59. The father, at times, ably presented his evidence. However, on occasion, especially during cross-examination, his answers were vague and unhelpful. He could remember some of the events but, on more occasions than one would normally expect, he was unable to recall details of other potentially more significant events. When I find that, I am conscious that a number of the events referred to are rather dated and recollection about them without having notes taken at the time made more difficult. There is some medical evidence verifying that he suffers from attention deficit hyperactivity disorder ("ADHD"). Dr. Watkins in her "Statement" dated 4 April 2018 notes that the father, on occasion, takes Adderall *"for concentration"*. Adderall is a drug used to treat ADHD and it may improve focus and attention while reducing hyperactivity and impulsive behaviour. The father says that he also suffers from memory loss due to concussions that he suffered when playing contact sport. It does not seem to be disputed that the father may suffer from ADHD, but the extent of the condition is not agreed, and it is not accepted by the mother that the condition should be used to explain away gaps in evidence or the vagueness of some of his answers. There is no medical evidence presented about the degree of his condition and how that may impinge on his recollection of events. In the absence of such evidence, it would be wrong for this Court to proffer anything more than a general view in that regard. I noticed that at some stages during his evidence the father's concentration did drift, although when given little reminders he could eventually usually refocus. I noticed from seeing how the mother, an experienced attorney, presented her oral evidence, that she possesses a better equipped memory to recall more detail about previous events, especially when aided by extensive, apparently contemporaneous, notes relating to events throughout the child's life which caused her concern and to which she now speaks. The father highlights that the produced notes were *"biased"*, predominantly and unwarrantedly negative about him and that the mother kept them to enable her to better build a case against him. The father, his raised ADHD issues aside, does not have the same ability to retain detail and I accept that some of the difficulties that he experienced when addressing historical matters were contributed to by his condition. That said, there were times when he could not express insight about the possible effect of his conduct and when one might have expected him to have better recall.

60. That does not mean that the Court should simply adopt and prefer the mother's interpretation of all the facts which she lays out without further analysis. I found that there was a degree of inflexibility in how the mother views incidents and the appropriateness of some of her own conduct. She, believed that her approach was always the correct one, whereas the father was, at times, willing to

accept that for certain events it would have been better if he had acted in a different manner. There were times, despite the mother's undoubted ability to recall events, where her version of events may be viewed as being inaccurate. An example of this arose when it was suggested, as set out in Dr. Watkins'[34] notes, that the mother had said that the paternal grandmother had poisoned the child. Also, the fact that the father's recollection is not as good as the mother's and the fact that there are clearly more gaps in his evidence than in the mother's does not lead the Court to conclude, as the mother suggests, that all his evidence is *"contrived"* or *"obviously unreliable"*. However, I accept the mother's contention that the Court should *"weigh the veracity of what he is saying very carefully"*.

Consideration of the facts upon which findings are sought in support of the mother's allegation of alleged coercive and controlling behaviour by the father

61. I have in mind the abovementioned legal principles and judicial guidance when reviewing the evidence relating to the facts upon which the other seeks findings to be made. It is important to note that this hearing is not one to determine whether the father is correct in asserting that the mother is implacably hostile to him having contact with the child or that her conduct amounts to parental alienation. The merits or lack of merit of such allegations, if still pursued, will be for the final hearing and only after the parties have been provided with an opportunity to apply the relevant law to the facts. Therefore, the fact that the father raises the possibility of parental alienation as an issue to be considered, an issue which the Court is unable to determine at this stage, does not amount to a factor leading to a determination that there has been litigation abuse by him at this hearing. That said, I accept that the mother would feel unsettled by the father's attorney raising in correspondence an accusation of parental alienation, and then adding that it may result in the father seeking an order to transfer residence from the mother to the father.

62. For convenience's sake, I will conduct the fact findings exercise by looking at the eight general heading allegations set out in the affidavits and mentioned in the final version of the Schedule. The Schedule includes just over fifty facts sought in support of the various general allegations. This is an incredibly high number of facts upon which findings are being sought and as previously mentioned above, even when the findings of facts sought are limited to what one would regard as

[34] The child's paediatrician.

a normal number for a fact-finding hearing, the Court need not slavishly address each and every fact set out in a schedule.

(i) Litigation abuse

63. Having regard to my observations made earlier in this Judgment when outlining the procedural background and the applications made, I can now deal with this General Heading Allegation in short order. The facts sought in relation to the allegation of litigation abuse, whether looked at individually or together, do not amount to litigation abuse. I accept that the mother may well find litigation to be stressful and that she may be unhappy with the manner in which she feels that the Summary Court has dealt with the proceedings. I am also conscious that there is a large disparity in the parties' respective incomes as well as of the damage which has inevitably been caused to each party's financial stability by these proceedings. The father claims that he no longer has sufficient funds to instruct an attorney and has applied for a costs allowance order which is scheduled to be heard post-delivery of this Judgment.

64. I do not accept the mother's contention that the father has made *"an incredible"* or *"unrelenting"* number of applications. When it comes to contact, despite the initial two week contact after the parties' separation, it is evident that the mother has felt that the contact arrangements to be put in place is to be the one that she deems appropriate, or as the father puts it *"on her terms"*. He is expected to 'fall in line' with her proposals. In support of that approach the mother rigidly relies upon the Order that she is in fact appealing. This approach to child contact has made it necessary for the father to bring applications to Court if he is to develop a normal relationship and bond with the child. Both parties have made applications at different stages relating to issues which they felt required the Court's assistance, on a number of occasions this has been after they failed to first resolve an issue in inter partes correspondence between their lawyers. As mentioned above, some of the applications made by each of them have required the Court to deal with issues which the Court would have expected them to resolve themselves. The Court often ended up making orders similar to the orders that were being sought in the filed application. Although the short notice of some of the applications has been inconvenient to the Court, the need for them has on occasion (as in November/December 2022) been caused by the conduct of both parties. I do not accept the mother's contention that the father's present application is inappropriate because the father *"is getting exactly what he is supposed to under the Order"*. Alas, that submission goes to the root of

why the father has had to make applications, namely the mother's unwillingness to develop the contact regime due to her inflexible *'track line'* interpretation of and approach to the Order. I note that the mother has not rigidly adhered to the contact regime on some occasions when she has taken the child out of the jurisdiction when the period overlapped with the father's contact under the Order and has failed to offer any make up contact. Although only relating to a short extension of contact time, Magistrate Hernandez's following observation, made in her December 2021 Judgment when she was clearly frustrated by the parties' approach to the application of contact orders is one which deserves repeating. She wrote:

> *"The parents have been unable to even finalize the last contact arrangement which this Court (apparently mistakenly) deemed as being agreed. I refer to the post hearing correspondence. A disagreement over fifteen (15) minutes additional time in the evening? Why? Whilst a routine is absolutely necessary, strict rigidity to the exclusion of reasonable scenarios is not helpful. The Court cannot stress enough that flexibility is indeed necessary. It is life. In the grand scheme of things I would think we consider what real harm is done to extend 15 minutes to avoid rushing and stressing (the child's) time with her mother."*

65. Neither party can be said to have approached the litigation as model parents or parties. It cannot go unnoticed that the mother, who is the party who seeks to raise and rely upon litigation abuse, has (whether by herself or due to the approach of her previous legal teams) progressed the present appeal in a regrettably dilatory manner and has sought findings of fact now far wider than originally sought or envisaged as the basis for asking for a fact finding hearing, with this seven to eight day hearing taking around four times longer than the two days estimated by the mother.

66. Magistrate Hernandez observed that there was an *"unhappy and unfortunate background for the child with her parents"* and added at paragraphs 29, 30 and 35 in her Judgment which is the subject of the appeal that:

> *"29. The background of the parents, their brief relationship, their uneven positions in their personal life journeys at the time of (the child's) birth and the ending of their relationship have all impacted their behavior of the parents to each other. There appears to be a lingering mistrust and hostility by one and the other reacts. They are different personalities. They operate from different positions. One more than the other wants to*

> *move on and hopefully be friends. One feels every move by the other is an attempt to manipulate. I note these are not my words but that of the parents.*
> *30. I do not put the blame of prolonged litigation on any one party. Both are responsible for where matters are now and they must acknowledge their role and stop the blame game. As Mrs. Bailey[35] said, a line must be drawn to end this. This is not in the best interests of (the child)."*
> *35… I do not believe that it is in the best interests of (the child) that we do not close the matter and stop litigation. It has gone on long enough and as it progresses it creates more ground for more complaints…. It simply must stop."*

Having had the opportunity to hear from the parties in much more detail than the Learned Magistrate did, I have to say that I find her remarks insightful, and I would not depart from them. It is a shame that the parties have failed to take them on board.

67. I do not make a finding that, despite my expressed concerns about his earlier shared residence application with the paternal grandmother[36], the manner in which the father has participated in these proceedings, even when considered as whole, can be regarded as amounting to litigation abuse.

(ii) Defamation and isolation

68. The mother seeks findings of fact in relation to the father's posting of images and comments on his public Instagram page *"as an alleged plea regarding wanting contact"* to the child and that he tagged CI Government, Cayman Marl Road and the Cayman Compass so that the posts and all his and the comments made by third parties would be seen by those viewing those public sources. The mother states that the father did this to force her to allow contact and to purposely hurt her and the child, to damage her reputation in the community and to isolate her from their friends and the community. The father states that it was a cry for help, but he accepts that it was a wrong approach for him to take. The father soon removed those initial posts by 17 April 2020.

[35] The Court Welfare Officer.
[36] See paragraph 10 above.

69. I note that on 20 April 2020, as the father had not provided the undertakings that the mother was requesting, she filed an application for an order, pursuant to the Protection From Domestic Violence Law 2010, prohibiting the father from publishing information related to the child proceedings as well as anything containing pictures of the child. That application was heard on the same day and an Interim Order was made by Magistrate Hernandez prohibiting the father from making any posting on social media of the child or in relation to the proceedings.

70. The mother argues that the father's postings and tagging of them is conduct sufficient to establish the general headline allegation of defamation and isolation. It is not clear whether she also relies upon the posting of photos of the child on social media. It is clearly not appropriate for a parent to publish details about ongoing child court proceedings. That is not what happened here. Although I find that the father made the postings, I do not find that he did it with the intention to purposely hurt the mother and the child, to damage her reputation in the community and to isolate her from their friends and the community. The allegation of defamation and isolating behaviour made against the father has not been established by the mother on the balance of probabilities. I make a finding that that he did publicly state in the public domain in the above manner that he was having issues with contact, but the fact of the matter was that he was having such issues. However, it was unwise and rather immature for the father to post as he did to apparently try and garner support for his child contact dispute, no matter how desperate he was with the lack of meaningful child contact. As the mother rightly highlights, this is a small community, and it is not appropriate for him to have done that.

(iii) False allegations

71. The mother relies upon six instances of false allegations that she says were made by the father, namely: (i) allegations of unlawful removal; (ii) allegation that the mother poisoned her own breast milk; (iii) allegations made against the mother's helper; (iv) allegations of interference contact (alienation); (v) allegations that the father is emotional and delays exchanges at contact; and (vi) allegations of parental alienation by the mother.

72. A great deal of evidence was expended at the hearing in relation to the allegations concerning the mother's breastmilk. Those allegations arose at a troubling and upsetting time for the parents, because the child was clearly unwell, and it took a while for Dr. Watkins to eventually diagnose

what was causing that. Both parties deduced that it was because of something that the child was consuming. That concern, from the father's perspective, was illustrated by the video that was played to the Court which had been filmed by the paternal grandmother at a contact handover. In that video the father did not say that the mother was poisoning the child, but he did highlight the need to investigate the child's consumption, including the way that the milk was being stored. I note that the video recording started when the grandmother came out of the property and that at the end of the recording the grandmother was leaving the scene and returning to the house. On the evidence before me, the mother has not satisfied me, on the balance of probabilities, that a further video was taken of her at that time in which she was *"taunted"* by the grandmother with allegations that she had poisoned the milk. The mother has not established, on the evidence, that on this occasion either the grandmother or the father directly alleged that she had poisoned the milk. Although I accept that the father did feel that the milk could be the issue, as illustrated by the fact that he retained the milk bottles for testing, I do not accept that the allegation about that day can be established, as is submitted by the mother, by inference. I am satisfied that they did raise that what the child was consuming should be inquired into, fearing it may be the cause of the child's health issues. When the father spoke to Dr. Watkins on 3 March 2018, the Clinician's Report dated 4 April 2018 and her notes indicated that the father had told her a concern that the breastmilk had something in it. The Doctor felt that the father, by saying that, was inferring that the mother had put something in the breastmilk. Dr. Watkins then said that, also on 3 March 2018, three hours after the child had vomited, that the mother telephoned her saying that she was concerned that the father's mother was poisoning the milk and requested blood tests for poisons. On 5 March 2018 the mother again raised concerns to the doctor that the paternal grandmother might be doing something to make the child ill. In her report, the Doctor summarised that:

> *"Since these episodes began both parents independently of each other have raised concerns that the other parent or paternal grandmother might be harming (the child)."*

The doctor in her report stated that it was unclear why the child was vomiting and that she did not rule out that either parent could be correct in their assertions and that someone was tampering with the child's food or milk. In her notes of 24 March 2018, Dr. Watkins wrote:

> *"Parents are presently going through separation. During court on Monday to negotiate access. Lots of stress between the parents. Both feel others poisoning their child."*

73. At the hearing the mother accepted that she made similar allegations about milk/food poisoning. She sought to justify or explain why she made the allegations when she told the Court that she did it because, if the father was making such a *"crazy"* allegation, her thought process was that he could actually be doing this. Her evidence about what she told the doctor, as highlighted in paragraph 38 of the mother's closing submissions, is not consistent with what is succinctly recorded in Dr. Watkins' notes and report. The Doctor was very clear that on the same day that the father was making a similar allegation, the mother also alleged that the father/his mother could be poisoning the child.

74. Thankfully, Dr. Watkins was able to diagnose that the issue was caused by an egg allergy. However, it is evident that these cross-allegations of poisoning, which happened soon after their separation and relationship breakdown, has deeply negatively impacted the way in which these parents were able and are still unable to cooperate in relation to childcare arrangements. The mother carries emotional scars from the allegations made against her, whilst unfortunately not being able to recognise that she herself was making the same allegations about the father. It is worth noting that in her evidence, as highlighted in the written closing submissions presented on her behalf, she said:

> *"It's difficult to co-parent with somebody who lies and says that you've struck them, with somebody who alleges that you've poisoned your breast milk, with somebody who is just so… has these incredibly outrageous ideas that just don't seem to me to be rational at all…."*

The mother's Counsel submitted that the allegations of breast milk poisoning had a *"catastrophic butterfly effect on this family"*.

75. I make a finding of fact that cross-allegations of poisoning were made by both parents. They were made at a time when they both had genuine concerns about what was causing the child's illness. This was no doubt a very anxious time for both parties. In such circumstances, it would be improper for the Court to consider the father's allegation in isolation of the mother's allegation. Having regard to the above, and putting it into the context of the state of affairs that prevailed at the time, the mother does not satisfy me, even when I look at it globally with all of the other allegations, that I should determine that it should be a factor illustrating a pattern of coercive or controlling behaviour by the father.

76. In relation to the allegation about the father raising concerns about an unlawful removal of the child, I have already commented about that at paragraph 6 above. I make a finding of fact that the father did issue an application for a prohibited steps order right at the outset of these proceedings. However, for the reason set out above, I do not view that as being a contributing factor when determining whether there has been coercive or controlling behaviour.

77. In relation to the concern that the father had made allegations against the mother's helper in May 2021, the mother contends that there was a false report made by the father to a counsellor that the child was being abused by the helper, he knowing that that counsellor may then be obligated to make a report to the Multi Agency Safeguarding Hub ("MASH"). It is contended by the mother that this was done to exert pressure on her prior to the substantive hearing which had been re-listed to July 2021. The mother believes that the child scraped her back whilst playing at school on 7 May 2021, which is when she first noticed the mark. She noted that the father had seen it on 8 May 2021, but did not report it until almost 2 weeks later. The mother contended that the father's reporting was suspicious because: (i) there was an upcoming final child arrangements hearing in July 2021; (ii) that the child had burnt her finger at the father's property on 15 May 2021 (which the mother had reported to Dr. Watkins); and (iii) the child was knocked over by one of the father's dogs on 17 May 2021 resulting in her getting bruises on her arm, knee and toe.

78. The father accepts that the child received a burn on her finger and later was knocked over by the family dog, but he feels that the mother is deliberately elevating those events to be more than the type of injuries that an active child might ordinarily receive. In relation to the report made concerning the helper, the father stated that he had noticed a mark on the child's back and that the child had told him: (i) that the helper had hit her with an object; and (ii) that it was not the first time that she had hit her. He said that, before he did anything, he emailed the mother to tell her about the injury and what he had been told. I note that in his email to the mother he insightfully said:

> *"Now, before we go making accusations, I think we should consider that she is at the age where she is making up stories."*

The email from the father is appropriate in the circumstances as is his concession that the child may be fabricating what she told him. The mother indicated to him on 11 May 2011 that she had asked the child if the helper had hit her, and that the child had said no and that she could not remember

how she got the scrape. The mother said that the child told her that she initially said to the father that she did not remember and that as *"you kept asking her, so she gave you a story"*. Therefore, it appears that the child did tell the father that the helper had hit her. He said the mother accepted that there had been different explanations. The father was not content with the mother's responses, and he sought advice from a school counsellor who advised him to report it to the Department of Children and Family Services ("DCFS), which he did. The father acknowledged that MASH investigated and decided to take no action, a decision which he accepted.

79. Having reviewed the evidence, I make a finding of fact that the father did write to the mother to inform her about the scrape on the child's back. I also make a finding of fact that he reported it to the school counsellor and was advised to report it to DCFS/MASH and that he did so. I note that he reached out to the mother before he did that and, although I recognise that there was a delay before MASH got involved, I do not find that it has been established that the father had an ulterior motive in making that reference. The mother has not satisfied the Court that it was *"a calculated attempt at manipulation, either to secure a more favourable court outcome or protect against any references to (the child) getting hurt at his home"*. Whether the child was telling a story to the father or not, the father cannot be said to have acted inappropriately in talking to a school counsellor and following that counsellor's recommendation to then report it when his child has informed him that an object was thrown at her and that she had been hit by that same person in the past. It appears that MASH was satisfied that the version of events explained to the father by the child were without foundation.

80. Before I move on, I note that it is contended that the father's reporting has had a significant impact on the mother's views about the father as it is submitted *"it is an act that eroded any lingering trust between the parties, leading to further upset and distress for (the mother)"* and that the mother believes that it is part of a pattern of behaviour to discredit her to secure the child's removal from her care. I note the mother's reference to removal from her care, when the father is not seeking a sole residence order but rather a shared care arrangement under the present shared residence order. It is evident from the way that this fact-finding hearing has been used, the depth of the material raised by the mother, and her words and demeanor when talking about him in her oral evidence that she does not trust the father and she is unable to view him to any extent in a positive manner.

81. I have already dealt with allegations concerning alienation in this Judgment and I do not intend to add to that. Allegations of the nature made in relation to what happens during some of the handovers are not relevant to the determination as to whether the father's behaviour may be regarded as being coercive or controlling. In the circumstances of this case, it is not an unusual issue for the Court to encounter and may be an issue at a later stage when one is considering what child arrangement order should be made and the mechanism to ensure that it occurs efficiently and with minimum conflict. I regard the raising of these types of allegations as an example of the mother's desire or expectation that she should have her numerous grievances in relation to the father raised and considered at this fact-finding hearing.

(iv) Neglectful parenting

82. I have reviewed the five allegations raised under the heading of neglectful parenting. The listed criticisms about the father's parenting are not issues relevant to a determination about where his behaviour is coercive and controlling or whether there is a pattern of such behaviour. They may well be matters for the Court to consider at the appeal/variation hearing when it is tasked with deciding what child arrangement orders are, at that time, in the best interests of the child. Therefore, I will not be making any findings of fact in relation to these matters at this hearing.

(v) Emotional abuse

83. The mother's submissions and evidence were fairly brief concerning this general headline allegation. She has raised seven allegations which she submits would amount to a finding of emotional abuse. They are: (i) the father telling the child to call the father's house *"home"* and the mother's house *"Mama's house"* when the child is at his home because the mother feels it results in the child feeling that she has no home; (ii) the father criticising masculine toys that the child plays with in the presence of the child; (iii) that the father cries at the same time that the child cries during contact thereby making the child feel that she is responsible for his emotions; (iv) phoning the mother when the child is crying at contact to ask her to reassure the child that everything is alright although he does not inform the mother about what is wrong; (v) the father's approach to the child's birthday in 2023 when he got the child to phone the mother to try to extend time at the party being held at the father's house and then bringing her to the mother 20 minutes late; (vi) leaving the child with the paternal grandmother on the child's birthday in 2022 rather than letting her be with the mother; and (vii) not letting the child call the mother when the child is with him.

84. These allegations, if proved, looked at individually or collectively with all of the other allegations would not amount to conduct that could be characterised as coercive or controlling. Again, seeking such findings at a finding of fact hearing is illustrative of the mother's instinctive negative interpretation of most actions taken by the father and trying to use this hearing as a catch all hearing to air all her grievances and have the court address them at this juncture rather than concentrating on more significant events that may if proved actually amount to coercive or controlling behaviour. Despite that, I will briefly comment on some of them. A parent informing the child that it should give different labels to each parent's home is not emotional abuse, it is in fact bolstering in the child's mind that each parent's property is a home for the child and that each parent wishes for the child to feel an integral part of their household. It would be wrong for the child to be given the impression that her only home is the mother's property.

85. In relation to the other incidents, the father does not accept the factual basis or the context of some of them. He denies that he had any issue about the type of toys the child plays with. I am unable to make any finding in that regard. In relation to crying, the father accepts that, on one occasion, on what had been a stressful day, he was tearful because the child was upset about not being able to have breast milk. His explanation seems plausible and, although not ideal, his emotional reaction in the presence of the child does not amount to emotional abuse. The 2023 birthday events are something that this Court often sees. I note that the father says that the child, the mother and her father were all invited to the party, but the adults declined. It is evident that the child was enjoying herself at her first birthday party at her father's home and she wanted to stay at the party longer. I accept that the father, knowing that the mother also wanted to celebrate a part of the special day with the child, should have told the child that she still had to return to her mother at the designated time. It was rather insensitive of him to put the mother in the position of having to be the parent to tell the child that it must leave the party and come back to her property.

86. The father states that he called the mother when the child was extremely upset because she could not have breast milk. It is evident that the father was having difficulty calming the child down. It is not emotionally abusive for the father to contact the mother hoping that she may be able to assist him to calm the child down in such circumstances. It may show that he, at that time, did not possess the parenting skills to do that himself, but his motive was a child-centric one and that does not amount to emotional abuse of the child or of the mother.

87. In relation to the allegation about leaving the child with his father on the child's birthday in 2022, the father's evidence is that he did not leave the child with the father, but instead they all went to the rugby together. Again, on the evidence before me, the mother is unable to satisfy me on the balance of probabilities that I should make the finding that she seeks in relation to that incident.

88. The next allegation is that the child is not made available by the father for indirect contact with the mother, this is also relied upon by the mother in relation to her allegation that the father fails to comply with Court orders. The Order made by Magistrate Hernandez stated that there was an expectation that the 'absent' parent would be able to have indirect contact once per day. The mother states that the father *"often"* does not permit the child to call her, telling the child that he has lost her number. The mother wrongly states in her Affidavit sworn on 10 July 2023 that this frustrates the child's rights under the Order to call her. The Order did not say that the child should contact the mother, it simply said that the parents should allow video or phone time. The mother says that when she calls the father, he does not tell the child that she has called, and the child becomes upset as she believes that her mother had forgotten to call her. The mother states that the father requires that she only call the child between 4:00 and 4:30 in the evening and she views his demands as being *"nonsensical and unworkable"*. The father states that he does not prevent the child from calling the mother and in fact says that the child can call whenever she wishes to. He adds that the mother calls too frequently at disruptive times. He is of the view that this is done in a manner which is inconsistent with the requirement in the Order to respect the time that he, the contact parent, has with the child. On the evidence before me, I am unable to make the finding that the mother seeks, although inevitably indirect contact may not have occurred on every single day when the child was in the father's care post the December 2021 Order. I am also unable to decide whether the mother abuses the indirect contact order.

89. Issues with the practical arrangements relating to indirect contact are frequently seen in contact cases, especially where the parents have a defective relationship as these parents do. There clearly have been some indirect contact issues in this case, and I would not be surprised if on occasions both parents have contributed to those. It is a matter of striking the correct balance. The child must be allowed to enjoy her contact with the father without what can be at times the disrupting interruption of indirect contact, but on the other hand some contact would enable the child to feel secure about the mother and the mother to feel secure about the child. It is unclear whether this

requires the indirect contact to be daily contact, if daily it can often be more for the wellbeing of the absent parent than it is for the child. The Order states that there would be an expectation for daily contact and now that the child is older, this may need to be reconsidered to determine whether daily contact is something which the child needs or finds onerous, rather than being something which either parent needs for their own security of mind.

90. Despite making a couple of comments above highlighting where the father may have 'done better' and had more insight, I do not find that he has been acting in a calculated manner to cause emotional harm to the mother or to the child.

(vi) Financial abuse

91. The mother relies on her allegations that: (i) the father's actions have had an adverse effect on her employment; (ii) the father has failed to reimburse the mother for the child's medical expenses, activity expenses, and some school fees; and (iii) the father has failed to disclose income and assets accurately as being her submitted grounds for a finding that the father financially abuses her. The mother states that her employment is affected as the father interrupts her at work, demands changes to the contact schedule on very short notice, has caused her to cancel an important client meeting due to him issuing court proceedings, and caused her to have to take leave from work when the child was hospitalised. These alleged actions of the father may well be factors to consider at a hearing when deciding what contact regime should be put in place, but they are not relevant to the current fact-finding hearing where the Court is being tasked to consider whether the father's actions amount to coercive or controlling behaviour. Accordingly, I make no findings concerning the specific allegations relied upon by the mother when she seeks to persuade the Court that she has been financially abused.

92. Financial and economic abuse can be a form of coercive and controlling behaviour. Financial abuse is often when an abuser takes control of finances to prevent the other person from leaving and to maintain power in a relationship. The abuser may take control of all the money, withhold it, and conceal that financial information from the victim. Financial abuse refers specifically to controlling money and economic abuse involves controlling access to economic resources (such as accommodation, transportation, clothing, food, personal possessions) more broadly. The Serious Crime Act (2015) in England and Wales defined controlling behaviour as: a range 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. So, in cases where the Court is considering whether there is financial abuse that amounts to coercive and controlling behaviour, the type of situation it confronts may be where the person is:

- depriving the other person of their basic needs and only allowing a person a punitive allowance;
- limiting access to finances (for example trying to control access to the parties' money, either by insisting they have access to the partner's bank account or obtaining passwords to the financial accounts and refusing to share them);
- denying access to support services, such as specialist support or medical services
- forcing the victim to take part in criminal activity such as shoplifting; or
- controlling finances: This may include: (i) using the partner's credit cards or other resources when the victim had not given him permission to do so; (ii) not allowing the victim to have her own credit cards or bank accounts; (iii) putting all of the victim's accounts in his name alone; (iv) withholding money from the victim or requiring her to ask for money each time she needed it; (v) insisting on knowing how every bit of money is spent, including when the victim is earning the money; (vi) controlling whether or not the victim can work; (vii) making sure that the victim spends down the monies she earnt on all the family expenses or legal proceedings, while the person saves all the money he earns in an account that the victim cannot have access to; (viii) intercepting and/or re-routing bank statements or credit card bills or using and/or changing the passwords they demanded the victim turn over to them; and (ix) taking the victim's wages.

93. The above behaviour can place the victim with little to no financial information or financial resources in an anxious and vulnerable state and make them overly reliant on the other partner. I have gone into the above detail to illustrate that those are the scenarios when financial abuse might exist and to distinguish the nature of the allegations that the mother relies upon to ground her contention that the father has perpetrated financial abuse. I make no finding of fact that the father has financially abused the mother in this case.

(vii) Breaches of Court Orders

94. The mother states that the Summary Court's orders are the *"cornerstone for successful contact regime"* and she contends that the father does not take them seriously *"when it suits him"* which causes her *"huge distress and sometimes puts (the child) in danger"*. The mother sets out examples which include: (i) a failure to provide indirect contact;[37] (ii) turning up *"routinely"* late for contact; (iii) failing to adhere to Covid-19 regulations; (iv) retaining the child outside court orders: and (v) publishing family law matters on social media.

95. It is accepted by the father that there have been occasions when he has been late returning the child to the mother after contact, but he also claims that tardiness is also a trait of the mother. The father states that he is willing to take a flexible approach but adds that that on occasion there may be a good reason for a late return.

96. The mother says that: (i) the father was 30 minutes late returning the child after the Easter 2023 contact and that he called her only after the return time had passed to ask if he could keep her later; (ii) the father was over 20 minutes late returning the child on her birthday on 28 May 2023;[38] and (iii) the father was 45 minutes late on Father's Day in June 2023. In relation to Easter 2023 the father accepts that he did contact the mother to ask for additional time as the child was enjoying an Easter egg hunt with her friends but added that, as a consequence of the mother's refusal to extend time, the child had to be the earliest to leave.

97. The father accepts that the child was late returning on the birthday of 28 May 2023, but as already mentioned this was because she was at her birthday party. The father does not accept that he was 45 minutes late on Father's Day, but concedes he was late but that was due to there being a late arrival coming off a boat and that he was unable to phone the mother due to his phone losing power. I make findings that the father was late on these occasions, but I also find that on the first two occasions he notified the mother and sought an extension of time, which was rejected by the mother. In a cooperative parental relationship, the above examples may not have become such a big issue as more flexibility from both parents would be expected. However, the father should have recognised that the mother would be unlikely to accede to his wish, and therefore if he was

[37] This has been dealt with in paragraphs 88 and 89 above.
[38] I have dealt with that at paragraph 85 above.

requesting an extension of time, it should have been done much earlier than at the tail end of the relevant contact session.

98. The mother adds that the father often makes requests to change contact arrangements, often late at night on the day before contact or during the contact day when she is at work. She characterises this as an ongoing pattern of behaviour and a lack of respect by the father in relation to her time. As an example of this, the mother highlights three examples in a one-month period between 25 May and the end of June 2023. On 25 May a change was sought to accommodate a T-ball game on 27 May 2023. In June 2023 a last-minute schedule change was requested due to the father's travel plans, coupled with the late notice that he was travelling which resulted in the mother having to make late alternative childcare arrangements. The mother highlights a four days' notice change in schedule in June 2023 made to accommodate Father's Day plans.

99. In relation to the T-ball game, the father accepts that he sought to adjust the time of the contact to enable the child to participate. He informed the Court that the child only plays that sport on Saturdays and that she has friends on her team. He says that a consequence of the mother refusing to change the schedule meant that the child missed the team's award ceremony. During the proceedings the mother has criticised the father for unilaterally enrolling the child in T-ball, which is a sport that he has an interest in. The mother believes the father organised the child's participation deliberately so as to impinge on her care time with the child and to give him an opportunity to see the child outside of ordered contact periods. However, I note that the child attends swimming around three times a week, an activity arranged by the mother who is herself a keen swimmer. In an ideal world, both parents would discuss and agree on the activities that their child should participate in. A child should be able to enjoy activities which both parents feel may benefit the child, it is not helpful for only one parent to dictate to the other all the activities which a child partakes in.

100. The above allegations of the mother do not amount to flagrant breaches of Court orders. What is set out is no different than one sees in a number of cases where there is a defined contact order, and the parents are unable to co-parent to a level where they can introduce reasonable flexibility to the arrangements contained in a court order. What has become clear to me, as a result of hearing all the evidence at this fact-finding hearing, is that these parents should attend a relevant co-parenting

program tailored to enabling them to interact in an improved manner that better meets their daughter's needs.

101. As mentioned above,[39] in April 2020, the Summary Court made an Order prohibiting the father from making any posting of the child on social media. The mother contends that that order has been breached by the father. The mother stated that the father posted additional photographs of the child on social media on 21 June 2020, refusing to remove them even after a letter from her Counsel was sent to him on 24 June 2020. She added that he also posted a social media video of the child on 31 October 2020 and that the father wrongly refused to acknowledge that he had done that. The father said that he posted more photographs on 30 October 2020 and as the mother was blocked from seeing them the only way she knew about them was when her friend sent copies in February 2021. He in effect was saying that the mother was having her friends stalk his social media accounts. The mother stated that the father misinformed the Summary Court on 23 December 2020 when he told the Magistrate that the June photographs had been removed, and that as a consequence her Counsel had to send him a further letter after that hearing requiring the removal of the photographs. I have seen the photographs posted on social media on 30 October 2020 which were attached to the exhibited 24 March 2021 letter sent by the mother's previous attorneys. They are rather innocuous photographs, with two of them showing the back of the child's head and she would not have been recognisable to anyone who did not know her or the family. There is one photograph showing the side of her face and it is likely that the child could be recognised from that photograph.

102. On the evidence before me the mother has satisfied me that the father did post three pictures of the child with other family members on social media in October 2021. It is unclear why the Magistrate felt she needed to make the Prohibitory Order. It may be because she felt that it was inappropriate for one parent to post images of a child on social media against the wishes of the other parent. It may well be because, at the time of the making of the Order, she was concerned that the purpose of the postings was for the father to inappropriately highlight the contact dispute between the parents in a public forum and that this was not in the child's best interest. Whatever the reason for the orders, I make a finding that the posting was a breach of Magistrate Hernandez's April 2020 Order.

[39] Paragraph 69.

103. Before I move away from the issue of posting images on social media, I comment that parents posting photographs of children on social media is something that is fairly commonplace. Different families have different views about whether they should do that, depending on that family's views about its online security and privacy. Whatever approach parents may decide, the posting of appropriate images of a child to simply share what events a family is enjoying does not amount to bad parenting, but parents would be expected to be able to reach a joint decision about their child's presence on social media.

104. The mother also highlights other events which she categorises as being breaches of Court Orders. These include a failure to adhere to Covid-19 regulations[40] and the father's retention of the child at contact in May 2023[41]. In relation to the May 2023 contact, I have made a finding of fact that the father did retain the child after the date and time agreed by the parties.

(vii) Harassment and stalking

105. The mother relies upon nine types of conduct which she contends are sufficient to ground an allegation of harassment and stalking. The first relates to the nature of frequency of written and oral communications the father makes to the mother. It is evident that in 2018 and 2019 the father inundated the mother with an inappropriate number of texts, at times disturbing her while she was at work. On the evidence before me, this has clearly reduced. Although the mother contends that the level of communication is still abusively excessive, I am not satisfied that this is established on the evidence before me. The finding of fact I make is that in 2018 and 2019, the father's written and oral communications to the mother were excessive and that at times it interfered with her ability to concentrate on her high pressure work environment.

106. The second type of conduct the mother relies upon is an allegation that the father attends at her home without her permission. She widens this to say that the father also turns up, without the mother's consent, at the child's school and other places he knows where she and the child will be. One such example relating to events in September 2019 was considered at some length in the oral evidence. Having reviewed the messages I am satisfied that the father was aware that, on that

[40] I considered this in paragraphs 106-112 below when considering the general heading allegation of harassment and stalking.
[41] I considered this at paragraph 35 above under the general heading allegation of litigation abuse.

occasion, he was not to turn up at the property when the mother was there. There had been an arrangement during a transition period after their separation when the father was able to see the child when she was being cared for by the helper in the mother's absence. However, on this instance on 3 September 2019, the father insisted on seeing the child although, at the very latest when he arrived at the property, he knew the mother was at home. That was not appropriate, and he should have left when the mother again made it clear to him, when he was knocking on the door, that he should have left and not pushed for contact. The mother called the police, but the father had left by the time they arrived. The mother contends that this type of conduct continued *"on the days that followed"*. On the evidence before it, the Court is unable to make findings about those additional days save to say it was clearly a very emotional time for the father with the child starting at school and he feeling he was being excluded. It is rightly submitted on behalf of the mother that his conduct in September was *"immature and irresponsible"*, but I do not accept, even when I consider it together with all of the other allegations being made, that it can be viewed as being *"manipulative, controlling and coercive"*. I am satisfied that at that time the father's actions were driven by him being desperate to see more of his child, but he failed to recognise what the appropriate boundaries were relating to attendance at the mother's property. His motivation was wishing to see his child more frequently at a time when the child was attending school for the first-time and not to cause harm to the mother's well-being.

107. There is an overlap with the mother's above concern with what happened during the time when Covid-19 regulations were in place in the Cayman Islands, namely in and around April 2020. Having regard to the circumstances and prevailing approach and attitudes at the time to counter the pandemic, following a discussion between the parents on or around 16 March 2020, they agreed that the mother and child would self-isolate at her property and that the Contact Order would be temporarily varied so that the father would have indirect contact.[42] The mother said that this was to last for so long as the Covid-19 measures continued.[43]

108. This was at a time when the parties were in the initial stages of Mediation having attended separate MIAM's. Although at that time the father was not seeing the child, the mother was concerned that

[42] The mother's preferred option had been for her and the child to self-isolate in Canada, but the father would not agree to that.
[43] Paragraph 7 of the mother's Affidavit dated 17 April 2020.

he was not taking the Covid-19 measures seriously due to his social activities, including hosting a gathering for his partner's birthday on 17 March 2020 and the fact that he was no longer living with his mother but with his partner and with another flat mate. The mother said that the father's circumstances and activities were different to what he led her to believe. The mother highlighted that, on 11 April 2020, the father misled the police when he told them that he had not left his house since 17 March.

109. The mother recalled that, when the Government Covid-19 Regulations were altered on 6 April 2020, the father indicated that he wished to restart having direct contact with the child. She was concerned that he was inappropriately making these requests in front of the child when he was having remote contact. I accept that if the mother felt that the father was not self-isolating appropriately, then she would have concerns about him having in-person contact with child. The mother felt justified in refusing contact on that basis and argued that the Order in place depended upon the parties agreeing a *"mutually agreed location"* and that the paternal grandparents' homes, which had been agreed locations, were no longer available due to health risks to them. Although the father's flat mate had moved out of his property on or around 31 March and he and his partner said they were self-isolating, the mother was concerned that the father was continuing to visit the beach. The mother highlighted that, in the build up to Easter, the father frequently messaged her requesting contact over the Easter weekend.

110. On 11 April 2020, the parents had an email exchange in which the father stated that he was going to come to the property for contact pursuant to the prevailing Interim Contact Order. The mother's response to him made it patently clear that that contact would not be taking place as per their 'Covid-19 Contact Agreement'. Despite that, the father still attended at the property, knocked on the door and messaged threatening to call the police if he was not permitted entry. The police arrived and the father spoke to them and the exchange between the parents became heated when the child was at the property. The mother had her attorneys speak to the police officers on the telephone and thereafter they and the father left the property. The mother felt that the father was using the police to try and intimidate her. The mother was critical of the police officers who were not wearing masks and she felt that they did not remain at a safe distance. The mother felt that the events of that day, which had occurred solely due to the father attending the property, put her and the child at risk of illness.

111. Although the father is technically correct when he argues that the Order remained in place, in circumstances where the parties had agreed to suspend that order due to the Covid-19 situation he was wrong to attend at the mother's property. Shortly before he did, on the same day, the mother had told him that he should not come. There was nothing wrong with him writing to the mother in the period building up to the Easter weekend to see whether there could be an agreement about some direct contact, but when it became clear that no such agreement could not be reached, (even in circumstances where he thought the Covid-19 Regulations did not prohibit him attending) he should have brought an application to the Court rather than attend at the property. He must have known that the mother would be upset by his attendance, especially as it was evident that she genuinely placed great priority on shielding the child from contracting Covid-19 and thereby protecting her and the child's health. I make a finding of fact that the father inappropriately attended at the mother's property to try to enforce contact on 11 April 2020 and by doing so caused distress to the mother. However, I am satisfied that he did so because he genuinely wanted to see the child, not because he wanted to harass the mother. That said, his actions showed a real lack of sensitivity and poor insight on his behalf.

112. A little later in the morning of 11 April 2020, the father messaged the mother to inform her that he was going to take a Covid test. Not to his credit, it appears that the father was able to get a Covid test by informing the Testing Centre that he had symptoms, even though he had informed the police earlier in the day that he did not. The father obtained a test that showed that at the time of taking the test he was negative. He was advised by the Health Service Authority that he must remain in isolation until 14 April 2020.

113. On 15 April 2020, the father messaged the mother apologising for upsetting her by involving the police but added that he was also sorry that the mother was making the child pay the price of not seeing her father. The father's final remark again showed little insight from him about how concerned the mother was about the possibility of Covid-19 infection. It was at this stage that regrettably he posted images and his concerns about contact in very public forums and media which resulted in comments being made in the public domain by members of the community. As already mentioned herein, it was an inappropriate thing for him to do and it did cause understandable distress to the mother.

114. Unfortunately, on 15 April 2020, the father again attended at the mother's property and knocked on the door. He was not granted access and he again contacted the police. For the reasons expressed above in relation to his 11 April 2020 attendance at the property, in the prevailing circumstances he was again wrong to go to the mother's property to seek contact placing reliance for him doing so on the interim order made prior to the pandemic. It appears that, after the police had questioned the father, he admitted to them that he had Covid-19 and that had been why he was tested, which surprised the mother because to that date he had always denied having symptoms.

115. I find that, on 15April 2020, the father again inappropriately attended at the mother's property, thereby causing her distress. The mother has not satisfied me on the evidence that the father's attendances at the property in April 2020 had a lasting impact on the child resulting in the child *"fearing monsters"* and a *"bad man"*. However, it was clearly not in the child's best interests for her to witness the emotional events and inter-parental friction that occurred on both of these days in April 2020, including the distress caused to mother. The correct approach would have been for either party to seek the assistance of the Court. The mother later did that by her application dated 20 April 2020, and her doing that resulted in a structured contact arrangement being set out in an Order made by Magistrate Hernandez at a remote hearing held on the same day as the application was issued. That order took into account and sought to address the developing and changing Covid-19 circumstances and concerns.

116. A further fact the mother relies upon in relation to the general headline allegation of harassment and stalking arises from events that happened in July 2022 when she was going to an important business meeting in New York and when the child was with the father for contact. The father emailed the mother asking her for flight details, as he had told the child that he would take her to the Grand Cayman Airport with flowers and chocolates to greet the mother when she arrived. The mother says that she felt compelled to provide that information to the child, because if she did not do so that would disappoint the child. The mother said that she was met at the Airport by the child and the father, and that the child gave her some flowers and chocolates. The mother said that the father waited for a very brief time and then said to the child that they had to leave because the grandmother was driving around waiting for them and that the child then became upset. The mother contends that the father had been motivated to do this, not to provide the child with an opportunity to greet her upon her return, but to checkup on who she might have been flying with. The father

says that he thought that he was simply providing a nice gesture and that it was something that the child would enjoy.

117. I find that the father attended the Airport with the child to meet and provide gifts to the mother upon her arrival, but having heard his evidence on the point, I do not find that this was an attempt by him to harass or stalk the mother. The mother has failed to prove that he had an ulterior motive. This is not one of those cases where the father was unhappy when the relationship came to an end and wished to monitor his former partner's life. It is quite clear that when the relationship did come to an end, save for the arrangements for the child, he was moving on with his life. The mother appears to be the one who was most upset by the manner in which the relationship came to an end, including the father quickly moving on to another relationship at that time. That is not a criticism of the mother, who at the time had a more mature outlook on life than the father did, especially when there were the new responsibilities for caring for a child.

118. A further allegation concerns an incident that happened on 26 July 2022 when the mother was driving on a dual carriageway from her home to deliver the child to the father at the Airport because he was taking her on an overseas trip. The father saw them 'on the road' and he drove his vehicle alongside the mother's car and honked his horn. The mother said this surprised and frightened her. The mother said that she slowed down so he could pass, and he then copied her and also slowed down so that their vehicles were driving side-by-side, thereby blocking the lanes that they were in causing a tailback of the cars behind them. The mother's view was that the father was deliberately looking to cause an accident and run her off the road. The father says that he is appalled by this allegation and that he viewed his actions as being no more than him trying to gesture and wave hello to the child in the other vehicle.

119. The mother's contention that the father was trying to deliberately cause an accident to her vehicle in which his daughter was seated is without merit. Unfortunately, it is an example of how, on occasion, the mother over-exaggerates her negative interpretations of certain events. However, the father's actions were immature and were clearly unsettling to the mother who was trying to concentrate on driving in a safe manner. It was poor driving on the father's behalf, and it showed a lack of courtesy, not only to the mother, but to other road users. I make a finding of fact that the

father did drive in this inappropriate manner and that it caused distress to the mother, but he was not doing so to deliberately harass or intimidate the mother or to deliberately cause an accident.

120. The mother contends that the father unilaterally enrolling the child in extracurricular activities when he is the coach during her parenting time is an example of harassment and stalking. I have already addressed the issues concerning parents enrolling their child into extra-curricular activities.[44] Although, as mentioned earlier, ideally both parents should jointly decide how the child's free time should be used on extra-curricular activities, in a situation such as this where both parents enrolled her in activities that the parents have historically taken part in or enjoyed does not mean that a parent has done that to stalk or harass the other parent. I find that the father did enroll the child in T-ball and that it may encroach on the mother's time that she enjoys with the child, but I do not find that the intention of the father was a to harass the mother.

121. The mother is critical of the father for requesting that they attend counselling. It is highlighted by the mother that the Court cannot compel the parties to attend counselling in private law children proceedings and that it is *"clinically inappropriate"* to force an unwilling parent to attend counselling. She is frustrated by the fact that the father still raises counselling in Court proceedings when she says that on at least two occasions Judges have stated that they do not have the jurisdiction to order parties to attend it. The mother submits that the requests made by the father for counselling are not being sought by him to address any parenting issues but to afford an opportunity to the father to spend more time with the mother. The mother sees his repetitive requests for them to attend counselling is an example of him seeking to exert control over her and how she uses her spare time.

122. I agree with the mother's concession that a request for counselling is not in itself abusive. I also agree that her receipt of repeated requests from the father to attend counselling, he knowing that she will likely rebuff them, is frustrating for her. However, parents frequently raise in Court that they feel that counselling would be beneficial and that they would be willing to attend. Courts frequently recommend to parties that they should attend relevant modes of counselling.

[44] See paragraph 99 above.

123. In this case, the Welfare Officer, Ms. Carol Robinson, recommended, in her report dated 18 April 2028, that the parties attend co-parenting sessions at the Family Resource Centre. In Ms. Robinson's 9 May 2018 Report, she said that she noted the mother's anxiety and she was concerned about *"the tension"* between the parents and that the child may be used as a pawn between them. She said that:

> *"It is obvious that both (parents) will need to enroll in co-parenting classes if they wish to be successful parents. They were both informed d by this writer about seeking professional help in this regard."*

The next Welfare Officer, Ms. Kernita-Rose Bailey recommended, in her report dated 31 March 2021, that the parties should:

> *"be provided with an opportunity for participating in co-parenting classes and developing a Parental Plan"* and that the matter could *"be reviewed following the parties' participation in co-parenting classes and development of a Parenting Plan."*

In that report, as highlighted by Magistrate Hernandez in her Ruling dated 13 December 2021, Ms. Bailey noted that the parents:

> *"had significant challenges in their co-parenting relationship which have resulted in repeated court appearances. It is of concern that they have been unable to reach agreements in the past. A review of the list of concerns by both parents reveal that they continue to experience difficulties in communication and collaboration."*

In her 16 July 2021 report Ms. Bailey noted that the parents had completed individually attended co-parenting courses at the Family Resource Centre and she recommended that they attend Mediation on specific aspects of their parenting plans that emerged from their attendance on the course. Although they have attended separate courses from which some benefit was gained as their two parenting plans emerged, it is evident that there are beneficial opportunities available to them to seek assistance, especially due to the developments almost three years after the 2021 course and the child being three years older. It is unfair to criticise the father for pushing for counselling, when the welfare officers in this matter have themselves continually been recommending it to the parents. In fact, on one hand, the father could be commended for taking on board their recommendations.

124. I find that the father has consistently wished to promote the adoption of counselling and that he has persistently sought, much to her chagrin, to convince the mother to share his view. However, I do not find that in so doing the father is behaving in a controlling manner.

125. There are other alleged incidents raised by the mother in relation to the present general headline allegation. They include the father attending at her house on 3 September 2020 and refusing to leave, the father removing the child from the mother's car without first speaking to her, slamming the door in her face at a contact exchange, him coming aggressively towards her from across the room on an unspecified occasion, and the father blocking her from getting to the child on an unspecified occasion. For all these alleged events, having regard to the evidence placed before me, the mother has not proved these allegations to the standard of proof required for findings of fact to be made.

126. Although, as set out at parts above, I have found that the father has acted inappropriately towards the mother on some occasions, I do not find that his acts either individually or globally can be characterised as stalking or harassment.

Conclusion

127. Although a number of allegations raised are dated and that alleged conduct by the father may have now ceased, it does not mean that they should not be taken into account when ascertaining whether there is pattern of controlling or coercive behaviour. When considering the allegations that have been proved and whether they establish a pattern of controlling and coercive behaviour, I have regard to the principles and guidance rehearsed by me at paragraphs 46 to 57. I seek to analyse what the intention of the father was and any harmful impact of his conduct. I am also cognisant that not all inappropriate behaviour amounts to abuse. When I consider the allegations of conduct, I first endeavour to make a finding about whether they occurred. Although I initially consider the nature of each action individually, that is not the end of it. I am aware that individual actions in isolation may not seem particularly serious or insidious. However, when one considers all of the proven allegations together, they may take on a different character, indicating a pattern emerging of controlling or coercive behaviour by a perpetrator. I have therefore considered all the allegations globally when considering whether the mother has established in the balance of probability that the father has acted in a coercive and controlling manner towards her.

128. When adopting the above approach, I still do not find there to be convincing evidence of abusive behaviour in the form of controlling and coercive behaviour. Some of the father's conduct may have been illustrative of a lack of parenting skills on his behalf when the child was much younger. It was at times inappropriate, insensitive, and immature, but I am not persuaded that it was malicious.

129. Above are my findings of fact. The parties will hopefully reflect on the findings.

130. If the above reflection does not lead the parties to a sensible resolution of these drawn-out child proceedings then, to counter further delay, I am making a referral for an updated Welfare Report dealing with the issues set out in the Summonses before me. As suggested by the parties at the fact-finding directions hearing, a copy of this Judgment will be provided to the Welfare Officer. However, if the parties feel that they would prefer to go to mediation before a report has been prepared, they should inform the Court and I can suspend the Welfare Report referral and direct that they may contact the Mediator directly.

131. I do not consider the issue of costs arising in these presently ongoing appeal and variation proceedings as my understanding is that is something that the parties will want to address at a later date.

THE HON. MR. JUSTICE RICHARD WILLIAMS
JUDGE OF THE GRAND COURT