

IN THE FAMILY COURT AT ROMFORD

Romford County Court and Family Court
2a Oaklands Avenue
Romford
RM1 4DP

BEFORE:

DISTRICT JUDGE KEMP

BETWEEN:

D

APPLICANT

-and-

A

RESPONDENT

Legal Representation

Ms Sophie Kay (Counsel) on behalf of the Applicant

Mr Zainulabedin Hatim Jafferji (Counsel) on behalf of the Respondent

Judgment

Judgment date: 15 January 2025
Transcribed from 14:22:20 until 15:36:21

Reporting Restrictions Applied: Yes

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

District Judge Kemp:

1. This is an application concerning the one child of the parties, their son, who is anonymised to, C, and is now eight years old. The Mother, who is anonymised to, D, is represented by Ms Kay of counsel, the Father, who is anonymised to, A, is represented by Mr Jafferji of counsel, and I am grateful for both counsel for their input and their considered approach to these proceedings. Fact-find hearings, whilst, of course, very difficult and sometimes traumatic for the parties also provide challenges to the professional advocates and I am grateful for the approaches taken by respective counsel.
2. I am, unusually, going to give a nod to a Mr Recorder O’Grady, an individual I do not know personally but who gave a very clear and concise, and indeed excellent, judgment in a completely unrelated case in the Midlands, actually in Leicester where Mr Jafferji, I think, hails, which has been shared amongst colleagues as providing a very useful template for judgments in fact-find hearings. I am not quoting it as an authority so I am not quoting the case in full in terms of a title, but it does provide a useful guide as to the issues to be addressed and there may be points in my judgment where I almost take verbatim what Mr Recorder O’Grady set out when it comes to the consideration of the law and the direction the Court has to give itself when considering the issues in a fact-find case.
3. In terms of a preliminary issue point, the parents, the parties, were separated throughout the hearing by a screen, they could not see each other when they gave evidence. There was, unfortunately, one blip after a break when for a split second, or maybe two seconds, the Mother did come into the eyeline of the Father, for which I apologise and that was simply a logistical oversight, but that did not detract from the ability of both parties to give their evidence without feeling intimidated in any way. Not having heard any objections to the arrangements with the screen in place I am satisfied that both parties have been able to fully participate in the hearing and their vulnerabilities have been appropriately safeguarded.
4. There was a preliminary issue also in relation to audio and video evidence, and it was agreed at the outset of the hearing that that would be listened to and viewed by the parties with counsel present and myself. Those video and audio recordings were subsequently referred to, touched upon, during the course of the hearing and the evidence heard over the first two days, with today, the third day, being confined to submissions and judgment.
5. By way of general background, the parties met in 2010 and married in 2011, and that is when the Mother came to the UK. She had no family or friends here and was totally dependent when she came to the UK on her relationship with the Father. Sadly, during the course of that marriage, the parties experienced a stillbirth in 2014. Whilst there is a suggestion by the Mother in evidence that the experiences that she had with the Father during that pregnancy may have been a factor in the very sad outcome no evidence has been offered that that is a conclusion that can be drawn. I am not therefore making any finding on that particular issue and unfortunately that may simply be down to life’s experiences, but I felt I should reference the fact that,

whilst C, thankfully, was born healthy, the parties had experienced an earlier pregnancy.

6. I will address in more detail later the dynamics between the adults but, ultimately, they separated in 2020 following an unhappy sequence of events, with the Father then commencing divorce proceedings. They were uncontested, a decree nisi has been granted. I am not clear if the decree absolute has followed, not that it has a particular direct relevance to the facts in this case. I will return later to an observation in terms of the evidence on the presentation of that divorce petition.
7. The Mother commenced this application in March of 2023. There is a safeguarding letter, which is dated 10 May 2023, and that does contain, really, the start of the opening up of the evidence which this Court has had to grapple with. That safeguarding letter does not in itself make happy reading.
8. Before I go on to the issues I should also just say that the first hearing, the FHDRA, First Hearing Dispute Resolution Appointment, took place on 26 October 2023. Again, sadly, the system did not allow for a quick first hearing and, as a result of that hearing in October of 2023, a Section 7 report was prepared in April of 2024 before a Dispute Resolution Appointment took place on 3 May 2024 before me. As part of the directions which were set out leading up to the fact-find hearing there was an Indirect Contact Order made for letters and cards, and also a Lives With Order until further order for C to live with the Applicant Mother.
9. The hearing that has now taken place was initially scheduled for four days. There had been some discussion at the DRA that perhaps the hearing could be a rolled-up fact-find and child focused arrangements hearing, and that, in fact, was discussed further at the Pre-Trial Review on 18 December 2024, when it was concluded that this hearing would be fact-find only. Perhaps with hindsight, and given some of the issues which have been raised during this hearing, we could have addressed some welfare issues but in many respects that was circumvented by the order I made at the Pre-Trial Review, which has already timetabled the further Section 7 report on the back of the findings that I will address shortly, and there is, I believe, a DRA already listed for sometime early in the summer. At least we have not lost additional time, had I been directing a Section 7 report as of today. It may only be a short saving in time but at least some saving for these parties and, more importantly, for C.
10. The issues I must determine are the allegations of abuse, both physical and emotional, against both the Mother and C. I had presented to me before the hearing commenced a bundle of some 460-odd pages. Permission had been given to go over the usual 350 page limit. There is a Cafcass report from Kirsten Connor, which I have referenced previously, and within the bundle as well there are extensive records from the school which have been referred to during the course of the hearing as the school logs. There is Local Authority documentation, photographs, statements from both parties with numerous exhibits, some of which have proved to be more relevant than others, and where I have thought it appropriate I have addressed those documents in my findings, which, again, will follow shortly. I, of course, also heard the oral evidence of both parties as well as the detailed submissions on their behalf by both counsel.
11. All the evidence I have considered very carefully. I allowed myself more than enough reading time at the commencement of the first day. I have also listened very

carefully to the oral evidence offered by both parties. It is not possible to offer in a judgment a repetition of everything that I have considered and heard and read, and any failure on my part to refer back to a particular piece of evidence does not reflect a failure on my part to have considered it. What follows generally is a summary of the evidence, what is pertinent, what is relevant and what may or not be persuasive to my findings.

12. I will say at the outset, and I did, in many respects, forewarn the parties before we commenced the evidence, that giving evidence can be a traumatic experience. Sometimes, as the lawyers used to this day in day out, we take for granted being in a courtroom and dealing with the formalities of court hearings without sometimes understanding and recognising how the litigants themselves are feeling and, of course, how litigants react to giving evidence can be very different. Some will relish the opportunity of telling their tale, others become particularly nervous and find difficulty in expressing themselves. I will address how I believe the parties came across, or at least how I saw how they came across in the giving of their evidence very shortly.
13. There is much argument in the legal world as to how much store judges can put on the demeanour of parties in giving their evidence. Issues of body language have been touched upon, some say it can be very telling, others say not so because the different ways that people react to the giving of their evidence. I try and take everything into the mix when I consider the credibility of witnesses, both in terms of how they deliver their evidence and also how they are reacting to the evidence given by the other. One of the benefits of in-court hearings as opposed to video hearings is that the judge does have the ability to see everyone clearly rather than looking from a screenshot on a video. I have been able to observe how both parties have carried themselves through the hearing, both giving evidence and listening to the evidence.
14. I will move on now to just give an overview as to how the parties presented in my view as a general observation before I then address the law, which will determine what is the guidance for me in terms of the findings I need to make, and the particular and precise issues which I have adjudicated upon. The Mother gave her evidence first as she has made the allegations. I found her to be credible. She dealt with questions put to her with sincerity, explaining her various thought processes, particularly when criticisms of her actions were put to her. She was calm and also at times, I have to say, emotional. I felt genuinely that she was putting across a position where she had tried to avoid getting to the point we are now at, but notwithstanding her attempts, sadly, this is a case which has had to be litigated to a fact-find and, of course, necessarily beyond.
15. The Father in giving his evidence often gave long-winded responses, going quite commonly off topic and had to be reminded as to what the question put had been before then re-focusing. He gave an impression quite early on in his responses to cross-examination that the Mother somehow owed him for what he had done for her. He referenced during the course of cross-examination how he had helped with her job, how he had helped with the gynaecologist, how he had helped her settle in to life in this jurisdiction.
16. There was no doubt, I will say, that he cares deeply for C. He loves him but seeks to impose his discipline and his world view upon him, and there were times when he minimised some of the issues put to him in appropriate cross-examination. When

some of the allegations were put, he offered no explanations to the evidence that the Mother relied upon, for which he had given a blanket denial. One of the most telling of those were in relation to the photographs. Again, I will return to that in more detail in due course.

17. One stand out example of his attitude came in relation to the anger management course that he had undertaken, and I must give him credit for having done that, completing that during the Summer of last year, but when he was questioned on that he made it quite clear that he had undertaken the course not because he had wanted to or felt it necessary, but because the Mother's counsel had asked him to do so. Actually, it may have been a submission made by Mother's counsel, but ultimately it was an order of the court. Having denied that he had anger issues, he then said that he had emotional control issues which, in many respects, is one and the same thing, but take out the word anger and it perhaps diffuses the implied concern that the Court may have as regards the self-control which the Father had sometimes not been able to contain.
18. The way he portrayed himself showed little insight as to how his approach to parenting had impacted C particularly and therefore also on the Mother. He only conceded admissions when confronted with the audio and video extracts which were presented at the start of the trial, and which I will again address later within this judgment.
19. For the first time, in cross-examination, he did admit to losing sight of what was important, and that was almost a word for word quote in response to a question put to him, but he also went on to say that he had nothing to apologise for. He did say, again in response to cross-examination, that he considered smacking an appropriate form of punishment, and he also acknowledged that maybe the way he had spoken to C had made C scared, but he offered no remorse nor insightfulness as regards the impact that would have on C. I have to say there were times when I felt that the Father was quite cold in the delivery of his responses to cross-examination.
20. What did emerge from the evidence of both parties, and listening to them carefully, is the cultural subtext which perhaps underpins some of the issues which have been raised in these proceedings. This was a traditional South Asian family dynamic, where the husband, the Father, is the dominant partner. That is not in itself an issue where there is harmony and I do not seek to criticise how different cultures structure their lives, but it can become a destructive factor when there is no harmony and there is no accord, no agreement, when it comes to life decisions and, most importantly, the bringing up of children.
21. In some ways this does direct me as to how these parents have moved from the child arrangements which were in place post-September 2020 to the full breakdown, which we see in early 2023. My conclusion by reference to the conduct of the Father, which I will again address in more detail when I go through my findings, is that he, in his arrogant belief in being superior to the Mother, was wanting to push C academically and impose his will and approach to parenting, pushing boundaries, chipping away at Mother and her role as a parent. Perhaps the solidifying of his own new relationship with his new partner was a step towards gearing up to a challenge to where C may ultimately live, and perhaps, and sadly and unfortunately for him, that imploded by the events of early 2023.

22. That, really, is a rather broad summary of the overall feeling of the evidence and the conclusions I reached on a more generic view before I go to the specifics of the allegations that are set out in the Scott Schedule.
23. I do have to address the law. The burden, as has been expressed, when it comes to proving of allegations is with the party alleging the fact. The standard of proof is the civil test, that being the simple balance of probabilities. If that standard is met then the assertion is considered a fact and treated so in the context of the decision making process. If not met, then it is not a fact for that purpose. The findings I make must be based on the evidence, including references reasonably drawn from the evidence, and not merely speculation. That evidence comes in the form of both the oral evidence of the parties, the written evidence, and also the documentation and corroborative evidence, information, that each party seeks to rely upon, or which each party seeks to challenge.
24. There are some documents which have been provided from third parties. Of course, without the ability to cross-examine those third parties, I cannot draw definitive conclusions in the absence of their cross-examination, but I can draw certain inferences which may or may not support the positions presented by each of these parents. I have to take into account all the evidence that is presented to me, and I think the quote often is, I have to survey a wide landscape and must avoid simply looking at things in isolation, although each consideration has to be addressed by me.
25. I also have to give myself what the lawyers have referred to during the course of this hearing as a Lucas direction. Where I find that perhaps there has been an untruth by a party that does not necessarily mean that everything they say cannot be believed. If a court is shown that the evidence is a deliberate untruth and did not arise from confusion, it relates to a significant issue, that it is not told for a reason advanced by or behalf of the person telling the lie, or for some other reason arising from the evidence which does not point to the person telling the lie, guilt, and only if satisfied that these criteria are satisfied, can the person telling the lie be used as some support for the case against him or her. But the lie itself cannot prove guilt.
26. That was from the case of *R v Lucas* [1981] QB 720, and the further case of *A, B and C* [2021] EWCA Civ 451. That is very legal and technical in terms of the litigants in the room, but what it means in very simple terms, that even if I find that a party has lied on one issue, it does not mean that everything they have said is considered to be untrue. Everything has to be looked at in isolation and then put together in the round.
27. So far as the law on domestic abuse is concerned that is directed through Section 1 of the Domestic Abuse Act 2021. That domestic abuse includes any single incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse by adults or over those who are personally connected within the meaning of Section 2 of the Domestic Abuse Act. Abuse can encompass but is not limited to psychological, physical, sexual, economic or emotional abuse. Economic abuse means any behaviour that has substantial adverse effect on the other person's ability to acquire, use or maintain money or other property, goods or services. Probably not directly relevant here, although there has been a touch upon a gambling addiction, but that has not been in itself a definitive issue in the overall scheme of things.

28. Coercive behaviour includes an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish or frighten their victim. Controlling behaviour includes an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape, and regulating their everyday behaviour.
29. The circumstances encompassed by the definition of domestic abuse in Practice Direction 12J, again I apologise for legal references to the parties in the room, the litigants in the room, recognises that coercive and/or controlling behaviour by one party may cause serious emotional and psychological harm to members of the family unit, whether or not there has been any actual episodes of violence or sexual abuse.
30. In summary, a pattern of coercive and/or controlling behaviour can be as abusive or more abusive than a particular factual incident that may be written down and included in a schedule in court proceedings. Harm to a child in an abusive household is not limited to cases of actual violence to the child or the parents. A pattern of abusive behaviour is as relevant to the child as to the adult victim. A child can be harmed in any one or a combination of ways, for example where the abusive behaviour is directly against or witnessed by a child, it causes the victim of the abuse to be so frightened of provoking an outburst or reaction from the perpetrator that she or he is unable to give priority to the needs of his or her child, creates an atmosphere of fear and anxiety in the home which is inimical to the welfare of the child, risks inculcating, particularly in boys, a set of values which involves treating women as being inferior to men.
31. It is also extremely 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 the child. Much will turn on the intention of the perpetrator of the alleged abuse and the harmful impact of that behaviour.
32. In terms of a child's welfare, that is addressed through Section 1 of the Children Act 1989 and although I am not today being asked to make a definitive order under Section 8 of that Act, of course C's welfare remains very much in the forefront of these proceedings and certain decisions will yet have to be made as to how the case proceeds, and what may be the ultimate outcome in relation to child arrangements.
33. If I then move on towards the findings themselves, I will start off by saying that at times the cross-examination of the parties was a little disjointed and I am not here criticising the barristers at all, but when one looks at the schedule of allegations there is a significant overlap between the allegations of physical harm, emotional abuse, controlling and coercive behaviour said to have been perpetrated against both the Mother and C, and perhaps this shows up the often raised legal discussions that take place as to whether Scott Schedules remain fit for purpose.
34. Again, I am not wishing to bore the litigants in the room, there is a school of thought that suggests that controlling and coercive behaviour is not always easy to pigeonhole. Scott Schedules were designed to try and focus minds on allegations, but when we are looking at controlling behaviour that is not always easy to define by reference to particular incidents.

35. However, to give some substance and structure to my findings, I will follow the main headings in the schedule, if not the subparagraphs themselves. I will, however, jump to the back of the allegations because they contain the admissions which were made by the Father at the commencement of this hearing after the playing of the audio and visual clips. As said, the Father has backtracked from his blanket denial of the allegations contained at allegation 5, subparagraphs (i) and (iv).
36. Subparagraph (i) alleges that the Father told C that the Mother had numerous boyfriends, and forced C to watch YouTube videos of the Mother's ex-boyfriend. The Father now accepts, as a matter of fact, that he did force C to watch the YouTube video and in the clip that we viewed, you could clearly hear C requesting, almost demanding, pleading, to not have to watch that particular video.
37. The concern I have also with that admission, and also the event itself, is the reference to the Mother's boyfriend and also the admission that references were made to the Mother's numerous boyfriends. It is quite clear in my mind that that is an attempt to abuse C emotionally, to raise question marks in his head as to his Mother's morals, her beliefs, and ultimately perhaps her ability to offer appropriate parental guidance as he grows up. It is quite clearly, in my view, an attempt to undermine the Mother's standing in C's mind.
38. Sub paragraph (v) alleges that the Father subjected C to emotional abuse by shouting and acting in an intimidating way. The Father acknowledged the emotional abuse by shouting and acting in an intimidating manner. I did reference that when I referred to an admission made that perhaps that was not an appropriate way of speaking with C and that maybe C had been scared, but again the Father showed a surprising lack of insight. Whilst acknowledging that it may have scared C I would have expected perhaps more insight and acknowledgement of the harm that it would have done to C, rather than just simply an admission that he had acted in an intimidating manner. I should also reference the fact that it is quite clear that on the audio that we heard, the Father was shouting at C and C's distress was coming through in that particular clip.
39. Moving back to the start of the schedule, and in particular allegation number 1, this is the allegation of physical abuse against the Mother. The allegations are divided into subparagraphs. The Father's response was a blanket denial and he repeated a number of times in cross-examination that he had never hit the Mother. The allegations in subparagraphs (i), (ii) and (iii) of alleged incidents in mid-2017, the winter of 2017, and 3 November 2019, are, really, only supported directly by the Mother's statement and I have to say that, in itself, is of limited value. I cannot, on the evidence presented on those three particular subparagraphs, make definitive findings, but when it comes to subparagraphs (iv) and (v), and those are the incidents of April 2020 and September 2020, it is a different story.
40. The incident of April 2020 is addressed in the Mother's statement at paragraph 5 onwards, through to paragraph 14. The allegation is that the Father hit the Mother numerous times because she would not stop C watching a video whilst he was eating. It is said that C was present and that as part of the incident the Father hit C with a ruler when C was trying to comfort the Mother. It is alleged that the Father told the Mother that he did this to 'hurt her'. It appears accepted that C was having dinner, the parties were in the room, C was watching a video on a phone and there was some altercation, disagreement, argument between the parties as to whether this is appropriate, the fact is that he is watching something on the phone. The Mother's

case is that she is struck by the Father and that also the Father strikes C as well, with a ruler.

41. In support of that particular incident the Mother has also produced photographs within the bundle and, significantly, she has sent an email to an individual who is described as a relative, anonymised to P1, with those photographs which quite clearly show bruises on her arm, and she says:

“Please keep attached the photos only to yourself as I only trust you.”

There is a response a few hours later where P1 responds, and there is reference to a phone, but that is not directly relevant to this particular issue, but in that email he says:

“He promised [*and that is the father*] he would not raise a hand to you again.”

Significantly, the word ‘again’ is used. That must, in itself, imply that there has been some physical chastisement of the Mother by the Father previously. I do not see it as a slip, I do not see it as a mistake. It is quite clear what that meaning is.

42. There is also reference in an email, again sent on 7 April, a little bit later, where P1 refers to the, Father:

“Many times told me that he feels like taking your life.”

I am not sure that that threat in itself is ever going to be a serious one, it is probably something said in frustration or anger when the Mother was not complying with the wishes of the Father, but it, of course, is something which will upset and be quite debilitating for the Mother to read in the context of that email.

43. Further on, the email refers to:

“I can’t believe the images that both of you paint on each other, simply can’t believe.”

44. There was a suggestion by THE Father in cross examination, and I am not sure I was mistaken in this, that what P1 was saying is ‘I cannot believe you’, the Mother. I do not think that was the meaning of that email. I think it is an expression of I just cannot believe this is happening between the two of you, and I do not question the fact that P1 himself is questioning the honesty of the Applicant Mother.

45. In terms of corroborative evidence of that allegation we have photographs showing clear bruises, no explanation offered in response, suggesting perhaps that they are fabricated, staged, self-inflicted, which would be the usual comeback if someone had some sort of explanation, but no. The Father is silent, he had the opportunity of suggesting how those photos came to pass and the only real submission that could be made either by him or on his behalf was, well, there is no actual data, there is no date showing on those photographs, how do we know they were taken on the dates that they were said to have been taken, which is immediately after the events of April 2020.

46. On that particular allegation, I find that the allegation of physical abuse against the Applicant did take place. I am going to obviously park the issue with C until we come on to specifically the allegations involving him.
47. Criticism has been made of the Mother by the Father, and again on his behalf, that maybe the Mother could have or should have done more to alert the authorities to what she was suffering as of April 2020, but I think that also does not, perhaps, acknowledge that she was still trying to make a relationship work and also she still felt, and continued to feel, isolated, not really knowing what to do, and I think, as she said in re-examination, remaining in this 'black hole' and feeling quite helpless.
48. We then have the events of September 2020. This is contained in sub paragraph (v) of allegation 1, that the Father repeatedly hit the Mother because she stopped him accessing her e-mails. C was present. This is set out in the Applicant's statement from paragraph 15 onwards, and there was quite a lot going on through the period, the summer of 2020, which led up to this engagement between the parties. If I put it that way for the moment, when the Mother finds the Father attempting to scroll through her laptop and she attempts to turn it off, there is a physical engagement between them in which she says she suffered bruising and again was hit by the Father.
49. His response again is simply a blanket denial, notwithstanding the fact that within the bundle, photographs are produced which initially show a red mark and then, after a couple of days, that red mark has turned to a bruise. The mark itself is entirely consistent, in my view, of an arm being held with some considerable pressure and that in itself supports the contention that the Father exercised inappropriate physical force on the Mother and was likely also to have struck her during that altercation, following a pattern of behaviour which I will cover in more detail, when I assess some of the documentary evidence which has been presented.
50. I will also later address what I have, perhaps unfairly, referred to as a sideshow of emails which were sent and received around this time involving third parties in the context of the controlling and coercive behaviour and emotional abuse. Again, to counter the criticism of the Mother that she did nothing or little to address the fear that she was in, I do accept her statement regarding C being about to start school and that she did not want him upset nor unsettled at home before this significant step. The police were called. There was a decision made in previous hearings not to have police disclosure because of the disproportionate costs given their limited engagement.
51. There is a summary contained within a Local Authority letter dated 22 January 2024, which references the attendance by the police. It is only a few lines, I do not think it is a document that either party can particularly rely upon, given that it is compiled by a third party from another third party and, whilst it was put to the Mother that that was some evidence towards the police not having been told about physical violence, I do not necessarily accept that assists one way or the other. The police were called, that does not seem to be an issue between the parties and, given the evidence of the photographs, the description of the incident itself, I again make a finding that that is a physical assault that did happen and has been proved on the balance of probabilities.

52. Moving through the schedule, we have allegations 2 and 3. Allegation 2 is the emotional, psychological and verbal abuse of the Applicant, and then we also have at allegation 3 the controlling and coercive behaviour towards the Applicant. What I have decided and considered in relation to those allegations, that they are probably best wrapped together because there is a fine line between what can be considered emotional, psychological and verbal abuse and controlling and coercive behaviour, given the view I expressed earlier about the difficulty in pigeonholing those types of abuse.
53. In the Father's evidence he is regularly critical of the Mother and her actions, and a clear example of that comes in relation to the email which was sent by her on 6 January, which follows C returning, after having spent time with the Father, on 3 January, just after the Christmas holiday break. In that email Mother expresses her worries, she references C having been under severe mental stress, she references his aggressive behaviour when returning from time spent with his Father, suffering anxiety whenever he has had to spend the weekend with the Father, referencing his head hurting and, sadly, referring to C expressing hatred towards his Father and telling the Mother to kill 'Daddy'. She is concerned about his mental health, his wellbeing. She references his plea to her that he should be rescued and that he may jump off the balcony when with his father.
54. She has been to the school, she has been to the GP, and a criticism that the Father makes is that she did not pick up the phone to discuss this with him. Given the dynamics, which I have already touched upon, as between these parties I am not surprised that the Mother chose to put something in writing rather than try and engage in a conversation with the Father in which she may have been shouted down or argued with, without having the ability to express her concerns, which are well articulated in that email. What the Father does not acknowledge is the last paragraph:
- “He is not fit to stay with you this weekend. Let me observe whether he will calm down in the coming week. I can arrange for you to make a video call to him, but I do not want you to shout at him. It will make things worse for C and you. Especially, I request you not talk about suicide anymore. I implore you to behave sensibly at this moment without getting into your usual angry mood, this is not time for that.”**
55. These are the words of a mother who is still desperately trying to hold onto something, to protect C, but at the same time give the Father the opportunity of understanding and recognising that C is a troubled child and that he needs careful handling, that his emotions are all over the place. There is certainly here not just a slight ajar door, a door almost wide open for the Father to engage, recognise, understand and work with, co-parent with the Mother to get C back into a place where he can continue a healthy relationship with his Father, but no. He says, '*she should have phoned me, it was irresponsible of her*'. That, in my view, is an attitude which demonstrates that unless the Father sees it and gets it his way, he looks to undermine the Mother. That is abusive.
56. If we go further back in time to the attempts in August of 2021 to set up a child arrangement without court involvement, there is a very reasonable proposal made on the Mother's behalf in a letter sent by her solicitors on 19 August 2021, but if we look at page 3, none of this comes as a surprise when you read:

“Our client further states that you are threatening and verbally abusing our client in front of the child, which is extremely damaging to the relationship she has with him as the primary care provider. She further states that you insist that you should be the sole authority, deciding who the child should be friends with.

While our client agrees to share the responsibility of the child’s upbringing and welfare with you she kindly requests you to refrain from this behaviour and making such immature claims, and communicate with her in a civilised way only in respect of the child contact agreement. Our client very much hopes that matters can be resolved as amicably as possible with you.”

57. Again, a Mother trying to normalise the relationship and pointing out her concerns as to what may have been going on, and what may be upsetting C. She is striving to achieve a balance. This is not a Mother who is closing down the hatches post-separation. This is someone who is hoping to keep that line of communication and co-parenting alive, and it is not being recognised.
58. Yet in cross-examination the Father tried to suggest his divorce petition proved that she had been acting and behaving unreasonably. Even today, upon instructions, I am sure, Mr Jafferji tried to revive that point, which I did shut down because the divorce petition in itself is not persuasive, given the nature of divorce proceedings and the fact they are rarely, if ever, defended. Here we have a father again trying to show that he is the better person. She was unreasonable, that is why the marriage ended, and it was a rather weak and lame attempt to undermine the Mother’s standing.
59. Again, I have to, on that divorce point, reference what was said by the Father in relation to the divorce, and this is at page 358 of the bundle:

“During the separation your client had agreed to the no contested divorce and requested me to apply for the divorce since it will be economically beneficial for her.”

If ever there was a stark contrast to what the Father said in the witness box and what was attempted to be put on his behalf today, that is it. There he says at the time, we agreed, we agreed for me to petition. For obvious reasons, I am not criticising, but today, yesterday, today, he attempted to turn that around completely.

60. I do now come onto the emails that he sent to the South Asian, I think, Secretary of Defence concerning this alleged relationship that the Mother had with an individual, I think, anonymised to P2. What was the point? What was the point other than to humiliate the Mother, to draw in a third party, to expose something which may or may not have been true, but in any event irrelevant to the issues of child welfare. This was a mother who may well have re-engaged in some online communication with a former partner, someone she may have been in a relationship before she met the Father. We all have pasts, we all have past relationships. What is wrong with re-engaging with someone when you are at your lowest ebb and you are looking for comfort, be it words or physically?

61. Of course, this is a man who is in South Asia, not in this jurisdiction, and has not been in this jurisdiction so far as any one has suggested. The Mother has not been to South Asia in this period so far as has been suggested. If there has been communication it has been purely online, no more, no less, comforting emails perhaps, or messages via Facebook Messenger. Again, we have not gone into detail. What the Father has done in this email is try to humiliate and expose something which does not really exist. I move on to also the observation that he constantly referred to her 'lovers', as if it were in the present, suggesting that she is operating some promiscuous lifestyle here, and now impacting upon C. That was the clear implication of his attempts to undermine her. She had a past, yes, no more, no less.
62. The other concern is then the email from P1, and the interesting issue here is that this is quite a damning email, again seeking to destroy and undermine the Mother's personality, her conduct, but let us look at the dates. The date of the email to South Asia is 27 August, the date of the email that is sent by P1 to the Mother is 31 August. It is not rocket science, in my view, to link the two. The Father is now engaging in a campaign to undermine, belittle, and discredit the Mother. He has obviously had a conversation with P1, there is too much coincidence that two such emails emerge within three or four days of each other.
63. There is a clear link, I make that as an absolute finding, and P1 has gone from being supportive, being a confidant in April 2020, to someone who is slating the Mother's personality and the information within that email can only have come from information given to him by the Father. Again, interestingly, in cross-examination the Father went from saying you cannot believe anything P1 says when it comes to the email of April of 2020 to this email in September 2020. Which P1 are we talking about, the truthful one, the lying one, or the one who bends with the wind because he has had pressure put upon him? There is, in my view, no doubt that those emails are deliberately set up to embarrass, discredit, and undermine the Mother, and ultimately be used in proceedings.
64. I have already touched upon the allegations of the so-called affairs, which I think again, have been raised only to try and discredit the Mother. No evidence has been offered in relation to promiscuity or sex videos, but then we also around this time have the issue of the accessing of the email account and the recording through a second phone, an admission in cross-examination which had not been there before that there had been some sort of rather amateurish use of a phone to record conversations that may be happening between the Mother and this so-called 'lover', and that is very much in inverted commas.
65. That in itself demonstrates a level of control in terms of recording private conversations between two, and even if they were in a relationship, consenting adults. Again, for what purpose? Confront it head on, have a discussion. It seems by now the Father is himself in a relationship. Is it so wrong for the Mother to be in a relationship herself? May not be quite the timing but ultimately he does enter into another relationship, and why should he not, and why should the Mother not, depending on timing? I am not making a finding that she was in a relationship.
66. All she was doing, at the highest level, was engaging in conversations online, but the Father sets up an amateurish recording method, hiding a phone to record conversations. There is the issue of him trying to scroll through her laptop, trying to access emails, to catch her out. For what purpose? Not for child welfare purposes but

to control, ultimately, to emotionally damage the Mother. That can be his only motivation, and in terms of controlling behaviour, that is as clear a finding as I can make.

67. The Mother talks also about isolation and the Father's reaction to that was, well, I took her out, we went out, we went out to friends. Her point is, of course, these were his friends. OK, they may become our friends, but in the first instance, they were his friends. The Father shows no insight into the difference between isolation and inclusion, including her, the Mother, in his life, his social life, his friends that are well-established within this jurisdiction. Credit to him when things are going well, but do not use that as a way of saying simply I did not therefore isolate her. Because what we do not have is any evidence that the Mother has friends of her own that she has nurtured, friendships nurtured by her that she can freely go out with friends from time to time, and ultimately she seeks friendship online.
68. The suggestion that she was not isolated, that he included her again, in my view, shows a level of control. Yes, she can have a social life but at my behest, with my friends, which have become our friends, but only when I say so. Again, quite clearly, in terms of controlling and coercive behaviour there is clear evidence that that has been proved.
69. Moving through to the allegations which involve C. Again, allegations 4 and 5 as before with the Mother's earlier allegations wrap around themselves and overlap into allegations of physical abuse towards Mother. Here the allegations are that the Father physically abused C and as mentioned earlier at allegation 5 that he emotionally and psychologically abused C. It was put very strongly today, and I understand why, that Mother offers no medical evidence, no GP records, or the school log has limitations, no counselling for C, and surely all of that could or would have been available had the abuse, physical and emotional, been exercised by the Father against C.
70. There is a wealth of evidence that comes from C, not just once, not just twice, but three or four or five times over, not just to one person but to more than one person, to the school, to a teacher, to the Local Authority family support worker, to the Cafcass officer. There are a number of examples. Page 61 of the bundle, C talks about his unhappiness. At one point he does say he has fun at Dad's but also he talks about his upset. At page 62, Mum does acknowledge that, at that point, she has no concerns about the Father physically abusing C, but then C goes on, or has said at the beginning of the month that he is subject to hitting. At page 63 of the bundle which chronicles the discussion between the social worker and C it is said that C saw, '*dad hit mum on the shoulder*' and that '*dad*' hurt him too. He said that '*dad*' hit him and shouts at him for no reason. In that same conversation C said he felt unhappy staying at '*dad's*', that he did not feel safe and again said that he did not like the shouting all the time. He also at this point talks of jumping from the balcony if he stayed at the Father's home.
71. C also references the Father keeping poison in the fridge. Now, again, the Father explains that he had some medication, I think it was, which would be harmful, and it is kept in the fridge and he had to tell C about it. C, given his age, why would he be opening the fridge, looking for something, potentially drinking something?

72. The Mother again I think quite clearly is trying to keep the family unit alive. She does not want to push too hard. She wants C and the Father to engage and have a relationship, that was quite clear from her email on 6 January.
73. It could have been explained to him properly, but what the Father did is put some sort of fear into C's mind that there was poison that maybe could be used against him if he were naughty. A lack of insight, it is emotionally damaging to C to present innocent issues as something which could be lethal, in a context where C is indicating to third parties that he is subject to punishment if he is naughty or does something bad. There are references through those pages.
74. Despite all this, the Mother, again, I think quite clearly is trying to keep the family unit alive. She does not want to push too hard. She wants C and the Father to engage and have a relationship, that was quite clear from her email on 6 January.
75. At page 72 of the bundle we have an extract from the Local Authority log:

“I don't like it when my mum shouts at me and when he used to hit me and my mum in 2020.”

That is referred to again at page 70. He says to the Cafcass officer that he has been hit by his father. He references in the school log '*the smacker*', the flag stick that is used, the flag having been taken off (page 201). He describes in some detail the wooden spoon, the flag stick, and being hit by it. He references emotional abuse at the top of page 201. He does not describe it himself as emotional abuse, but what he says quite clearly does amount to that.

76. This is relating also to the incident at the school gate that we saw on video. The teacher says:

“I witnessed C being dropped off. Dad was bending down, whispering in C's ear. C was trying to pull away.”

We saw that on the video clip that we watched, C is clearly uncomfortable. He is not happy that his father is turning up and speaking to him at the school gate. I do understand perhaps a level of frustration that the Father may be feeling, given the cessation of contact that has taken place since January, February, but it is inappropriate conduct, and again, shows a lack of insight when it comes to the issue of C's emotional wellbeing.

77. The Mother has alerted him to this in that email of 6 January in some detail. The Father does not accept it, recognise it, because in his mind there is nothing wrong, and the only thing that is wrong is the Mother's attitude. And he is again, seeking to undermine her and at the same time, in my view, quite clearly emotionally abusing C, who is by now confused, scared, worried as to what may happen to him and that is, in itself, very troubling when it comes to insight and behaviour of the Father.
78. We also have the issue of the Father's new partner, where she is reported to have had a conversation with C that says, we will have a chat but do not tell Mum, and that is the summary, that is the short version. Do not tell Mum that we are having this chat. Given C's age is that insightful? No. Is it sensible? No. Is it appropriate? No. Again,

it is emotionally abusing C and ultimately, again, leads to the cessation of the contact arrangements.

79. Going back to that letter from the solicitors in 2021, the Mother alerts the Father to her concerns about how C is treated. Come 2023 and her email in January that is still a point she raises. Does the Father take any notice? Does his partner take any notice? No. The Father's response to the girlfriend is, well, she knew all about the girlfriend, we went away together and C came with us. The response to that is that C knew there was a friend. C's young, does not necessarily understand adult relationships, but this was quite clearly more than just a friendship. It was hiding facts from the Mother and putting C in a position of conflict, and it is not open and honest. That in itself again shows a controlling attitude. I can do what I want in my life, you cannot do what you want in yours, and again if we go back to those emails to the South Asian army - fine for Dad to have a relationship, not so fine for Mum.
80. Then, we have a particularly troubling set of documents, and these are the letters written by C to Mum, inviting her to smack him for being naughty, throwing him over the fence, which is a rather childish view of potential punishment. '*Throw me away*', '*throw me over the fence*', and that is repeated a couple of times over. The Mother attempts to respond by writing something with hearts alongside, saying C is '*good, nice, exotic*', I cannot actually read what it says, '*stunning lad*' maybe, which he scribbles over. He talks about '*come smack me*' because of what he has witnessed. I can find quite clearly on the evidence, the documentary evidence, of which there is much, that smacking is normalised behaviour, which the Father has admitted is an appropriate method of punishment.
81. Now, whether it is a hard smack or a soft smack, it is still a smack. There are cultural issues here, I do acknowledge that, but when they are in harmony and in context, and perhaps infrequent, it is a different argument, but the effect of smacking loses its impact when it becomes regular. I say loses its impact in a positive way. Punishment occasionally, rarely, if absolutely necessary, if all else fails, if a child is so out of control. I am not excusing smacking, I am putting a context in, but what this shows is that it became normalised, not just with C being smacked, but the Mother being hit.
82. You are stepping out of line, I do not agree with you, you are wrong, you have been naughty, you got that wrong, smack, hit. That is what is going on in this household. That is normalised behaviour in the eyes of a child, so in the context of proving allegations 4 and 5, it may be the words of a child, and it was put to me that those words are inconsistent to different individuals, the detail that C goes into in some of those documents and the reasons for being smacked, getting things wrong in Maths, not doing homework, spending too much time on screentime, as it is described, is consistent. Maybe he remembers more at different times because of his growing maturity, albeit he is still of tender years, but then we see something in a video, the whispering in the ear, at a time when there is no agreed child arrangements in place. Allegations 4 and 5, wrapped up together, are clearly found on the balance of probabilities.
83. The Mother has succeeded in demonstrating to me that the behaviours of the Father are inappropriate and they must therefore form the basis of any further work and consideration of potentially making arrangements for safe direct contact, if that were possible. That will be for Cafcass to prepare a report, given the basis of these findings, for those findings to be considered. Obviously the parents will have to

reflect, more so the Father, on the findings I have made, and there is a huge amount of work to be done.

84. Much of the work at the Family Court when it comes to child arrangements is rebuilding of trust between parents. The gulf here is wide, huge, and if there is to be any hope for C to have a healthy relationship for both, then a huge amount of reflection has to be undertaken by the Father.

This Transcript has been approved by the Judge.

The Transcription Agency hereby certifies that the above is an accurate and complete recording of the proceedings or part thereof.

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