

**IN THE FAMILY COURT SITTING AT BIRMINGHAM    CASE NUMBER: BM21P08297**

**RE: B (dob XX December 2019)**

**Neutral Citation Number: [2022] EWFC 173**

**BETWEEN:**

**L**

**Applicant/Father**

**and**

**J**

**Respondent/Mother**

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**JUDGMENT OF DISTRICT JUDGE WEBB**

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1. This judgment follows the finding of fact conducted on 1, 2 and 6 December 2022. Ms Poselay appeared for the applicant father; Ms Rudd appeared for the respondent mother. I have heard oral evidence from both parties and observed their responses under cross examination. I have considered the bundle and written submissions. Failure to mention a piece of evidence or submission made does not indicate that I have not considered that and factored it into my conclusions.
2. The judgment is published in anonymised form in the pursuit of transparency and to foster a better understanding of the day-to-day tasks of judges in the Family Court. It represents an attempt to wrestle with the common issue which arises in fact finding hearing of inconsistencies in testimony and explores the case law in this area.
3. The parties are the parents of B who is three years old, they are of Afghani heritage. The father has indefinite leave to remain in this country, the mother has right to remain as a refugee. They met in 2015. They married under Islamic law but did not marry under civil law. The mother left the family home with the police on 29 January 2021 with B. This led to the father applying for a Child Arrangements Order on 16 March 2021 to allow him to see B and a Prohibited Steps

Order to prevent the mother taking the child out of the jurisdiction. The Prohibited Steps Order was made on a without notice basis.

4. The mother responded to the application and set out allegations of domestic abuse which led to CAFCASS advising that a finding of fact should be considered. At the FHDRA on 12 August 2021 the court determined a fact-finding hearing was required. On 14 October 2021 the case was managed with evidence ordered, a pretrial review set, and the matter listed for a finding of fact to take place in March 2022. This hearing was vacated as police disclosure was incomplete, a July relisting was vacated for the same reason leading to the fact-finding eventually occurring in December 2022 nearly 21 months after the initial application. In accordance with CAFCASS's advice there has been no contact between the father and his son during that period.
5. The mother seeks to prove five allegations of abuse as follows:
  - 5.1 In March 2020 the father made a threat to kill her. "Allegation 1"
  - 5.2 In early November 2020 the father stuck her with a metal clothes dryer leaving a mark on her arm. "Allegation 2"
  - 5.3 In late November 2020 the father held a knife to her throat and threatened to kill her. "Allegation 3"
  - 5.4 On 24 January 2021 the father physically attacked her including attempted strangulation and B received 'a minor collateral injury from this attack'. "Allegation 4"
  - 5.5 On 29 January 2021 the father punched her and threw B against the bedroom wall whilst he was crying. "Allegation 5"
6. Pursuant to *Re G and B (Fact-finding Hearing) [2009] EWCA Civ 10* the court is not bound to consider these allegations in isolation and can make other findings if appropriate; the way the case was presented made it clear that the mother sought a wider finding of the existence of coercion and control in the relationship and of emotional abuse.

### **The Competing Positions**

Ms Poselay advances the case that the number and nature of discrepancies are such that the mother's testimony cannot be relied upon. Ms Rudd advances the case that discrepancies are

inevitable given the fallibility of human memory of traumatic events and the essential testimony is not undermined. She further seeks to rely on behaviours the father demonstrated to third parties suggesting these assist in understanding the truth by confirming his real character.

### **The Evidence**

7. The mother provided a narrative rider attached to her C1A dated 29 April 2021 verified by a statement of truth (B42), a witness statement and schedule dated 3 September 2021 (C1), and a witness statement dated 1 July 2022 (C130). She further relied upon police disclosure relating to the incidents of March 2020 and 29 January 2021 which included body-cam footage and a witness statement she provided to the police on 8 May 2021 (E414). This last statement refers to an earlier statement given to the police on 30 January 2021 but that was not in the bundle.
8. One of the features of the cross examination was the suggestion that her description of events had changed over time as such it is necessary to understand her written accounts provided.

### **First Account**

9. In her written evidence she stated that the relationship was initially good (statement to police at E410) but became worse when she became pregnant. Her first account in the C1A described a physical assault in March 2020 (established by police records to have occurred on 20 March 2021). She described the incident of November 2020 as *“father placed a hot iron on my arm which resulted in a burn to my upper arm and blackened skin,”* (B47) She stated that strangulation occurred on multiple occasions but gave a specific date of 24 February 2021 in the C1A. We know this date to be incorrect as the parties separated on 31<sup>st</sup> January of that year. She indicated that when the health visitor visited the father would hide in the bedroom to hear the conversation. She alleged he would threaten to kill her and convinced her the police in the UK would not help her if she called them. She suggested that the father would constantly call her or text her when she was out of the home. She described an incident in August 2020 when she suggests that the father kicked her on the back causing her to lose a second child. This allegation appears to disappear by the time the schedule was prepared. She suggested that the applicant forced her to be involved in a faked accident in support of a road traffic accident claim. She described the incident of 29 January 2021 as including the father picking B up and

throwing him against the wall. Finally, she described an incident post separation where the father sent her a picture of his face where he had sewn his lips together.

### **Second Account**

10. In her statement dated 3 September 2021 she began to highlight the alleged element of coercive behaviour stating;

*“The Applicant unfortunately treated me with coercive behaviour. Even prior to having my child with him he would beat me if I refused to give him money for gambling. I would describe the Applicant as a ‘culturalist’ as he would not allow me (as a woman) to attend college and would not let me out of the home without him.” (C3)*

She described Allegation 1 as follows:

*“The Applicant was unhappy with me with the fact that I asked him to watch our son and this turned into a heated argument. I felt extremely afraid during the argument and decided to call the police, who advised they will be attending shortly. The applicant then waited in his car until the police arrived.” (C4)*

11. In relation to Allegation 2 she stated

*“this happened in early 2020 at some point. I was in our home though I cannot remember what we were arguing about, though I do remember B was in his cot. The Applicant became very angry and picked up a metal clothes dryer and stuck me with it very hard” (C4)*

She exhibited a photograph which showed a purple bruise on her upper right arm. (C7)

12. In relation to Allegation 3 she confirms this was late November 2020 and the argument arose because she intended to go to the park with B without his permission. She stated:

*“The Applicant expressed to me that he was unhappy that I ‘did not ask his permission’ to leave and began to threaten me. During the course of the altercation, the Applicant picked up a kitchen knife and held it to my throat and threatened to kill me”. (C4)*

13. In relation to allegation 4 she stated that it took place at around 9am on 24 January 2021:

*“The Applicant woke up after a short while and became aggressive, challenging me about the level of noise by saying ‘why don’t you shut the baby’s mouth...’”*

*“The Applicant...then physically attacked me by pulling my hair, slapping me on the cheek and then he began to strangle me. This lasted for a few seconds and when he stopped I immediately notice a small red mark on B’s cheek. As B was right next to me, I can only guess that he was hit by the Applicant or I was hit into him when the Applicant was pulling my hair and slapping me around as he used excessive force when attacking me.” (C5)*

14. In relation to Allegation 5 she described a row commencing at about 4.30 a.m.

*“The Applicant then began to shout at me for asking where he had been and then punched me in the left cheek, This did not necessarily leave a mark however my jaw was extremely sore for a few days afterwards and I struggled to eat with the injury.*

*Following this, B woke up as a result of the commotion happening and the Applicant asked ‘ why doesn’t he shut his mouth’. He then walked over to B picked him up from the bed and threw him against the wall and B fell a short distance and landed on the bed.” (C5)*

#### **The Father’s Evidence**

15. The father denied all the allegations and set out his position in witness statements dated 23 September 2021 (C12) and 20 June 2022 (C20). He is a Christian and met the mother at the shop where he worked. He introduced her to his church and ‘evangelised’ her with her converting from Islam to Christianity. He worked very hard at his job and made sacrifices for the mother and his son to have a better life in the UK. He maintained he had played a caring role for B and this created a ‘*distinct unbreakable bond*’ with his son. He described the mother going to college every Monday to learn English and he would look after his son at that time. He indicated his view was the relationship was a happy one and the mother would acknowledge the support she was given to friends. He indicated he had a respect for women and paid for the mother to travel to Iran to see her parents and to Sweden on two occasions.

16. He felt that issues began to arise when her family started to interfere, as such he believed that the mother had pre-planned the circumstances he found himself in as a way of escaping the relationship. He was very clear that he has carried out no abuse stating:

*“I am even more shocked and appalled in respect of the reference to the physical incidents and threats when our child was present. The only rationale I can think is that the respondent is using this in an attempt to keep the child away from me and to hurt me.” (C14)*

17. He stated on the day of separation the mother took a call for about one hour, he says apart from that there were no indication of their being problems in the relationship. He was clear he was not a ‘culturalist’ to use the mother’s word. He stated she had her own Uber account and he introduced her to his church. He also paid up to £4,000 for driving lessons.
18. In relation to Allegation 1 he indicated that he was phoning his family in Afghanistan and that lead to tension and a verbal argument which led to the mother calling the police. He left the property, handed the police his key but the following day received a call from her begging him to return.
19. In relation to Allegation 2 he gave a full denial and stated he had no idea where the alleged bruise in the photograph came from. He enquired that if she had this bruise why did she not call the police. He stated *“I believe this is a self inflicted injury”*
20. He made a simple denial of Allegation 3 without providing further details. He denied Allegation 4 in its entirety and again asked why the police were not called.
21. In relation to Allegation 5 he described returning home from work at about 4a.m and slept. At about 11.30 he went out and took B to the park. There were no incidents of note or confrontation. He was therefore surprised when he returned from work the following day to find the mother and B gone. He was arrested shortly thereafter and not released until about 10.30 p.m. He accepted sending messages over the following night which are set out below. He summarised his position as follows:

*“There have been no safeguarding issues raised and no involvement from social services. I do not have a criminal record, or a history of violence. I am a kind, loving and caring person. I am a religious and god-fearing person and a man of principals. I am most saddened by the accusations made which I reiterate again are untrue.” (C17)*

22. He exhibited medical his records to confirm he had no mental health issues and showed money being transferred out of his account at the day of separation. He attached phone records which

are again considered below. He exhibited a photograph dated 26 January 2021 which showed a bruise to B's cheek and indicated that when he asked the mother about it she indicated that B had fallen whilst playing. He exhibited many photographs of B and him together which were indicative of a caring relationship.

### **Cross Examination**

23. Under cross examination the discrepancies between the accounts given were highlighted and further contrast was made with accounts given to or by third parties.

#### **Allegation 1**

The mother indicated that when the police arrived, they took the house key off the father. The initial police log reports that *"Seems to be shouting at someone in a foreign language – male heard but not shouting."* (E286)

The initial account recorded by the attending officer recorded:

*"General log entered by Saunders-20506, on 20 Mar 2020 at 16.23.01 [sent from mobile device]: Log-1503. P1 IP has called police stating her husband is trying to hit her. At the address officers spoke with the IP and suspect separately. Suspect was outside the address in his car waiting for the police. Both seem calm and compliant. No visible injuries. IP- the mother bn [DOB]. Born Afghanistan. GP X Surgery. Suspect- The father bn [DOB]. Have account to say she was cleaning the kitchen and suspect was looking after their son in the bedroom. Suspect has approached her and said he needed to leave the address and go to work. This has called a verbal argument in which time the IP has picked up a hoover handle and the suspect has picked up a broom handle. Both have been arguing and suspect has made idle threats. Ip told suspect to leave the address which he refused so she called the police. IP confirmed she had not been assaulted. Did not want to make a formal complaint and merley wanted suspect to hand over his keys as the flat is in her name. Suspect has done this and left. He has been told not to return....Due to a slight language barrier when officers were discussing DARA questions an interpreter (Farsi) was used. During the questions being asked IP disclosed approx. 2 weeks*

*ago suspect had slapped her leaving a red mark. She confirmed she will not make a SOE or support any prosecution.” (E438)*

24. It was suggested that at no time had the mother stated to the police that the father had threatened to kill her and in her statement she had not described the parties holding weapons. Clearly there are discrepancies here, what is clear is that she called the police, told them that her husband was trying to hit her, when the police attended voices could be heard with the man not shouting. Once the police had spoken to the parties, the father was asked to leave the area having had a key taken off him by the police. The mother was clear at that stage she did not want to make a complaint but did report a previous incident involving violence.
25. The father accepted there was a verbal argument that day which involved the mother shouting in front of B. He accepted she called the police and when the police arrived, he was waiting in the car. He handed over his keys and left. He denied being aggressive or picking up a pole of any sort. He stated that the mother lied to the police by saying the tenancy was in her sole name which led to them asking him to leave.
26. There are inconsistencies in both accounts. The mother's inconsistencies are principally those of omission. In her statement she does not mention the picking up of weapons which it is suggested would be memorable. In her account to the police, she does not mention threats to kill. In the father's written account, he indicated the reasons for the argument was that he had called his family, under cross examination he stated it was because of suspicion over him having an affair.
27. The mother called the police twice the following day at 11.02 and 13.08 and reported that she had received texts and voice mails from the father which stated that if she did not give the baby over he would kill her, himself and the child and would burn the place down (E444). The police were slow to react and by 26 March they reported the parties were back together.
28. The mother maintained she had called the police and they offered her an appointment on another day. She indicated that the father made more threats and then 'became ok'. He returned to the home and he then deleted his earlier threats and messages from her phone by the time the police did come round. The father stated that she had contacted him the night of the incident itself and



asked him to come back to her as she was frightened to be alone in the house. He was clear under cross examination that he returned 'that night'. Clearly this is incorrect given the times of the calls made by the mother to the police.

#### Allegation 2

29. In the Scott Schedule this incident is stated to have occurred in early November, in the witness statement it is said to have occurred in early 2020. The mother confirmed the incident was in early November 2020. In the C1A the mother describes being stuck with an iron which caused a black burn to her skin, in her witness statement she describes being hit by a clothes dryer. She confirmed this was a clothes dryer being a rack up to her shoulder in height. The mother explained that the reason for the incorrect description in the C1A was that this was taken over the phone without an interpreter and is a misinterpretation or mistranslation of her account. The photograph supplied showed a nasty purple bruise on the outer part of the mother's upper arm. The father denied this incident occurred at all asking why the mother had not gone to the police if it had occurred. His response was:

*"Maybe she hit it somewhere else, I cannot be blamed for something maybe she did it somewhere else and blamed it on me. I don't know how she did it. She did not show it or mention it to me. If she was injured that much by me, why did she not call the police." (responses under cross examination).*

#### Allegation 3

30. The mother confirmed under cross examination that the father had become angry because she was taking B out without asking him first, she stated he went into the kitchen and picked up a knife. Ms Poselay was able to elicit a slight difference in the accounts given for this incident with this being centred around the father either being angry because she had asked for permission or whether it was because she had not asked for permission. Again, the father maintained his denials stating:

*“I did not get angry. I did not leave the bedroom to go to the kitchen. I did not pick up a knife. Why didn't she call the police? They could get my fingerprint from the knife. I did not put the knife to her throat and threaten to kill her. She did not tell me she was just going to the park.”*

*(Cross examination responses)*

#### Allegation 4

31. The mother became less willing to provide answers by this point stating:

*“I have already explained everything in here, recalling these memories would upset me. For that incident it would take me about two years to explain.”*

It was put to her that her account in her statement and under cross examination were different to the account she gave to the police. She told the police that the father had come home at around 10 in the morning. He went to bed, but the child was crying and this made him angry.

She stated that;

*“He started beating me up with his hands while being angry. I was in the living room sitting on a couch and the child was next to me that my ex-partner approached me and tried to strangle me. When he left after finishing with me, I notice the bruise on my child's face which didn't exist before. I think the bruise was done by my ex-partner while he was beating me up. My ex-partner pulled my hair, slapped me on the face and tried to strangle me in this incident.”*

*(E416)*

Again, discrepancies were suggested such as in her statement she suggested she immediately noticed the bruise on B but in her statement to the police she stated she noticed when he left. The mother indicated that any discrepancies were due to her giving the statement to the police when in hospital when she was worried about where she would go and during a time when the father was calling her and threatening to hurt himself. She also indicated that the statement was given with the assistance of an interpreter over the phone and that may have led to errors.

32. The father gave a wider timeframe for this incident. He indicated that that night was snowy, and he struggled to complete the deliveries from his pizza business. For that reason, he was late coming home. He phoned the mother at 9.41 that morning and stated:

*“Why are you bothering (or annoying in alternative translation) me? I work very hard (the actual words were stronger suggesting the work was even harder). I did a lot of deliveries, very difficult deliveries. It was snowing, the snow was a lot. Why are you bothering me like this? Why are you not answering your phone. I will hit somewhere to ease yourself and to ease myself.”*

The interpreters agreed the last phrase was a suggestion he would have an accident and the result would be to make their life easier as he would not be there, suggesting he would not be alive. He further accepted that he would have been annoyed by her contacting him asking him where he was saying:

*“Yes indeed you will be annoyed if she is accusing me of not working”.*

He was very clear that he did not assault her or his son. He also queried that if he had hit his son there would be injuries beyond one bruise which he stated predated this incident. When pushed to explain the small bruise visible on B he stated that the mother might have caused that. The mother did not report this incident to the police. By this point the father was also becoming less focused on supplying useful answers stating on a number of occasions:

*“She is saying lots of things if we believed what she says I would be in prison.”*

#### Allegation 5

33. The mother indicated that this incident happened at about 4.30 a.m. and the father was drunk. He struck her to her left cheek but that did not leave a mark. He then threw B against the wall. He was lifted by his collar and thrown against the wall so that his legs and his back hit the wall. In relation to this incident there is bodycam footage of the police arriving. In that video the mother gestures to her right neck at the point it meets the cheek. This was very significant for the father who stated:

*“Let me tell you another lie. She said her left side but on the video she showed the police the right side, who are you going to believe now?”*

He was clear it was not logical to say he was angry because B was crying as he had not heard B cry from the day he was born.

34. The mother called the police after this incident and was taken to a place of safety and then after some persuasion she went to hospital. She remained in hospital for four days and then moved on to a further place of safety. No injuries were found on her or B during this period save for the minor bruise to B's cheek which the doctor felt was in "*an unusual place for an accident*". The duration of the hospital stay was down to the need to observe B given the allegations made and the need to secure a place of safety for the two.
35. This is thus a case where there are no witnesses to any of the incidents and police involvement in only two of them. There are police logs from March 2020, the undated bruise photographs and police logs from March 2021. There are undoubtedly discrepancies between the mother's various accounts with the C1A account in particular having some very significant differences to the later statements and account given in court. Both parties sought to rely on documentary evidence to support their parties' version of events.

#### **Key Documentary Evidence**

36. **Medical Records:** The mother attended her GP on 12 February 2018. She was accompanied by the father. The note of a Dr W reads:

*"History: Seen with partner. Partner rather aggressive and intimidating. He tells me [the mother] has been in pain for 2 years and that no one is helping her. Derogatory towards GPs in general and thinks we are discriminating against [the mother] because they are 'Asian'..I asked to speak to [the mother] alone- she confirms that she is happy in her relationship...she does not experience any DV and is desperate to have a baby... She has no thoughts of DSH/suicide as her partner seemed to suggest...Partner thinks she should have a longer course (of antibiotics)- had usual course for eradication of UTI in women but he does not accept this. [The mother] mild mannered as usual. Husband wants to make a complaint." ( E18.)*

Other episodes of the father being described as difficult were noted:

On 27 July 2016 a Mrs B stated he had called in '*quite irate*' and '*he was not happy saying his wife nearly died because he has been waiting 6 months for an appointment and he said that I was incompetent and was recording me!!*'

On 3 October 2016 at a new GP's surgery a Dr A reported that the father had referred to the previous GP as '*stupid*'.

On 27 October 2016 the same GP reported that the position was not straightforward due to the mother's '*forceful husband*'.

On 3 November 2017 a Dr M was unwilling to record injuries following a road traffic accident and comments that the father "*Then became stroppy...and if he dies it will be my fault...Not happy and repeating the rather veiled threat that it would be the GPs fault if he dies.*"

It is notable that four separate medical practitioners felt it appropriate to comment on the father's demeanour in notes. The father when confronted with this evidence indicated "*I cannot check their computer and what they wrote. When it is your rights and someone does not give you your rights of course you have to be angry.*"

37. There were also untruths demonstrated in the mother's dealing with GPs. On 23<sup>rd</sup> March 2020 she attended her GP complaining about being in a road traffic accident and stated she was experiencing pain to her back and neck. She told the police that this was a staged accident and she had not experienced any injuries. Clearly the two accounts to third parties are incompatible.

### **38. Phone Records:**

The father annexed to his witness statement translated text messages. There was no way of knowing at the hearing whether these were all the relevant messages. After initially not accepting they were messages from his phone, the mother came to accept they were genuine. The messages presented a more nuanced picture of the relationship. It was clear from them that by January 2021 the mother was concerned about the lateness of the father's return from work. He owned a share in a pizza takeaway and indicated that he would work until 4.a.m. some nights. This clearly caused strain. One excerpt reads as follows:

*"19/01/2021 21.36 The mother – are you coming late*

*19/01/2021 22.12 The father - Yes*

*20/01/2021 2.09 The mother \_ Send the location"*

This request is made on a number of occasions and indicates the mother did not trust the father's explanation.

39. In the run up to Allegation 4 we see the same pattern:

*"23/01/2021 19.56- The mother-Are you coming late at night?"*

*23/01/2021 19.57- The father-Yes my dear*

*24/01/2021 07.10- The mother- [The father] don't come home*

*24/01/2021 07.11- The mother- If you come I will kill you"*

This is the run up to the alleged incident of 24 January and it does create a picture of the mother being the person most angry at that point in time.

40. The texts continue on 25 and 26 January with no mention of the assault alleged on 24 January.

There is a clear indication that the mother wanted to talk about something. By 26 January 2021 at 22.45 she is telling the father that they should separate.

#### **Voice Messages**

41. The father sent his voice message on 24 January described above at 9.41 which ties in with the increase in tension set out in the texts. The bulk of messages are however sent in the early morning of 30 January 2021 and seem to start at 4.15 when the father returns from work to find the flat empty. Here are the transcripts of the key messages:

#### **Voice note sent on 30.01.2021 at 4.15am**

*"Dear [the mother], answer me.*

*Where are you my sweetheart?*

*I missed my son. I came home, you are not here. Answer me.*

*For God sake, why are you doing this to me?"*

#### **Voice note sent on 30.01.2021 at 4.19am**

*"Dear [the mother], answer me.*

*I swear to God, if you don't answer me I'll commit suicide and then all my sin will be left upon you.*

*Why are you doing this?*

*I came home. I miss my son.*

*Why are you doing this?*

*We talked on phone today, I didn't say anything to you. I know what the hell you are doing... (inaudible)."*

**Voice note sent on 30.01.2021 at 4.23am**

*"Where did you take my son?*

*God.*

*Don't separate my son from me, God. God. Why (oh my God).*

*Where is my son?*

*Don't do this to my son. Swear to God. Oh God. God. I died. God, God. Help me."*

**Voice note sent on 30.01.2021 at 4.30am**

*"Dear [the mother], please.*

*On your mum's life, swear to Karbala (Holy City in Iraq).*

*Just tell me where you are. I won't come. Just let me know where you have gone – to Abass or are you here in England?*

*No problem, if you have separated, there is no problem, that's fine. I would like to see my son even once.*

*I did a lot.*

*Why are you doing this?*

*Well, if you had separated, then separated.*

*For God sake, I missed my son so much"*

**Voice note sent on 30.01.2021 at 5.54am**

*"[The mother], I will be at work tomorrow.*

*I didn't inform 'S that I am not coming tomorrow.*

*Because if I say this to him then he would say, what is your problem? It is your work day. Even if you go to work then you are not bothered to work though.*

*Please say if you are ok. Tell me you are somewhere but don't tell me where you are. Tell me that you are going to separate from me. Tell me if you have divorced.*

*I know that £20 which you sent over to 'M' was for getting divorce. No problem.*

*I am, I want to see my son at least once. I am a father, that's fine. You have father and mother as well.*

*You have things...*

*Please pick up your phone for once. If you don't, swear to God I am going to commit suicide. Swear to God, my blood is going to be on you.*

*I am not going to be God's servant if I don't commit suicide, then I will be your servant.*

*By God, I will drink two or three bottles of wine to not feel any pain to commit suicide, then it is your choice. I am not giving you warning. It is your choice.*

*I can not remain separated from my son. I must see my son at least once a week.”*

**Voice note sent on 30.01.2021 at 5.59am**

*“Dear [the mother], I was damn wrong. I ate shit (Suggested to mean I am not going to do this again = I have done wrong).*

*Whatever we did, it is gone now.*

*Please send me voice message for once.*

*Tell me whether you and son are in the safe place, you are in a good place.*

*Send me your voice for once.*

*Don't be spiteful.*

*By God you will not get anywhere by spitefulness.*

*Why are you embarrassing me in front of my friends which they would say that he couldn't keep his wife.*

*Why are you doing this my sweetheart? Please just send your voice for once to let me know that you are doing well because I am so worried which I can't talk. Please.”*

**The Picture of the father**

42. The father sent a very disturbing picture to the mother's mother on 31 January 2021. It showed his face with his eyes covered by a message handwritten on a piece of paper attached to his forehead. The message read *“Live good boy. No B- No Life. AS and AS, BH, LS Murderers”* The named people are the mother's family members. In the picture you can see the father's lips which he has sewn together crudely with string. The father accepted he had written the note, sewn his lips together and sent a picture of that to the mother's mother. The father expressed very strong negative feelings towards the maternal family stating:

*“These people destroyed my life, created a scene, introduce me as a killer. I blame them for the breakdown of the relationship... I was on a strike of not eating and I wanted my parents to know who did this.” (cross examination)*

He confirmed he was in a bad state of mind when he posted the picture and indicated he wanted his family to know that if anything happened to him that it was the named people who had caused it. The father confirmed that he had also sent this picture to his father.

**Body Cam Evidence**

43. The police arrive at the family home at 17.58 on 29 January 2021 and their interaction with the mother is captured by body worn camera. The mother let the police into the flat, it is clear she



was not aware that the interaction is being filmed. The police did not indicate they were filming and she did not look at the camera. She almost immediately said “*He put him into the wall, it happens every day*” She gestured at B and pointed to the bedroom wall. She stated that he would come home drinking and beat her. She informed the officers that she had no family or friends to go to and she wanted a divorce and for the son ‘*to be for me, not for him*’.

44. She stated that two days earlier the father had taken a knife and said he would kill her and the same thing had happened that day. She said that she wanted to leave the address that day and that he was dangerous and not normal. She indicated that she had no injuries but then said that he pushed or punched her neck and she points to the right side of her neck and the point it meets the cheek. She stated that in the last month he had started beating B. She has packed a large suitcase and was ready to go. She confirmed to the police she was prepared to go to the criminal court repeating stating that he was not normal.

### **The Law**

45. In *Re R (Children)* [2018] EWCA Civ 198, the President of the Family Division, Sir Andrew McFarlane, said “*in family proceedings, the outcome of a fact-finding hearing will normally be a narrative account of what the court has determined (on the balance of probabilities) has happened in the lives of a number of people and, often, over a significant period of time. The primary purpose of the fact-finding process is to determine, as best as can be done, what has gone on in the past, so that that knowledge may inform the ultimate welfare evaluation where the court will choose which option is best for the child with the court’s eyes open to the risks as the factual determination may have established*”.
46. In the present case, the Court must decide whether the father has behaved in the manner so alleged by the mother as set out in the disputed Schedule of Allegations. In doing so, the Court must assess the evidence in the bundle, the direct oral evidence of the mother and the father and make/not make findings in accordance with the civil standard and burden of proof which is applicable in all Children Act proceedings.
47. The burden of proving the facts pleaded rests with the person making the allegation. The standard to which the person making the allegation must satisfy the court is the simple balance

of probabilities. This means no more than the court being satisfied, on the whole of the evidence presented to it, that the case for the asserting party has been shown to be more probable than not.

48. The inherent probability or improbability of an event remains a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. Within this context, there is no room for a finding by the court that something might have happened. The court may decide that it did or that it did not – *Re B* [2008] UKHL 35. However, failure to find a fact proved on the balance of probabilities does not equate without more to a finding that the allegation is false (*Re M (Children)* [2013] EWCA Civ 388).
49. The legal concept of proof on the balance of probabilities must be applied with "common sense" (*The Popi M, Rhesa Shipping Co SA v Edmunds, Rhesa Shipping Co SA v Fenton Insurance Co Ltd* [1985] 1 WLR 948).
50. Findings of fact must be based on evidence not on speculation: *'It is an elementary proposition that findings of fact must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation'* *Re A (A child) (Fact Finding Hearing: Speculation)* [2011] EWCA Civ 12, per Lord Justice Munby.
51. The decision on whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors (*A County Council v A Mother, A Father and X, Y and Z* [2005] EWHC 31 (Fam)).
52. In determining whether the party making the allegation has discharged the burden upon them, the court looks at what has been described as 'the broad canvas' of the evidence before it. The court takes account of a wide range of matters including its assessment of the credibility of the witnesses and inferences that can be properly drawn from the evidence. The role of the court is to consider the evidence in its totality and to make findings on the balance of probabilities accordingly. Within this context, the court must consider each piece of evidence in the context of all of the other evidence (*Re T* [2004] 2 FLR 838 at [33]).

53. The evidence of the parties is of utmost importance, and it is essential that the court forms a clear assessment of their credibility and reliability. The court is likely to place considerable reliability and weight on the evidence and impression it forms of them (see *Gestmin SGPS SA v Credit Suisse (UK) Ltd Anor* [2013] EWHC 3560 (Comm) at [15] to [21] and *Lancashire County Council v M and F* [2014] EWHC 3 (Fam)).
54. The court is not bound by the respective cases put forward by the parties and the court may adopt an alternative solution of its own – *Re S (A Child)* [2015] UKSC 20. As per Wall LJ in *Re G and B (Fact-finding Hearing)* [2009] EWCA Civ 10. Judges are entitled, where the evidence justifies it, to make findings of fact that have not been sought by the parties, but they should be cautious when doing so. It would require good reason to do so and if the court is minded to make a finding of fact not contained in the schedule, the court must be astute to ensure that (a) the additional or different findings made are securely founded on the evidence; and (b) that the fairness of the fact-finding process is not compromised. As Peter Jackson LJ stated in *Re A (No.2) (Children: Findings of Fact)* [2019] EWCA Civ 1947 at [100]: “*The questions for every fact-finder are What, When, Who, How and Why?*”.
55. It is not uncommon for witnesses in cases of this sort to tell lies in the course of the hearing. A witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress, and the fact that a witness has lied about some matters does not mean that he or she has lied about everything (see *R v Lucas* [1981] QB 720). The court also has to bear in mind that memories can fade or change with the passage of time, particularly in respect of events which were traumatic or distressing at the time.
56. The revised *Lucas* direction directs that the court should only take account of any lies found to have been told if there is no good reason or other established reason for the person to have lied. Furthermore, McFarlane LJ (as he then was) in the decision of the Court of Appeal in *Re H-C* [2016] EWCA Civ 136 says at [100] “*that a judge should take care to ensure that they do not rely upon a conclusion that an individual has lied on a material issue as direct proof of guilt.*” This approach is no different in the family court than it is in the criminal court.

57. Article 8 rights to private and family life under the Human Rights Act 1998 are engaged in this case, as is the right under Article 6 to a fair trial.

### **Credibility and Demeanour**

58. In this case demeanour, credibility and the appropriate weight to put on inconsistencies are central to the assessment. In the case of Re B-M (children: findings of fact) [2021] EWCA Civ 1371 Peter Jackson LJ dealt with a number of issues of recollection, demeanour and credibility and the following points have relevance.

59. Firstly, he suggested there was a distinct difficulty in *'harvesting obiter dicta expressed in one context and seeking to transplant them in the context of another'* (at para 23). This was a move away from following the guidance of Leggatt J in Gestmin SGPS SA v Credit Suisse (UK) Ltd [2013] EWHC 3560 (Comm) at [15-22] and SS (Sri Lanka) v SSHD [2018] EWCA Civ 1391 at [33-43]. That guidance made the assertion that it is usually unreliable and often dangerous to draw a conclusion from a witness's demeanour as to the likelihood that the witness is telling the truth. Jackson LJ noted these cases were from very different contexts.

*"24. Further, and as noted by this court in Kogan v Martin [2019] EWCA Civ 1645 at [88- 89] Gestmin is not to be taken as laying down any general principle for the assessment of evidence. Rather, as Kogan states, it is one of a line of distinguished judicial observations that emphasise the fallibility of human memory and the need to assess witness evidence in its proper place alongside contemporaneous documentary evidence and evidence upon which undoubted or probable reliance can be placed. The discussion in Gestmin is expressly addressed to commercial cases, where documentary evidence will often be the first port of call, ahead of unaided memory."*

*25. No judge would consider it proper to reach a conclusion about a witness's credibility based solely on the way that he or she gives evidence, at least in any normal circumstances. The ordinary process of reasoning will draw the judge to consider a number of other matters, such as the consistency of the account with known facts, with previous accounts given by the witness, with other evidence, and with the overall probabilities. However, in a case where the facts are*

*not likely to be primarily found in contemporaneous documents the assessment of credibility can quite properly include the impression made upon the court by the witness, with due allowance being made for the pressures that may arise from the process of giving evidence. Indeed in family cases, where the question is not only 'what happened in the past?' but also 'what may happen in the future?', a witness's demeanour may offer important information to the court about what sort of a person the witness truly is, and consequently whether an account of past events or future intentions is likely to be reliable."*

60. As such witness demeanour is not to be taken in isolation but is an important part of assessing credibility where there are other cross checks of that assessment including but not limited to other known facts, previous accounts and the overall probability of events.

61. How do we deal with inconsistencies in testimony? Lady Justice King in Re A [2020] EWCA Civ 1230 explored this stating

*"40. I do not seek in any way to undermine the importance of oral evidence in family cases, or the long-held view that judges at first instance have a significant advantage over the judges on appeal in having seen and heard the witnesses give evidence and be subjected to cross-examination (Piglowska v Piglowski [1999] WL 477307, [1999] 2 FLR 763 at 784). As Baker J said in Gloucestershire CC v RH and others at [42], it is essential that the judge forms a view as to the credibility of each of the witnesses, to which end oral evidence will be of great importance in enabling the court to discover what occurred, and in assessing the reliability of the witness.*

*41. The court must, however, be mindful of the fallibility of memory and the pressures of giving evidence. The relative significance of oral and contemporaneous evidence will vary from case to case. What is important, as was highlighted in Kogan, is that the court assesses all the evidence in a manner suited to the case before it and does not inappropriately elevate one kind of evidence over another."*

62. Jackson LJ returned to the issue of fallibility of recollection later in *Re B-M*

28. *Of course in the present case, the issue concerned an alleged course of conduct spread across years. I do not accept that the Judge should have been driven by the dicta in the cases cited by the Appellants to exclude the impressions created by the manner in which B and C gave their evidence. In family cases at least, that would not only be unrealistic but, as I have said, may deprive a judge of valuable insights. There will be cases where the manner in which evidence is given about such personal matters will properly assume prominence. As Munby LJ said in Re A (A Child) (No. 2) [2011] EWCA Civ. 12 said at [104] in a passage described by the Judge as of considerable assistance in the present case: “Any judge who has had to conduct a fact-finding hearing such as this is likely to have had experience of a witness - as here a woman deposing to serious domestic violence and grave sexual abuse - whose evidence, although shot through with unreliability as to details, with gross exaggeration and even with lies, is nonetheless compelling and convincing as to the central core... Yet through all the lies, as experience teaches, one may nonetheless be left with a powerful conviction that on the essentials the witness is telling the truth, perhaps because of the way in which she gives her evidence, perhaps because of a number of small points which, although trivial in themselves, nonetheless suddenly illuminate the underlying realities.”*

63. Drawing these themes together the following merge:

- a) It is essential that a judge forms a view as to the credibility of each witness in family fact finds
- b) Oral evidence will be of importance in determining the reliability of witnesses
- c) Save in rare cases, this will not be a process in isolation for there should be other cross checks of that assessment including but not limited to other known facts, previous accounts and the overall probability of events.
- d) The obiter from other types of cases may not be of assistance in questioning this process of considering demeanour but are useful in setting out the fallibility of human recollection and the need to assess witness evidence in its proper place alongside contemporaneous

documentary evidence and evidence upon which undoubted or probable reliance can be placed.

- e) It is important to recognise human fallibility in recollection and the pressures of giving evidence.
- f) It is important to evaluate oral testimony as part of the wider evidence and not to elevate any part of the evidence over another.
- g) Evidence can contain unreliability as to details and contain even exaggeration and lies yet be compelling in its central core.

64. In this case I would add other factors.

- a) If inconsistencies are alleged or indeed established, it is important to recognise who is recording the testimony and under what circumstances.
- b) A person giving an initial account under intense stress may provide an incomplete or inaccurate account.
- c) If that account is taken from a person in a language other than their first language the risks of inaccurate reporting increase.
- d) If an account is given in other than a face-to-face meeting it may give rise to inaccuracies.
- e) Whenever an account is taken by another it will be shaped by the purpose for which it is taken and the needs of the statement taker. A police officer taking a witness statement will be focused on the elements of the crime alleged which may need to be proved and less focused on peripheral details which may assist a wider picture but not be relevant to the offence alleged.
- f) If accounts are taken for specific purposes such as allocating resources to attend the scene of a crime the motivation may be to establish priority not evidential details.
- g) It is harder to assess demeanour when the parties are giving evidence via interpreters.
- h) It is harder to assess demeanour when parties are from different cultures where there may be different approaches to the evidence giving process and different expectations as to how to respond to questions under cross examination.

65. In addition, in cases involving domestic abuse it is useful to look at comments made in three recent cases. On behaviour patterns of victims of abuse Judd J stated in [Re M \[2021\] EWHC 3225 \(Fam\)](#):

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

This behaviour pattern was commented on by Mr. Justice Cobb in [Re B-B \(Domestic Abuse: Fact-Finding\) \[2022\] EWHC 108 \(Fam\)](#) at para. 6 (vii) *"an abusive relationship is invariably a complex one in which the abused partner often becomes caught up in the whorl of abuse, losing objective sense of what was/is acceptable and unacceptable in a relationship."*

66. Jackson LJ in [Re A \(A Child: Finding of Fact\) 2022 EWCA Civ 1652](#) stated at para 42

*"Perpetration of domestic abuse is an expression of an aspect of a person's character within a relationship and the fact that a person is capable of being seriously abusive in one way inevitably increases the likelihood of them having been abusive in other ways."*

67. This exposition of the law in domestic abuse family fact finds is in danger of becoming unwieldy. It is interesting to see the simple explanation given in the June 2022 Crown Court Compendium [www.judiciary.uk/guidance-and-resources/crown-court-compedium](http://www.judiciary.uk/guidance-and-resources/crown-court-compedium) where a suggested direction to the jury in cases of sexual assault reads as follows;

*"Example 4: Inconsistent accounts When you consider this allegation, you must not assume that the evidence W gave in court is untrue because W said something different to another person.*

*You heard that when W gave a statement to/was interviewed by the police W said {insert}. But when giving evidence in court W said {insert}.*

*[Either] It is agreed that these two accounts are inconsistent. You have to consider why they are inconsistent.*



*[Or] You need to compare these two accounts. If you find they are inconsistent, you will have to consider why they are inconsistent. Just because W has not given a consistent account does not necessarily mean that W's evidence is untrue. Experience has shown that inconsistencies in accounts can happen whether a person is telling the truth or not. This is because if someone has a traumatic experience such as the kind alleged in this case, their memory may be affected in different ways. It may affect that person's ability to take in and later recall the experience. Also, some people may go over an event afterwards in their minds many times and their memory may become clearer or can develop over time. But other people may try to avoid thinking about an event at all, and they may then have difficulty in recalling the event accurately. Your assessment of this factor will be influenced by your conclusions as to the facts of this case. You must form a view of what happened in this case based on all the evidence you have heard." (at 20-7).*

68. This summary albeit from a different context is helpful in explain the fact find process in a simpler way.

### **Submissions**

69. Ms Poselay prepared detailed written submissions where she identified over twenty suggested inconsistencies in the evidence provided by the mother at various times and in different accounts. Some of those are identified above but there are others. It was clear that Ms Poselay had expended many hours in considering the bundle, preparing forensic cross examination and compiling these submissions.
70. She further identified some wider inconsistencies including inconsistent accounts to professionals as to when domestic abuse started, the accepted evidence that the mother had travelled alone to Sweden during the relationship and had taken driving and English lessons out of the home. She contended that the telephone messages and the picture sent to family members were evidence of a person in turmoil and should not be regarded as evidence of his general demeanour. She summarised her position as follows:

*“On behalf of the father I would invite the court to make findings that none of the allegations documented within the Scott schedule have been proven. I would respectfully ask the court to consider the mother’s evidence carefully which directly affects her credibility. She has clearly lied in her written evidence and what she had stated to the police and medical professionals. **If someone had genuinely suffered as alleged then they should be able to give a clear and transparent description of what exactly happened, which something that the mother has not done.** The mother from evidence appears to place the blame of solicitors and interpreters for the inaccuracies as what she previously said which differs significantly from the account that she gives the police. At one point she even blamed the command of her English language not been very good and that’s why she didn’t know her left from her right. The Court is asked to note that the whole conversation with the police in the bodycam video is done in English without the use of an interpreter and when referring to her alleged injury on 29.01.2021 she is rubbing her right hand side of the neck” (My highlighting)*

71. Ms Rudd submitted in summary that:

*“4. The court is invited to find that the mother was an honest and credible witness who directly answered every question asked of her to the best of her ability taking into account: firstly, the length of time since these incidents took place and, secondly, the nature of the allegations and the impact on her of having to recall difficult experiences of physical abuse to both herself and B.*

*5. The mother’s oral evidence was consistent with the case that she has always presented, namely that the relationship between the mother and the father was one characterised by a perpetration of abuse by the father towards the mother and that, in respect of two incidents in particular, B was also a victim of such abuse. In addition, the mother’s oral evidence was on the whole consistent with the initial reports of each allegation as set out in the police and medical disclosure. The court is invited to find that this is because this is a woman who has lived through those experiences and is therefore able to accurately recall what happened to her.*

*6. Where inconsistencies were put to the mother during her oral evidence, they were trivial and*

*insignificant and did not detract from the core allegation being made. The inconsistencies focused on the minutiae of the incidents. Given the length of time that has passed, it is not surprising that the mother's recall of some of the smaller details may differ. This is clearly a woman who is just trying her best to recount what she experienced and provide as much detail as she can."*

72. Ms Rudd highlighted areas of testimony from the father which were inconsistent and described his evidence as using textbook answers. I am grateful for both advocates work both at court and in written form.

### **Analysis**

73. In relation to each allegation, one or other of the parties is telling the truth and the other is lying. In this case there is no room for ambiguities or misunderstandings. The question is: has the mother proved via admissible evidence that her testimony is more likely to be true than the father's.

74. In evaluating this it is safer to start with agreed or uncontested evidence. The following facts are established by virtue of being provided by unchallenged, independent third parties or by concessions made by the parties themselves:

74.1 The father attended medical appointments with the mother on at least 11 separate occasions. Many of these appointments were in relation to sexual health and conception issues and attending them is at least potentially intrusive.

74.2 The father has on at least four separate occasions been described as aggressive by medical practitioners, the language used includes '*rather aggressive and intimidating*', '*quite irate*', '*forceful*' and '*stropky*'. These comments are made by four separate medical practitioners from at least two different surgeries. They are accused of racism and treating the family different because they are 'Asian', yet at least one of those practitioners is of Asian heritage. In the same notes the mother is described as '*mild mannered as usual*'. When confronted with this evidence the father justified his behaviour stating that is one did not get their rights then "*of course you have to be angry*". This is indicative of a forceful and dismissive element to the father's character.

- 74.3 The father also accepts that in certain circumstances a person is entitled to become angry. This sentiment is repeated when asked about how he felt when the mother kept on texting him during the night of 24 January when he stated: *“Yes indeed you will be annoyed if she is accusing me of not working”* This indicates that at the time of one of the incidents he was annoyed at least.
- 74.4 The father clearly has an emotional side to his character and when emotional makes threats to harm himself. There is a clear threat to harm himself during the phone message of the morning of 24 January and repeated threats throughout the morning of 30<sup>th</sup> January and then a very clear and obvious threat to kill himself in the horrendous picture send to two close family members. This is indicative of an instability in his behaviour. Threats of self-harm are regarded as being significant ‘red flags’ in the context of domestic abuse, they will always almost amount to emotional abuse, are frequent in cases of coercion and control and may indicate a heightened risk of harm to others. The phrase *“Please pick up your phone for once. If you don’t, swear to God I am going to commit suicide. Swear to God, my blood is going to be on you”* is a chilling one. This evidence confirms that the father has an intemperate and emotional side to his character. These threats are clearly emotional abuse. Here Jackson LJ’s comments in *Re A* as above have relevance. A person who can sew their own lips together with string and then send pictures of that along with a threat to kill himself to family members is more likely to be capable of other elements of domestic abuse for such a person is over-emotional, self-centered and either willing to cause emotional harm or unable to comprehend that such actions would inevitably cause such harm.
- 74.5 It is also clear that some of the incidents are in circumstances of heightened tension between the parties. The police report shouting on March 2020. On 24 January 2021 there is a buildup of tension between the parties. Even in the snow no one has pizzas delivered at 9.41 a.m. and so the father is clearly not being truthful about what he is doing and the mother is clearly getting increasingly frustrated, and it has to be said threatening. As such it is clear the circumstances existed for confrontation.

- 74.6 Added to this is the difficulties the family were under. The accommodation as demonstrated by the body cam footage is cramped with the cot in the parents' room. I further accept the father's account that he was working in a new business and working very hard indeed to provide for his partner and child. There was undoubtedly a real tension between the parties.
- 74.7 The question thus becomes in light of the tension and impending confrontation how are the parties likely to react? The circumstances point towards the likelihood of the father acting in an erratic, emotional and forceful matter with an added element of self-entitlement in feeling aggrieved.
- 74.8 We also know that the mother called the police to two incidents. On the first occasion the police ensured the father left the scene, on the second they took the mother to a place of safety. The calling of the police itself is a significant step. It brings the authorities into the private life of an individual and it is inherently unlikely a person with refugee status would draw themselves to the police's attention without any logical reason if they intended to embark on a length process of lying.
- 74.9 We also know that the mother called the police again the following day after the first incident to say that she was being harassed and threatened. If she was happy to be with the father there is no logical reason for her to do so. The father's evidence that he was back in the house the same day is not borne out by the call logs.
- 74.10 On 29 March 2021 the mother gives an account of abuse to officers which contains allegations of abuse and is recorded in full. This is within hours of the alleged events and with no apparent intervening event or third-party involvement.
- 74.11 We also know the mother was prepared to be taken away to an unknown place where she would know no one and had no real idea of the living conditions and has remained there for almost two years. This is on the face of it not the behavior of a person who is lying and simply wants out of a relationship.
- 74.12 The mother has maintained the truth of these allegations over a two-year period. If her motivation was to escape the relationship that motivation no longer applies.

74.13 We further have pictures of the mother with a bruise and a picture of B with a bruise.

Taking the known undisputed evidence there is a clear logic to the mother being subject to violence and seeking to leave that environment.

75. Inconsistencies: As analyzed above there are inconsistencies in both parties' accounts. The question is whether the inconsistencies are of the type readily understandable in the context of understanding the fallibility of memory of those subject to abuse or are of such a persistent and blatant nature that the testimony cannot properly be relied upon. There appear to be a number of categories of inconsistency:

75.1 "Lost in translation" Both parties blame their lawyers for failing to understand their instructions. The grossest example of this is the C1A which is a poorly drafted document. It contains numerous errors; the date of the November allegation, the date of the later allegation which if it was as stated would be after the parties separated and the suggestion that the mother was stuck by an iron and burnt. The mother's explanation that this was completed without the benefit of an interpreter, over the phone at a time of stress makes sense in this scenario. The father also blamed his lawyers at times and given that evidence was taken via interpreters in court and much time was spent clarifying the exact meaning of words and phrases it is readily understandable that some misunderstandings may creep into testimony.

75.2 "Chain of interpretation" The process of comparing versions of events is appropriate to check internal logic and consistency over time. It becomes a less useful process where the accounts have passed through a number of sources. As such a police officer recording what a person said may be less accurate than the original testimony. In the same way even without language barriers a person preparing a statement when that statement is not presented alongside the original language version is liable to lead to errors.

75.3 "Fallibility of memory of traumatic events:" Our understanding of how persons who have experienced trauma recollect that trauma over time has developed to the extent

where inconsistencies are not regarded as automatically undermining testimony. In many ways a truthful witness may struggle to remember or recall specific movements or positions adopted reflecting the way the brain may not fully capture moving events. This is the position specifically highlighted in the jury direction quoted above. The process of recalling such events over time in different circumstances and under stress and pressure is likely to lead to further discrepancies occurring. The reality is traumatised victims should not be expected to give totally accurate, totally consistent descriptions of these events. Here Ms Poselay is simply wrong, her submission highlighted above that *“if someone had genuinely suffered as alleged then they should be able to give a clear and transparent description of what exactly happened”* does not reflect the modern understanding of trauma and memory.

76. We thus have three areas of inconsistencies of detail within the context of a central narrative which was set out in writing and maintained under oath. Here it is useful to look at a number of inconsistencies to see whether they undermine the credibility of the central account. A few examples will suffice:

76.1 Ms Poselay highlighted that the mother said to the police that the father was trying to hit her but in the CIA she stated she had been assaulted in relation to allegation 1. This appears to be an example of category 74.1 above with her instructions not being fully understood and set out.

76.2 Ms Poselay indicated that the mother highlighted the height of the clothes dryer as being about shoulder height but when seen in the head cam footage it was clearly smaller than that.

76.3 In relation to allegation 3 in one document she refers to the father being angry because she intended to take the child to the park without asking him and then in another account he was angry because she did ask him.

My assessment is even taken cumulatively the discrepancies as set out do not undermine the central narrative and are explicable largely by virtue of the three explanations set out above.

77. Alleged or Proven lies.

The mother either lied to the police about having no injuries following the road traffic accident she said was staged or lied to the doctor when she complained of pain to the neck. It was also suggested that she lied to the police by saying that the tenancy was in her sole name in March 2020. Here a *Lucas* direction is appropriate. Are there reasons for the lies and do the lies go to key issues in this case? It is not possible to take from the lie to the GP (if that is the lie) a genuine predisposition to untruthfulness. The mother explained the lie by saying she was under the influence of the father and did not try to distance herself from the fact she told an untruth. The issue of the tenancy agreement is a technical one but on the face of it does appear to be an attempt to strengthen her position regarding who, if anyone, was to be asked to leave the flat. These are the proven untruths and need to be placed in the context of a lengthy relationship. They in my estimation do not prove that she is lying in relation to other events under oath in a court.

78. The Bodycam footage. Ms Poselay was very clear that the mother stated she was struck to the left side of her face and yet in the video moved her hand to her right side. If the footage is considered carefully the question put to the mother at 12.50 is phrased as a statement but is "*He grabbed you by the throat?*". The mother then holds her hand to the right side of the neck. It is far from clear that this is a definitive statement that she was punched to the right side not the left as alleged and so I do not find this to be the definitive lie as it is suggested.
79. Demeanour: The mother answered most questions put to her though she became less helpful towards the end of her testimony. She provided answers to the questions put to her and could be seen trying to explain events. Ms Poselay was able to demonstrate inconsistencies, but the mother continued to try and answer questions. The father frequently resorted to posing questions back to counsel despite being warned it was not helpful. It was suggested that this was a language feature and that may be correct but at times it appeared he wanted to challenge the questioner rather than engage with the evidence. He also used stock phrases, he said on a number of occasions that if what the mother was saying was true why was he not in prison. This was not helpful. He maintained a full denial to all events and the impression given was of an unwillingness to accept that there were any real problems in the relationship save for outside



interference. One example of this was his comment that he had never heard his son cry. That seems implausible. In addition, he seemed to take delight in the mother's inconsistencies being explored. At times it almost appeared a game to him.

80. This is a case which requires a consideration of the evidence in its totality. On one hand I have what I find to be a broadly consistent testimony of escalating abuse on the other I have a blanket denial and some reluctance to engage with the evidence under oath. I find that the established facts support a volatility and aggressiveness in the father which is indicative of a likelihood of violence when under stress. I further find the stress existed through hard work and inadequate living arrangements.

81. It may well be that there are factors not explored. The text from the mother to the father saying she would '*kill him*' is an odd text within the context of violence. In addition, it is clear that the mother herself is demanding as to the father's exact location. Relationships are not as simple as schedules of allegations, but it is not my responsibility to determine these matters. This is not a case where counter allegations have been made which I have to determine.

82. This is very much a case where I have to have to consider the broad canvass of the evidence. In doing so I note the logic of conflict in the undisputed facts, I am not satisfied that the inconsistencies are of such matters of significance that they undermine the general thrust of the mother's testimony. I find the counter narrative that nothing untoward happened as inherently unlikely given the volatility of the situation and what we know about the father's character. Taking all these factors into consideration I thus find that it is more likely than not that there is an essential element of truth running through the mother's testimony. As such I find that the allegations are largely proven as set out in the schedule. I add to that a finding of emotional abuse via threats made by the father to kill himself and the indication that the mother would be responsible for that.

83. I do not find that the father has harmed B as alleged. The mother was not able to describe how B might have got injured or knocked on 24 January. It is only the bruise which leads her to make this accusation and there is some evidence the bruise may have already existed. With the mother not having seen the incident I am not satisfied it occurred as described. I also do not

find that the father threw B against a wall. He was subject to full medical examination by doctors over a four-day period and they found no marks or injuries. It is possible that the father knocked B during that incident but that is not the same thing and is not the allegation made. These findings are not incompatible with the overall truthfulness of the mother's testimony as she accepted she did not see the first incident and the second incident was clearly frightening and she may have misjudged what occurred. In any event I find that element of the allegations not proved.

84. In relation to the allegation of coercion and control certain factors point to that including the attendance at medical appointments and the threats of self-harm. However, other elements do not fit the pattern, the driving lessons, the college attendance and the unaccompanied travel to Sweden and Iran. In addition, the texts indicate the mother trying to control or at least monitor the father's location. Clearly there were elements of the parties trying to monitor each other as their relationship deteriorated but I do not find there is sufficient evidence for me to find one sided coercion and control.

85. The purpose of this fact find is to establish a factual matrix against which the risk assessment can occur and I will now ask CAFCASS to carry out that stage of the process.

District Judge Webb 22 December 2022

