

ZW21P00189/234 & ZW21F00037

IN THE FAMILY COURT AT WEST LONDON

West London Family Court,
Gloucester House, 4 Dukes Green Avenue
Feltham, TW14 0LR

Date: 10/02/22

Before :

HIS HONOUR JUDGE WILLANS

Between :

RA

Applicant

- and -

MA

Respondent

Mr Daniel Milner (instructed by **Landmark Legal**) for the **Applicant**
Mr Justin Shale (instructed by **Arden Solicitors**) for the **First Respondent**

Hearing dates: 10-12 January 2022

JUDGMENT

His Honour Judge Willans:**Introductory Points**

1. Within this judgment I will preserve anonymity using the following initials:

RA	The applicant mother
SA	The respondent father
M	The subject child
W	RA's daughter from previous marriage. Linked to the allegation of sexual abuse
X	RA's son from previous marriage
DB	MA's former wife
Y	MA's daughter from previous marriage
Z	MA's child (deceased) from previous marriage
AA	Country of birth of RA (Middle Eastern State)
BB	Country of birth of MA (Middle Eastern State)
CC	Country of Asylum of RA and MA (European State which neighbours DD)
DD	Country of Asylum of Y (European State which neighbours CC)

2. This judgment concerns a fact-finding hearing which serves to determine an application under the Family Law Act 1996 ("the injunction proceedings") and to inform the welfare disposal concerning M in proceedings under the Children Act 1989 ("the children proceedings"). I heard evidence over three days, but this was insufficient to also hear submissions and deliver judgment. I have therefore received written submissions and have taken time to provide this written decision.
3. In the course of this judgment I will highlight aspects of the evidence that have particularly informed my decision making. I will not deal with each

and every issue in dispute or analyse in fine detail all parts of the evidence. This would be disproportionate and unnecessary. I have though kept all the evidence in mind in reaching this judgment. I have equally reflected on all parts of the evidence prior to reaching conclusions on each allegation. I have considered how each issue interacts with other issues placed before me and I have borne in mind the potential for evidence with respect to each allegation to be mutually supportive or oppositional to other allegations. However, this judgment must have a structure and in setting out my finding it will take the form of a linear assessment.

The Allegations

4. Five specific allegations which are placed before me for determination. I bear in mind the evidence extends beyond these allegations into a more general account of the parties' relationship. I do not intend to constrain myself rigidly within the five allegations which are:
 - i) In about 2008 and in 2019 MA sexually abused W
 - ii) In 2008 and 2012 MA physically and emotionally abused SA causing her to flee to a refuge for protection.
 - iii) In March 2010 MA physically abused SA causing a fracture to her arm.
 - iv) In around 2015-16 MA was financially controlling in respect of SA.
 - v) On 29 January 2022 MA used both violent and threatening behaviour when attending at the home of SA.

The Proceedings

5. I generally refer to section A of the hearing bundle. These proceedings commenced with MA's application to spend time with M on 5 February 2021. On about 15 February 2021 SA issued her applications both for injunction and children orders. On 16 February 2021 Recorder O'Donovan made interim injunctive and prohibited steps orders at an on-notice hearing. A follow up hearing was listed and heard by Deputy District Judge Brett on 15 March 2021. At that hearing the Judge gave directions towards this fact-finding hearing. Initially this hearing was due to be heard on 28 July 2021, but this was subsequently vacated and relisted to his hearing. It can be seen this case has not had a complex procedural history. The injunction will expire on 16 February 2022 unless otherwise extended. To complete the procedural history, I note the CAFCASS safeguarding letter of 3 March 2021. It found no criminal

traces and only local authority references following the commencement of this dispute in January 2021. It noted the allegations being raised and recommended consideration of fact finding followed by a section 7 welfare report.

Relevant Background

6. I return to the relevant background detail when considering the allegations but would at this time draw out the following history which is taken from the parties' statements (section B of bundle) and the chronology filed on behalf of MA:
- i) The parents are nationals of AA and BB (both middle eastern states sharing some similarities in culture and a common adherence to the Islamic faith). They met in 2008 whilst SA was working in BB. They married very shortly afterwards. At that point MA was already married ('the ex-wife') but as I understand it such polygamy is permissible within the parties' culture and SA does not appear to make much of this state of affairs within her evidence. SA had been previously married and had two children (W and X). MA had two children of his existing marriage (Y and Z). Sadly, Z was killed during a period of civil unrest in 2009.
 - ii) The evidence suggests the marriage with the ex-wife did not survive the marriage of SA and MA and in the period that followed the ex-wife travelled with Y to AA. In late 2008 SA, MA and W travelled to CC where they claimed asylum. X appears to have travelled separately to DD in company with his father – where he appears to have claimed asylum.
 - iii) Ultimately the parties were successful in their claim for asylum and I understand them each to have settled European rights (albeit I think there is a residual issue as to the rights MA has to reside in this jurisdiction). Thereafter the family continued living in CC until 2017/18. SA would argue she moved with M to the UK in 2017 and was followed in 2018 by W, who having completed her education moved to the UK to enter tertiary education. SA claims she lived with MA's family for the first year or so before obtaining her own accommodation in 2018. MA disputes this claiming the move did not take place until 2018 when W had completed her education. There is agreement as to visits to CC and DD in the period that followed.
 - iv) The parties do not agree as to their shared living arrangements once SA obtained her own accommodation. SA would say this

property was shared with M and W and that MA only visited on an irregular and limited basis to see M. He did not stay or live at the property. She could not say where he was when not there but appeared to assume, he was variously in CC or with family in this jurisdiction. In contrast, whilst accepting periods in CC, MA gave an account of essentially living with SA and the children from 2018 onwards until around September/October 2020 when their relationship ended. I should note MA had some time previously divorced his ex-wife.

- v) The parties agree there was ongoing contact between SA and M (although disagreeing as to the amount and regularity of the same) through to early January 2021. The last contact was on 2 January 2021. Following this date contact has been denied leading to the applications under consideration.

Legal Principles

7. SA makes a series of allegations against MA. It is for her to prove these allegations and MA bears no responsibility to disprove the same. SA will prove the allegations if she satisfies me the allegation is more likely than not. I will have regard to all the evidence when considering these allegations but will give special regard to the evidence of the parents. I will pay particular regard to the consistency and credibility of the account given by each witness and whilst I will not ignore the manner in which they gave their evidence (their demeanour) I will bear in mind that there may be many reasons why an impression formed from a witnesses demeanour may be unreliable as a source of establishing the truth of what they say. I will also reflect upon any finding that a witness has lied through the principles found in the case of R v Lucas rather than simply discounting that witness's evidence altogether.
8. The allegations in this case raise the issue of SA as a vulnerable witness. It is incumbent on the Court to reflect on this point and consider appropriate measures that may be required to ensure it receives the best evidence from her. This is considered prior to the fact-finding determination and as such has to be considered knowing the ultimate findings may undermine this concern. These measures should not cause unfairness in the court process and sight must not be lost of the Article 7 rights of each party to a fair hearing. In principle there should be no reason why careful and considered measures which permit SA to give her best evidence should disadvantage MA. At the commencement of the hearing I considered this issue with the parties and the following matters were agreed or were applicable:

- i) The remote nature of the hearing created a sense of distance between the parties. SA was not required to give evidence in the same room as MA;
- ii) All questioning in the case was done through experienced advocates;
- iii) MA's camera and mic was turned off when both SA and W gave evidence;
- iv) Both parties were assisted by interpreters
- v) There was no suggestion of cognitive issues. Having heard the evidence, I had no grounds for believing either laboured any a cognitive difficulty.

I consider these measures provided an effective and fair hearing for both parties.

9. The hearing was conducted remotely. It seems neither party sought to attend Court in person and for my part I am satisfied the evidence I received would not have improved by reason of the witnesses being physically in the same room as me.
10. I bear in mind the case law as to domestic abuse and fact finding. I have regard to Practice Direction 12J. The structure for this hearing was not set by me and a direction for limited allegations was set by the court. Whilst I appreciate this approach offends against the case law, I also bear in mind the statement evidence extended beyond this constraint. Each party filed three statements and this evidence brought into consideration issues beyond the scheduled points.
11. I bear in mind Re H-N and Others (children) (domestic abuse: findings of fact hearings)¹. I note in particular (with relevant paragraph references) the following guidance:
 - i) The weighty responsibility put on the tribunal, and particularly so where the evidence is the word of one parent against the other, given the consequences for the child in either direction should the Court get the decision wrong (§6)
 - ii) The ever-increasing understanding of the impact on children of living in an abusive environment (§24)

¹ [2021] EWCA Civ 448

- iii) The importance of focusing on patterns of behaviour which may be abusive, even where these do not amount to allegations of violence (§25)
 - iv) The definitions of ‘domestic abuse’, ‘coercive behaviour’ and ‘controlling behaviour’ set out within PD12J (§26)
 - v) The ability to be a victim of such abuse without ever suffering a physical injury and the importance of recognising that specific incidents may be part of a wider pattern of abuse (§27)
 - vi) The potential for such abuse to cause harm to other members of the family unit whether or not there has been actual violence/sexual abuse. A pattern of non-physical abuse can be just as abusive as a specific event that might otherwise find its way into a schedule and is as relevant to a child within the home as it might be to the perceived direct victim of the abuse (§31)
 - vii) The importance of recognising that not all behaviour which might be criticised will be abuse in this context with much turning on the intention of the relevant individual and the impact of the behaviour (§32)
 - viii) The need to recognise that such abuse may endure after the parties separate and may be relevant notwithstanding there are protective orders in place. Such abuse may continue to be relevant in an insidious fashion (§52)
12. In the recent case of *BY v BX*² Cobb J. highlighted the benefit that can be obtained in ‘*considering the evidence relevant to each different form of alleged domestic abuse in ‘clusters’*”; e.g. sexual abuse; financial abuse; physical abuse. Whilst he noted the tendency for evidence to overlap into different territory, this approach permitted a picture to be built up of the nature of the relationship under scrutiny. A picture that might not have been possible to obtain through a rigid schedule approach. I accept the benefit to this approach and will not rigidly structure this judgment with reference to the discrete allegation but will rather approach the issues through headings of alleged abuse.

The witnesses

13. I heard evidence from SA, W, MA and DB.

² *[2022] EWHC 108 (Fam)*

14. I found DB to be an entirely straightforward witness. In essence her evidence was simply character evidence as to MA's character. I have no reason for not accepting the essential truth of her account although I consider it is unlikely to be central in determining the truth of the allegations.
15. W was the only witness to give evidence in English. She was fluent and seemed to me confident and firm as to her evidence. I found no essential problem with the manner in which she actually gave her evidence although there are very serious challenges to the consistency and credibility of her evidence. I will return to these issues below.
16. In many ways I formed a similar view of SA's evidence. The issues are not so much with the manner in which she gave her evidence, although having been given through an interpreter it lost most of its natural spontaneity and the opportunity for assessment was limited. Rather the issues are as to inherent consistency and the manner in which the evidence changed and/or developed. As with W I will set out my assessment in the sections below.
17. MA was the least impressive of the witnesses on a conventional assessment. As with SA issues around interpretation caused delay and removed any spontaneity in response. However, in the case of MA the answers were often difficult to follow, and MA had to be regularly brought back on track by me. My sense was that he was better able to answer the questions when I put them than when they were put by counsel for SA. This was notwithstanding they often were fundamentally no different in their form. My sense was of MA being somewhat defensive in his responses to questions from SA. As with SA there were issues as to consistency.

The Allegations

18. In the case of each 'cluster' of allegations I will attempt to first summarise the nature of the allegations providing appropriate detail. I will then outline my conclusions in such regard identifying the key aspects of the evidence which have been central in the formulation of my decision making.

Sexual Abuse

Evidence

19. Both parties approached this allegation as the most significant for consideration. The majority of court time was taken up examining this allegation and it will take up most space within this judgment

20. The evidence came from W who claims that on a date in mid/late August 2019 and when aged 19 she was at home with MA. MA was either living at the property at this time (MA) or visiting to see M (SA). There is no suggestion he had attended inappropriately or without permission. As with SA the detail as to this allegation was quite limited within the written evidence and was as follows:

I was at the flat alone with the Respondent, he made sexual advances and attempted to touch me in an appropriate way, he unexpectedly grabbed me from behind, touched my breasts and rubbed his crotch area against me, which certainly was not what any good father or a stepfather would do. I was shocked and shaken and pushed him away

W claimed that very shortly afterwards she had a 'disturbing flashback' of a similar event occurring when she was 'much younger, maybe around 8 or 9' when MA had 'touched [her] in a similar way'. She had made no report at that time as she hadn't understood his motives. W claimed SA then returned from shopping and whilst W initially did not say anything her mother could tell something was wrong and she broke down and told her what had happened. Within days SA, M and W travelled to DD to visit X.

21. SA's written evidence was that it was whilst in DD she noticed W was not her normal self and that X had opened up in confidence and told her that MA 'had touched her inappropriately'. SA provided no greater detail in her statement evidence. Both SA and MA agree that SA called MA from DD and raised some form of allegation with him. MA denied any wrongdoing but it far from clear as to what exactly MA was told he was said to have done to X.
22. In his evidence MA accepts an allegation being made and his denial of the same. He further claimed to have spoken to W both in person and on the phone and he was told by W that she had been made to make up the allegations by her mother. The nature of the relationship between MA and W thereafter is in dispute. W claimed the allegations had made her mother very angry and she had decided MA would never have any contact with X. In her written evidence SA agreed this account indicating she was not convinced by the denials and made sure X had no contact with MA. In contrast MA in his written evidence seeks to highlight an ongoing relationship with all the family to include living at the same property.
23. The written evidence does not suggest any particular action thereafter until 8 November 2020 when SA and MA exchanged a series of messages exchanged between the parents in which SA makes various observations as to MA having abused W. The narrative is general rather

than specific as to what was said to have happened and does not relate the specific events in question but clearly refers to MA as being a 'paedophile'. As before MA denies any such behaviour. On 3 January 2021 W reported her allegation to the police although in her written evidence she advises this is 'not going anywhere' and it seems no action is being taken on the report.

24. It can be seen that at the commencement of the live evidence both the detail and circumstances of the allegations were far from clear and unsurprisingly counsel for MA sought to probe both SA and W in this regard.
25. In response to questioning SA indicated the first report of the allegations to her had been made whilst she and W were in DD. Whilst this might be assumed from her statement evidence it was not clearly the case and of course stood in contrast to the written evidence of W. She was asked how the report came to be made and said that both her and X had noticed W was upset and asked W what was wrong. Then X directly asked her 'whether anyone was abusing her' and 'whether MA had abused her'. It was in response to this that W confirmed she had been abused by MA, but she only went into detail to SA later when they were downstairs in the garden. As to the detail given, SA recounted being told that MA had pulled W's bottoms down when she was 8 and when she was in bed and had rubbed his penis against her 'bottom'. She confirmed the account of the assault when aged 19 was similar and had also involved trousers being pulled down and a penis related rubbing action. Later she told me that when she and W returned to the property, she told X (in the presence of W) that what had been said was not true. SA when asked was clear she has received reports of two assaults as above. This is important as in her written evidence SA used language which suggested sexual abuse had continued from when W was 8. SA was questioned about this and made clear this was not what she intended to say and that there were only the two reports in her evidence.
26. W gave evidence the next day and counsel for MA expressed concern as to the risk of SA and W discussing the evidence given the suggestion of inconsistencies and embellishments. I formally directed SA that she must not speak to W about her evidence and the case.
27. When called W informed me, she wished to amend her evidence and told me that contrary to her written evidence the report to her mother had occurred in DD and not in London. She told me she felt her original written evidence had been vague in this regard and had not appreciated it gave a false account until recent re-reading. When examined she repeated her account as to the recent assault explaining it had taken

place in her room when MA had entered and forcibly grabbed her from behind. She physically illustrated the grabbing with arms being across her chest from each side and wrapped around her. She explained this shocked her and she pushed MA away by pushing her elbow back into him. Shortly afterwards she sat down and had a flashback of MA 'touching her in a similar fashion' when she was younger. Prior to this assault she had had no memory of the historic event. She has a memory of feeling then as she had felt when 19, of his crotch being rubbed against her back and hands on her breast. She confirmed there were only two incidents as above. In material terms this evidence replicated the written evidence provided by W albeit with some modest additional circumstantial features.

28. She was then probed as to the circumstances of the report to her mother. She gave an account of being asked what was wrong and breaking down and 'opening up'. However just her and SA were present. X was not present, and she could not tell him. The conversation took place in the living room of the property and nowhere else. The account given was as above with the report of the historical event being of a 'similar' event.
29. W was then questioned as to apparent inconsistencies between the account given by her mother and her. W sought a break and one was given. When she returned, she told me there had in fact been two historic assaults. One as described her and one essentially as described by her mother (being in bed and having her trousers pulled down and a penis rubbed against her). She had told her mother she did not want this brought up as she was ashamed of what had happened.
30. In his live evidence MA maintained nothing of the sort had taken place at either point in time. He gave an account of the subsequent discussions which took place around the subject and told me that whilst the allegation was of having 'molested' W the detail of the allegation was never made clear. He had taken the allegation to be in some way sexual but had denied the same. Given the generality of the evidence from both SA and MA as to the detail raised in the conversations it is far from clear as to whether the conversation focused on the events of 2019 or extended back in time to the earlier allegation. He confirmed his evidence of W telling him she had been put up to making the allegation and further confirmed there had been a time when W had said that it would be easy to get herself out of the property by making allegations against him. In her evidence W denied such conversations.

Conclusions

31. Having assessed all the evidence, I am not persuaded on balance as to the sexual allegations for the following reasons
- i) My assessment was not helped by the very limited detail found within the statement evidence. Whilst the court can empathise with the sensitivities surrounding such evidence it must have been clear that within this process the Court would need as much detail as was available to be able to properly analyse the allegations. Indeed in her evidence SA stated that a lack of detail elsewhere in her evidence was because she wanted to concerntrate on these allegations.
 - ii) This approach to the evidence left SA open to the challenge that a lack of detail was an approach taken to mask the fact the allegations were untrue and not accompanied by detail through a lack of reality on which to base the detail. Whilst I was willing to reserve my view on this point I consider the subsequently provided live account gave credence to the challenge.
 - iii) Frankly the live evidence raised more questions than it answered. Given both SA and W were describing a conversation which took place in a calm enviorment distant from the point of alleged assault it is troubling that there were and remain so many inconsistencies. These include (a) whether the brother was present: SA's account is clear that he was there and in fact extracted the first complaint. W is clear he was not present and was not told; (b) SA was clear that the conversation took place in the garden, W was clear it was in the living room; (c) SA tells me both assaults were similar and reconciles the evidence by developing the 2019 assault beyond the actual report (in trousers being pulled down) whereas W reconciles the inconsistency by detailing a new account which could not be described as similar to be grabbed from behind while standing.
 - iv) In addition to the above inconsistencies is the fundamental contradiction as to where the report was made. Whilst W attempted to portray her original account as being in some way vague this is simply not correct. Her written evidence is clear and explicit as to the assault happening in London and her mother then returning from shopping and being told. Given her clear grasp of English I cannot understand how she came to sign this statement as being true.
 - v) Frankly I was left very concerned by the somewhat circuitous route towards the ultimate evidence in this case. The case started

with an apparent allegation of over clothing contact with MA grabbing, holding and rubbing himself against W. In her written (and initial live) evidence W was clear the events were similar in character. SA gave equivalent written account but when probed developed the allegation to include the notion of trousers being pulled down and the historic event taking place in bed. W then later developed her evidence in a manner which fitted with the account given by her mother but in doing so was only able to reconcile the same by making a third report. The sense was of story creep and an account catching up with the evidence of the last witness. I am not confident SA followed my direction insofar as not talking to W overnight. It is striking to me that the key issue of cross examination (the location of the report) was the first thing W wished to correct the next morning. If as I find likely there is a willingness to act in this way then it casts doubt on the extent of historic willingness to put their heads together as to these allegations.

- vi) Other details provided cause grounds of concern. The evidence of SA (not accepted by W) of X promoting the suggestion of MA having abused W is a startling piece of evidence. Bearing in mind there was no previous report or concern on what basis would X jump to such a conclusion from seeing his sister upset. There are a host of different and more logical explanations for the same before one gets to the suggestion of abuse. It might be thought the answer should have been accessible out of the evidence. However SA was unable to help and W denied the conversation.
- vii) I have found the developing picture presented with respect to these allegations concerning. I give appropriate regard to (a) the risk that a truthful allegation may be nonetheless poorly presented for extraneous reasons, and/or (b) the potential for sensitivity and embarrassment (including cultural shame) to minimise reporting. Nonetheless the extent of inconsistencies and story creep in this case goes beyond that which I can allow for. I appreciate in many cases of this sort the detail may be confused and the accounts given in a developing fashion but I am troubled by the manner in which a wholly generalised account has developed in this case. I consider counsel for MA was entitled and correct to raise the suggestion of SA and W hiding a false account behind a lack of detail. He was entitled to probe as he did. It may have been the probing would have revealed a consistent and plausible response. Here however the probing led to further inconsistencies. What I

was not left with was any sense of two accounts coalescing around a common truth.

- viii) There are some linked points which feed into my conclusions. I am simply unable to accept the written evidence of SA and W that contact was stopped with W following this report. Such a response would be a natural, indeed expected consequence of such a report. However it is quite clear that contrary to their evidence this did not happen in this case. I have a wealth of messaging correspondence to the contrary. It includes the most mundane communications between MA and W around issues of buying razors and ordering takeaways. It includes warm and affectionate messages and trivial day to day matters over a sustained period of time post August 2019. Indeed there is messaging in the immediate period following August 2019 which is silent as to the allegation but sits uncomfortably with the notion of contact having been stopped. There are communications surrounding MA collecting the family from the airport on their return home. Again I am conscious as to how abused individuals can maintain a relationship to keep the peace or out of fear or a controlling relationship. But the evidence prepared for this case was that the relationship had been ended as a result of the allegations. In her live evidence it seemed to me W sought to square this circle by suggesting she had only communicated to pacify MA and out of fear of him. A fair reading of the messaging, which is often promoted by W, is inconsistent with this live evidence (which is itself entirely contradictory of W's written evidence in any event).
- ix) There is also the reality of the ongoing relationship between MA and M. It is difficult to understand why, if she believed MA to be a risk in this regard, she would have permitted ongoing unsupervised contact (or any contact). It is a feature of this case that contact was not stopped (in 2021) due to these allegations but due to M not wanting to go to contact.
- x) Quite separate to the above is the concerns I have as to how far the evidence can take me with respect to the 'flashback' evidence. In the first instance the account was of a similar event occurring a about 10 years previously. The difficulty with the original report is the obvious complications that would arise by taking the case back 10 years. First, it would of course be far more natural and expected for MA to hug a 8/9 year old child. Of itself this would not suggest sexual intent. This hugging may be firm without changing the understanding. Second, the sexual development of

a 8/9 year old child would plainly be materially different to that of a 19 year old woman and the suggestion of MA placing hands on her breasts has to be considered with care when extrapolating this on the body of a 8/9 year old. Third the height and positioning would change as X would have been smaller in stature and therefore the positioning of MA's groin area would have been very different. Fourth, I have concern as to the weight that can be given to what is described of a 'flashback' of the feeling of a groin being rubbed into W's back 10 years earlier. A distinction surely has to be drawn between a 'flashback' of an explicit assault (e.g. penetrative sex) and a flashback of a 'feeling'. For all these reasons even were I to have accepted there was something remembered by W I would be far from being able to conclude this amounted to a sexual assault. I distinguish this from the later suggestion of an assault whilst in bed.

- xi) I make it clear that I have not been helped in reaching these conclusions by the evidence given of (i) MA favouring W over M, or; (ii) the limited evidence of MA attending W's school to her embarrassment. Neither point is supportive of improper sexual interest in W. I consider point (i) really has no relevance. I accept the evidence of MA that these were children of very different ages and his engagement with each of them was very different and reflective of their differing ages. The evidence really does not detail any action or event which paints the relationships in a different light. As to the school attendance whilst there is a modest dispute on the facts it is clear this at most happened twice and would appear at its highest to suggest MA was being over protective in his conduct or overly restrictive of W's personal autonomy. It does not support any sexually inappropriate intention.
- xii) I also make clear I am little assisted by the character evidence of DB. Plainly it is entirely possible for MA to have assaulted W whilst still being a loving daughter to Y. It is a matter of note that W is not MA's biological child and whilst this would not diminish the significance of breach of trust in any assault it might explain a different attitude on the part of MA to each child.
- xiii) I note it is not suggested there was any misconduct between 2011 and 2019. This would not resolve the dispute but it creates a gap in understanding as to why there would be two events of this type separated in time to such degree and with a vacuum in the middle. It is not as if it is said W responded in such a way historically to

cause MA to modify his behaviour. At first glance this is not entirely consistent with MA showing sexual interest in X.

- xiv) A counter point which I have borne in mind relates to the fact that an allegation was made in 2019. I accept the submission made that this seems inconsistent with the suggestion of MA that it was fabricated to stifle contact when in fact contact continues for another 18 months or so without obstruction. If this is right then it leaves the question hanging as to why the allegation was made if it was not true. Whilst I remind myself it is not for MA to have to disprove the allegations it is a point of note which requires due consideration.
- xv) I reflected on this point with care and note the following. Whilst something amounting to molestation was raised with MA in 2019 the actual detail of the allegation was very limited. On the basis of my findings and indeed on the evidence of SA and MA I consider the report from W likely amounted to no more than a vague and generalised account of no more detail than that found in the statement evidence. Correspondingly I find it likely the dialogue between SA and MA was equally highly generalised in nature. I am not at all confident it extended to the historic matters. As such there is room for ambiguity as to what was being said and as the perceived significance of the same. In this context the idea of a general notion of molestation can be understood. This would explain how it came to pass that relationships endured between the key participants notwithstanding the fact of a report. Viewed in this way the core of the 2019 conversations may have been a suggested sexual assault involving W being held from behind with MA denying any impropriety.
- xvi) This might explain the limited fallout from the report but begs the question why was the report made? I consider it material to reflect on some of the other evidence put before me. I have noted the evidence of MA turning up at W's school. I have not rejected this complaint whilst I have not accepted its impact on this case. MA accepts some limited attendance but seeks to explain why this was the case. I question whether this might have embarrassed W whatever the legitimacy of the explanation. There is then W's perception of being favoured by MA. Again I have not rejected W having this sense whilst rejecting the suggestion it informs the sexual allegations discussion. The notion of being favoured appears to be entirely positive but might be somewhat double edged if it meant MA was being overly involved in W's life as she

was developing her own autonomy (see the school point above). Further to the above there was a striking and unusual piece of evidence given by SA of an incident when W threw a glass at MA in circumstances where he was restricting her wish to go out. I bear in mind MA denied the same and W gave no evidence on the subject but if correct it does suggest stresses in the relationship to some extent. I also bear in mind the evidence of MA, denied by W, of her telling him that she could obtain her removal from the house by making an allegation against him. I bear in mind it is understood by both that MA is not her biological father. In this context I find it difficult to rule out a generalised complaint being made by W to create distance between her and MA. It is plausible W has stretched an innocent event for this reason and this story has been allowed to develop over time. In considering this point I reflect on the physical description of the event given by W of the contact of which she complains. Whilst in her statement she speaks of MA putting his hands on her breasts the physical depiction given during live evidence was of his arms being across her chest in the manner of a hug from behind. I question whether at some point there has been innocent physical contact which W has either exaggerated or been uncomfortable with and which she has reported to her mother with the subsequent consequences for this case.

32. I do not find the allegations of sexual abuse proven.

Physical Abuse

Evidence

33. The evidence of physical abuse comes from SA and from some contemporaneous documents from CC (from a Child Care Department which and which is akin to social services reports in this jurisdiction). The focus of SA's evidence relates to the behaviour of MA particularly in the period 2008-2012 whilst in CC. Although in her written evidence SA referred to physical abuse continuing throughout her marriage I received no evidence (subject to the point at §34 below) from SA detailing any physical abuse post-dating this period. My understanding is further complicated by SA's evidence as to when the marriage 'ended'. Support for the narrowing of the window of physical abuse can be found in SA's where she refers to the abuse being in front of the children but M being too young to remember. Unfortunately a lack of evidence prevents me reaching a more confident conclusion.

34. Post-2012 SA reports the events of 29 January 2021 as involving a physical assault by MA upon her. W gave no live evidence as to physical abuse within her mother's relationship although she did report arguments between MA and SA and her mother 'crying' and appearing 'scared of [MA]'. I bear in mind the contemporaneous reports from W to which I will return.
35. As with the previous allegations the statement evidence in this regard is quite general in its nature and asks me to draw inferences as to what took place. Rather than provide a detailed account of an incident SA instead points my attention to the contemporaneous records as evidencing what took place. My attention is drawn not only to the children services records (which include outside agency reporting, e.g. school reporting) but particularly to reports from a local crisis centre (a refuge type organisation). In this way I am asked to piece together the parts of the 'jigsaw' to obtain an understanding of the underlying picture. With this in mind I would note the following:
- i) Good evidence of SA and W living at the 'crisis centre' for a period of about a month in both 2008 and 2012. The confirmatory letter does not detail the reasons for attendance. It does though raise an evidential basis for considering there were sufficient difficulties in the relationship to cause not only separation but for SA to leave the family home with W and move into this place of protection.
- 2008
- ii) With respect to 2008 SA in her third statement gives an account of having been thrown out of the family home by MA following a disagreement (in company with W and their possessions). Then being helped by a neighbouring family who sought assistance which led to the transfer to the Crisis Centre. SA points to records of her being seen to have 'bruises on her body and a swollen head'. In her own evidence SA does not give an account of the actual physicality which she claims led to her injuries other than implicitly blaming MA for the same.
 - iii) I also have close regard to MA's account of the events. He accepts hitting (slapping) SA and pushing her away but claims this was done in self-defence after she has slapped him and threatened to do so again. In his live evidence he was unable to account for the force he used or the part of SA's body on which she was hit. So far as I can understand he details no harm to himself.

- iv) Interlaced through the accounts and records is the suggestion that the incident surrounded SA's discovery that X was now in DD and her wish to reunite him with her and W. The suggestion within the papers is that MA was not supportive of this and this led to disagreement and heightened emotions.
- v) I turn to the contemporaneous documents. There are reports from both the Asylum Reception Centre [564] and from the Crisis Centre [549] in 2008. These provide a consistent account of there being a dispute in the family home relating to X. The reports confirm SA alleging an assault (the first time she had been assaulted) with MA denying the same. The documents note SA reported being 'beaten' and 'thrown out' by MA. She had pain in her ear and was taken to hospital where 'swelling with fluid formation but no rupture' was noted. The Centre noted the 'blows must have been heavy'.
- vi) Whilst I do not have this direct evidence there is a reliable report from the Crisis Centre of SA being found to have the injuries noted above. I bear in mind MA suggests the ear difficulty related to an infection not an assault.
- vii) The reports then detail the reconciliation of the parties and SA and W's return to the Reception Centre. There is no suggestion of SA retracting the allegation (or of MA admitting the assault).

2010

- viii) SA alleges being pushed in 2010 causing her to fracture her arm. In the same year the family once again sought to enter the Crisis Centre. However the two events are agreed not to be linked (although the reports naturally sought to discover whether they were in fact linked).
- ix) The parties agree they sought to enter the Centre following threats being made to MA by a fellow resident at the Reception Centre. The Crisis Centre would not take MA due to his previous role as a perceived perpetrator of violence and the family chose to return to the Reception Centre. If there is a criticism arising out of this it is that SA and W were not left in a place of safety at a time when threats had been made.
- x) The 'fracture' did not arise as a discrete report from either of SA or MA but rather out of W reporting to her school arguments at home and concerns. She reports shouting which had woken her

up and her mother being hurt. The parents agree there was such an event with loud noise and W being woken. At the time they agreed this was due to SA having fractured her arm.

- xi) Within the contemporaneous reports it is clear the investigating body are concerned as to whether this represented a repeated event of domestic abuse. SA denied the same and whilst repeating the fact of the earlier assault denied this was a further incident. MA gave an account of the mother falling and explained his shouting as being because SA had failed to seek his help.
- xii) This investigation highlighted family difficulties but went no further in establishing the exact circumstances.
- xiii) Before me MA maintains the essential account given in 2010 of an accidental injury caused when SA fell in the bathroom. In contrast SA contends she fell when the parents were arguing and MA pushed her onto a table. The argument was because MA was wanting money for DB. SA agrees W was woken by shouting and this had scared her. SA did not report the assault as MA threatened that he would kill X but also made threats that she would lose the children.
- xiv) The picture is complicated by MA's allegations that SA was threatening to him (not subject to any fact finding directions) causing him to leave the family and relocate to a different Reception Centre prior to the 2010 attendance at the Crisis Centre. SA agrees there was such a separation and both parents seem to agree it arose out of a dispute around giving X a pair of MA's trousers. I have found it difficult to identify any real relevance of this point to the wider assessment.

2012

- xv) As to the 2012 attendance SA provides no details at all as to the circumstances leading to this attendance. This is notwithstanding me signalling the absence of such evidence and a wish for details to be provided. All I have from SA is the fact of attendance. MA contends this attendance was staged to achieve a transfer of the family to a different Reception Centre (something which appears to have factually occurred). MA's account infers some report of abuse was made (to justify the attendance) but contends it was not true.

2021

- xvi) Thereafter there is no detail of any note until the allegation of 29 January 2021. SA alleges that following her terminating contact MA attended at her home and when she would not allow him access to M he violently forced the front door injuring her hand. He told her he was recording the incident and would not leave until the police were called and spoke to him.
- xvii) MA accepts attending the property following contact being stopped but denies the allegation. He relies upon a video recording on the events which he says bears no relation to the description given by MA. When this was put to her in evidence SA claimed there were in fact two visits that day; that the assault occurred on the first occasion with the recording relied upon relating to the second visit.
- xviii) I have viewed the video.

Conclusions

- 36. I have come to mixed conclusions with respect to this group of allegations. In reaching my conclusions I have not been particularly helped, as before, by the limited detail supplied. In this regard I was struck by the inability of both parties to provide information that they might each be expected to recall. In reaching my conclusions I must bear in mind my conclusions elsewhere as to the credibility of aspects of the evidence given by SA (as I have regard to these conclusions when considering those allegations).
- 37. I reject the notion of an abusive incident in January 2021. Having watched the video it is clear it demonstrates nothing approaching the allegation. In the video (shot on a car dash cam) one watches MA's car travelling for some distance before arriving at SA's home. He then can be seen to approach the front door, knock and wait before it is opened. He stands back a respectable distance and talks to the individual opening the door who cannot be identified. The conversation is short and the door closed with MA returning to his car. The assault as alleged simply did not happen. But what do I make of SA's alternative explanation as to a second visit? I reject this account which is not referred to within the statement evidence and might be expected to have been mentioned. The statement evidence in contrast gives a clear account of the visit and the police then being called. It does not permit of MA leaving, later returning and then the police being called. It begs the question as to why the police would not have been called after the

violent attendance but were later after this apparently rather innocuous attendance? It is also difficult to understand why the door would have been opened on the second occasion if there had been a prior threatening attendance. I have a high level of confidence that the report of a second visit was made up to explain the contents of the video which on any viewing fatally undermines the allegation.

38. In reaching this conclusion I also conclude that this takes the last reported event of physical abuse back to the period around 2012. I am simply unwilling to infer such behaviour for the subsequent period in the absence of any positive evidence of the same. This is particularly so as there is evidence (photographs and messaging) of ordinary family life which challenges such an account. I wish to be clear that such evidence would give way to persuasive evidence of abuse given that the two are not fundamentally oppositional – it is entirely possible for abuse to take place within a relationship appearing ‘normal’ to the outside world. However, here there is no actual evidence to gainsay the documentary evidence. In reaching this conclusion I cannot overlook the evidence which casts real doubt on SA’s credibility over this period. I note the evidence of substantial ongoing contact despite her claim that she stopped all contact involving W. I have considered the competing views as to MA’s ‘living at the property’. On balance I do not feel it necessary to determine this dispute in full but I do note that SA at two points in her evidence speaking of their marriage ending after the allegations made by W. This would be September 2019 and sits uncomfortably with her denial of MA’s case of living in the property in 2019. The whole tenor of the substantial messaging is of very ordinary family life and does not fit with MA being substantially separate from the family.
39. I am unpersuaded as to allegations surrounding the 2012 attendance. I specifically asked for any evidence supporting this allegation and was provided with no evidence. I cannot be clear exactly what led to the attendance on that occasion but I can make no finding of misconduct in a vacuum.
40. I take a different view with respect to the earlier allegations. The evidence in this regard is of a different quality and has more persuasive qualities. I note:
- i) the independent evidence of complaint and of apparent pain and suffering;
 - ii) the evidence of hospital attendance and diagnosis.;
 - iii) MA’s account and the extent this lends itself to an assault;

- iv) the global account found within the contemporaneous documents to include W's reports;
- v) the views formed by the professionals and the surrounding difficulties faced by the family.

Drawing on all these sources one obtains a relatively consistent account and particularly with regard to the 2008 incident. On balance I found MA's inability to detail the nature of his assault (in self defence) evasive and informative.

41. I find on balance there was an assault in 2008 when during a domestic dispute MA slapped SA firmly to the side of the face causing the injury subsequently witnessed and the ensuing reports. I do not accept this assault can be explained away as being in self defence. I find the suggestion of an ear infection to be a red herring. It is entirely possible SA suffered an infection consequent on the assault or indeed had an underlying weakness which exacerbated the situation. But this does not alter my finding.
42. I am persuaded there was a further assault in 2010 when MA pushed SA and she fell fracturing her arm. I was simply not persuaded by the explanations given as to why it was that MA came to be shouting on this occasion. On his evidence he was acting to assist SA who had fallen over. I find it most unlikely he would have ended up shouting at her for not allowing him to help her. Instead I find the shouting represented the domestic fight between the parents which led to the push and which was central in waking W up. Whilst a child could be confused as to what parents were shouting about it seems probable to me the surrounding circumstances would appear materially different between an occasion when an adult had accidentally fell hurting themselves and one where the fall had been due to a push. The evidence fits better with the latter explanation. In making this finding I wish to make it clear that the finding is of a push leading to the injury. I do not find this was done with intention to cause such harm but was likely unthinking as to the consequence.
43. In reaching this conclusions I draw on the available information as to the stresses surrounding the family during this period in particular. As the CC authorities make clear this was a family with many challenges. These included: (a) financial difficulties in the relationship; (b) undoubted stresses flowing from their asylum status; (c) the contemporaneous death of Z and the circumstances in which this occurred; (d) the evidence of SA suffering a miscarriage at this time; (e) the threats being made by other residence; (f) MA's problematic menatal health at this time linked to much of the above; (g) stresses arising out of SA's wish to reconcile

her family. Taken together this was fertile territory for significant family dispute and the findings I have made. But I am not persuaded there is evidence of this enduring materially beyond this period (2008-2012). With the passage of time many of these factors will have diminished in significance. I note SA's own evidence linking the death of Z in particular with a change in MA's presentation. The reality is I am asked to consider a pattern of behaviour and not just specific incidents. I have found a pattern of behaviour but it would be unbalanced not to recognise evidence that the pattern of behaviour appeared to have stopped without the need for further outside intervention.

44. I find allegations of physical abuse proven as set out above.

Emotional abuse

Evidence

45. I intend to deal with this in relatively short order. The evidence I received in this regard was very limited and as an aspect of behaviour it forms no part of the final submissions or examination. Whilst I find it likely that the environment associated with the established physical abuse (as above) will have included emotionally abusive conduct including language and related behaviour I can find no foundation for making a finding of emotional abuse extending beyond this period.
46. In limiting my findings I have regard to my concerns as to SA's evidence in respect of more recent matters. It is difficult to reach a confident conclusion as to ongoing emotional abuse on the part of MA in circumstances in which I find SA has lent herself to an embellished allegation of both physical and sexual abuse against MA. It is additionally difficult in circumstances where SA gives an account of terminating the relationship due to these issues whereas both photographic and messaging evidence suggests this was not the case. Finally it is right to observe the evidence ongoing emotional abuse is far from clear.
47. Subject to my views as to emotional abuse likely accompanying the period of physical abuse I do not find this allegation established. I do not consider this finding adds very much to this case viewed from 2022.

Financial Abuse

48. I cannot find this established. I simply do not have an evidential basis to make anything approaching a safe finding. At its highest I have a short observation in SA's statement evidence that between 2015-16 when employed as a receptionist MA was controlling by taking her wages. However this point was not developed in evidence and appears to be the

totality of the allegation. Elsewhere within the messaging and to the contrary there is evidence of MA being asked to and providing financial support for the family (including W directly) over an extended period. At one point in evidence W appeared to suggest MA's financial control was by reference to the fact he was providing support to the family.

49. I do not find the allegation of financial abuse proven.

Controlling and Coercive Behaviour

50. Whilst this is not discretely alleged I consider it sensible to consider the extent to which the evidence might be thought to support this allegation.
51. I consider there is some evidence around the period 2008-12 which might be said to support this allegation. As an example there is the evidence of the family not entering the Crisis Centre in 2010 when the unit would not permit entry to MA. There is also the behaviour around X. As per my findings there is also the evidence of SA underplaying the assault surrounding the fractured arm which is likely understood in the context of control on the part of MA. But I struggle to identify supporting evidence in the period after 2012 and certainly from 2017 and the point when SA relocated to UK. The evidence from SA is that she was able to and did choose to leave MA and establish her own independent home free from him. Whilst her evidence of terminating contact does not fit with the evidence it does not suggest her being under any form of control. There is certainly no evidence of financial control after this period unless one adopts the argument of support as control. I note there is a suggestion that SA was poorly treated for a period when she lived with MA's family after leaving CC. However this was not developed in any meaningful way and the information available does not support a finding.
52. For the avoidance of doubt I do not find this to be a relationship in which the presence of coercive and controlling behaviour has relevance.

Conclusions

53. In my judgment this relationship had elements of physical and emotional abuse in the period in the period after the family sought asylum (between 2008-12). It is likely this was accompanied by controlling elements on the part of MA. I have explained the likely relevance of the surrounding circumstances to this behaviour. This does not excuse but does provide some context in which misconduct took place. In this regard I have largely but not entirely preferred the evidence of SA over that of MA.
54. However, I am not persuaded these behaviour patterns continued after 2012 and I am not persuaded as to the sexual allegations. In this regard

I prefer the evidence of MA over SA. As to the sexual allegations the assessment is complicated by the allegations likely deriving from W and I cannot rule out the possibility that SA came to genuinely believe the allegation to be true (re the 2019 allegation) but has allowed herself to become part of the embellishment of the allegations subsequently. As to the 2021 allegation it is clear SA has made this allegation falsely and knowingly so. This suggests SA has been willing to make false allegations with the intention of obstructing contact.

55. On the evidence I have considered this would not appear to be a case in which the findings should inevitably impact on contact arrangements. The passage of time and my findings as to the cessation of such behaviour means a more sophisticated approach is required. This case will now need a welfare report from CAFCASS.
56. I have considered the need for the prohibited steps order to continue. I note it binds both parties. I do not intend to discharge it at this time.
57. As regards the non-molestation order. It is due to expire on 16 February 2022 and SA has had the benefit of its protection now for nearly a year without any suggested breaches. In the light of my findings the order should now be discharged. I cannot conceive of circumstances in which such an order would have been made on the findings within this judgment alone.
58. This judgment will be sent to counsel and can be shared with their clients and instructing solicitors. I will look to hand the judgment down at a remote hearing on 1 February 2022 at 10am (t/e 1hour). In advance of the hearing I would ask counsel to do the following:
 - i) No later than 4pm on 27 January 2022 send to me any corrections and/or requests for clarification. I will look to address these in advance of the handing down.
 - ii) No later than 4pm on 31 January 2022 send to me a proposed draft order. As we will be looking for a DRA I will ask for any dates to avoid to be provided for the period 14-18 weeks from the next hearing.
 - iii) As this judgment will be published on bailii any suggested alterations to the judgment required to preserve anonymity,

His Honour Judge Willans