



Neutral Citation Number: [2021] EWHC 1367 (Fam)

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/05/2021

Before:

Mr Justice Poole

Re JK (A Child) (Domestic Abuse: Finding of Fact Hearing)

Between:

FG

Applicant

and

(1) HI

(2) JK THROUGH HER GUARDIAN

Respondents

Ms Best (instructed by **Dawson Cornwell**) for the **Applicant**
Mr Perkins (instructed by **Anthony King**) for the **First Respondent**
The **Second Respondent** was unrepresented at the hearing

Hearing dates: 13-16 April 2021

JUDGMENT

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

Mr Justice Poole:

Introduction

1. This judgment follows a finding of fact hearing concerning allegations of a pattern of coercive and/or controlling behaviour during the course of a marriage. The hearing has taken place shortly after the Court of Appeal handed down its judgment in *Re H-N and Others (children) (domestic abuse: finding of fact hearings)* [2021] EWCA 448 (Civ) in which guidance was given in relation to such hearings.
2. I am concerned with JK, the three year old daughter of the applicant father and respondent mother. The proceedings began as an application for JK to be made a ward of court and for her return from England to a country in South Asia hereafter referred to as “Z”. The mother had removed JK from Z in October 2019, leaving the father behind. Following disclosure and location orders, the mother and child were located, passports were seized, and the mother engaged with proceedings. The child was made a ward of court, joined as a party, and an officer of the Cafcass High Court Team was appointed as Guardian. On 26 November 2020 case management directions were given by Ms Justice Russell for the parties to file and serve numbered lists of “all the complaints and allegations being made” – commonly known as Scott Schedules. The case was then listed before me for a pre-hearing review on 30 March 2021 and the final hearing beginning of 13 April 2021. Shortly before the hearing on 30 March 2021, the father conceded that the child should remain in the care of the mother in England but maintained that she should spend time with him both in England and in Z in the future. The mother does not agree to that level of contact. The Cafcass report by Ms Magson indicated that determination of the factual disputes was necessary to allow her to make a recommendation for anything other than supervised contact in England. Hence, the parties agreed that the hearing beginning on 13 April 2021 should be utilised as a finding of fact hearing with the Guardian to report further in the light of the findings made.
3. I have heard evidence from the mother and the father, but no other witnesses. I have been provided with a hearing bundle that includes as many as five witness statements from the mother and four from the father, a Cafcass report, a report from a legal expert in Z law, and documents from the mother’s immigration application in the UK. I have also received additional evidence including translations of text messages and three videos. Much of the parties’ written witness evidence concerned issues no longer in dispute, such as the protective measures for the return of JK to Z. The allegations of fact are mostly set out in their first statements.
4. In this judgment I shall provide a brief background and summary of the allegations of each party. I shall then set out the legal framework and discuss how to apply the guidance of the Court of Appeal in *Re H-N* to this case. I shall then evaluate the evidence in the case before setting out my findings of fact. For

the reasons given below, and in the light of the guidance in *Re H-N*, I shall not set out my findings by reference only to the parties' Scott Schedules¹ but shall give a narrative account of my findings.

Background

5. The father was born in Z in December 1980 and is a dual Z and British national. He has married and divorced once before. The mother was born in Z in November 1985 and has indefinite leave to remain in the UK based on domestic violence. The parties entered an arranged marriage in December 2013 in Z. They had not met before the marriage and at the time they lived in separate countries: the father lived and worked in England, the mother lived and worked in North America where she had lived since 2009. They spent about one month together in Z after the marriage and then returned to their respective countries of residence. The mother visited the father in England in October 2014 and spent one month with him here. She says that this was intended as a form of honeymoon.
6. The mother returned to North America in November 2014. The parties continued to live apart except for a few weeks together in Z in June to July 2015, until January 2016 when the mother left North America to live in Z, staying with the father's family. The father visited for two weeks in March 2016 but otherwise remained in England. The mother's application for a visa to come to England was refused. She continued to live with the father's family in Z except for a period in December 2016 which she spent with her family who live only 20 minutes away from the father's parents. In March 2017 the father visited Z again, but only for ten days. In April 2017 the mother found that she was pregnant. A spousal visa application was successful and the mother arrived in London on 6 August 2017.
7. The parties began to live together in their own home for the first time. JK was born on 9 December 2017. The father's parents were staying with them at the time, returning to Z in January 2018. At about the same time, a shipment of the parties' belongings was sent to Z. In March 2018 the mother called the police to the family home in London following an alleged assault on her by the father. In April 2018 the parties and JK left England to relocate to Z. The father travelled to and from a Gulf State and the mother and JK initially stayed with the mother's family but spent some time at the father's parents' home. The father's brother celebrated a wedding in July 2018 and the mother and JK stayed with the father at the father's parents' home from then until September 2018 when the father returned to a Gulf State. In November 2018 the father's parents left for a Gulf State to visit the father and their youngest son. The mother went back to live at her own family's home.
8. The father returned to Z for another family wedding in December 2018, returning to a Gulf State in February 2019. There is a dispute about the time the father spent with the mother and JK during this time. After his return to a Gulf

¹ The composite Scott Schedules are appended to this judgment

State, the mother spent time intermittently at her own family's home and the father's parents' home until June 2019, when she and JK flew to to visit the father. In July 2019 the mother, father and JK went to a different Gulf State for 12 days to visit the father's brother. The mother's brother also lived there. The parties and JK travelled back to Z on 15 July 2019. On 17 July 2019 the mother and JK went to live with the mother's family, whilst the father continued to live with his parents. On 14 August 2019 the mother visited the father's parents' home with her brother, sister and mother and sought to collect some belongings. There was a row and the following day the father, with help from two of his brothers, delivered the mother's dowry furniture at the outside of her family's home. CCTV footage taken from a neighbour's property has been disclosed showing events as they ensued.

9. The marriage had now broken down. The father obtained a divorce on 16 August 2019. The mother applied for custody of JK in the Z court on 5 September 2019. The father then applied for custody himself on 2 October 2019. The mother, fearing that she might lose JK to the father, left Z for England on 10 October 2019 without informing the father who only discovered what had happened in January 2020. The mother did not reveal her whereabouts to the father who then made applications for the return of JK, and for disclosure and location orders. The mother was located and opposed the father's applications for JK to be returned to Z. The court gave directions for Scott Schedules, an expert report in Z law, and for a Cafcass report. The Cafcass report dated 5 November 2020 recommended that it was in JK's best interests to remain in England with her mother. The Z proceedings have been disposed of, the mother withdrawing her application and the father informing the court that he did not press his application at the present time. On the morning of the last hearing before me on 30 March 2021, the father indicated that he no longer pursued his application for a return order and conceded that JK should continue to live in her mother's care. He seeks contact, including staying contact in England and Z. The mother contends that only very limited contact should be permitted and that contact in Z should be ruled out.

The Allegations

10. The brief history of the parties' relationship reveals that although they married in December 2013 they spent barely three to four months together before the mother moved to England in August 2017; they lived together in England for about eight months; and following their return to Z they spent a total of about five months together before effectively separating in July 2019. During the five and a half years from the marriage until separation they lived apart for at least four years.
11. The mother says that from the beginning, the father showed her no affection and no romantic or sexual interest. She claims to have seen evidence of the father using a dating app for men, that he is homosexual, and that they have had intercourse only rarely and then in a perfunctory manner. She told the court that the father was the "first man in my life – I had not had a physical or romantic

relationship with anyone else before. I loved him with all my heart and I was not giving up on him. I wanted the marriage to work not only because of social pressure, but I thought with my love I could win him over.” However, when she tried to discuss the lack of intimacy in their relationship, the father reacted violently. She alleges that he assaulted her by slapping her across the face on two occasions during their “honeymoon” in England in October 2014. He was also, she alleges, insistent on making decisions for her, from where the mother should live – demanding for example that she went to live in Z in January 2016, and that the family should relocate there in April 2018 – to what food and clothes she should buy. When they were together in England he controlled all the finances, giving the mother an allowance of £20 per month, and she could not go to the shops without his permission. Even when she was living in Z and he remained in England, during 2016, he would not allow her to leave his family’s house where, she alleges, she was treated like a slave.

12. The mother alleges that when she was living with the father in England he controlled all aspects of her life and used violence to seek to control her. She alleges that he verbally and physically abused her in October 2017, when he kicked her in the chest whilst she was pregnant, and again on 21 March 2018 when he beat her around her face and head with his hands. On that occasion she called the police and the father was arrested, but when he apologised she chose to return home with him and no further action was taken.
13. The mother alleges three assaults by the father on JK, including two whilst they were on a visit to a Gulf State in July 2019. No serious injuries were caused but the father, she alleges, spanked JK with a flip flop, squeezed her hard and slapped her on the face, and beat her across her face, arms and hips.
14. On 15 August 2019 the mother says that the father tried to break down the door of her family’s home in Z, and that she was cowering inside with JK, terrified that he had come with the intention of taking her daughter away from her.
15. The father alleges that the mother falsely told police in March 2018 that the father was pressurising her into relocating to Z, and that from November 2018 to February 2019, when he was in Z, the mother limited his contact with JK, cutting off all contact from 17 July 2019 and then wrongly abducting her from Z to England in October 2019. He denies all of the mother’s allegations. The mother accepts that she removed JK from Z in October 2019 but says that the father did not seek contact with JK during the periods about which he complains.
16. On the father’s case this was an unsuccessful marriage but there is no reason to suppose that he would present any risk to the mother or to JK were generous contact, including abroad, be allowed. On the mother’s case the father has been guilty of physical violence against her and JK and has perpetrated domestic abuse in the form of coercion and control throughout the marriage. He presents a risk to JK’s welfare such that, on the mother’s case, contact should be limited and direct contact supervised.

The Law

17. The following principles apply to this finding of fact hearing:

- a. The burden of proof lies on the party that makes an allegation of fact and identifies the findings they invite the court to make.
- b. The standard of proof is the balance of probabilities.
- c. Findings must be based on evidence not suspicion or speculation - Lord Justice Munby in *Re A (A child) (Fact Finding Hearing: Speculation)* [2011] EWCA Civ. 12.
- d. The court must take into account all the evidence and consider each piece of evidence in the context of all the other evidence – see Dame Elizabeth Butler-Sloss, President observed in *Re T* [2004] EWCA Civ. 558, [2004] 2 FLR 838.
- e. It is not uncommon for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind that a witness may lie for various reasons, such as shame, misplaced loyalty, panic, fear, distress. The fact that a witness may have lied does not necessarily mean they are guilty of the matter alleged against them and the fact that the witness has lied about some matters does not mean that he or she has lied about everything: see *R v Lucas* [1981] QB 720.

18. This case concerns allegations of domestic abuse, including coercive and controlling behaviour. As such I must follow the principles and guidance at PD 12J of the Family Procedure Rules 2010, and the guidance given recently by the Court of Appeal in *Re H-N and Others (children) (domestic abuse: finding of fact hearings)* [2021] EWCA 448 (Civ). In that case at [25] to [27] the Court of Appeal noted that PD 12J remains “fit for the purpose for which it was designed” enabling the courts to recognise domestic abuse and thereafter how to approach such allegations in private law proceedings. In relation to the recognition of domestic abuse in the form of coercive and/or controlling behaviour the Court of Appeal said:

“[25] ... there are many cases in which the allegations are not of violence, but of a pattern of behaviour which it is now understood is abusive. This has led to an increasing recognition of the need in many cases for the court to focus on a pattern of behaviour and this is reflected by (PD12J).

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

“'domestic abuse' includes any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate

partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, psychological, physical, sexual, financial, or emotional abuse. Domestic abuse also includes culturally specific forms of abuse including, but not limited to, forced marriage, honour-based violence, dowry-related abuse and transnational marriage abandonment;

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

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

19. The Court of Appeal set out the harm to children that can be caused by coercive and controlling behaviour:

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

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

The Court of Appeal endorsed the judgment of Hayden J in *F v M* [2021] EWFC 4 in which he referred to paragraph 60 the statutory guidance published by the

Home Office pursuant to Section 77 (1) of the Serious Crime Act 2015 which identified paradigm behaviours of controlling and coercive behaviour, and said:

“‘coercion’ will usually involve a pattern of acts encompassing, for example, assault, intimidation, humiliation and threats. ‘Controlling behaviour’ really involves a range of acts designed to render an individual subordinate and to corrode their sense of personal autonomy. Key to both behaviours is an appreciation of a ‘pattern’ or ‘a series of acts’, the impact of which must be assessed cumulatively and rarely in isolation.” [4].

20. However, the Court of Appeal emphasised at [32] that:

“It is equally important to be clear that not all directive, assertive, stubborn or selfish behaviour, will be ‘abuse’ in the context of proceedings concerning the welfare of a child; much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour. We would endorse the approach taken by Peter Jackson LJ in *Re L (Relocation: Second Appeal)* [2017] EWCA Civ 2121 (paragraph 61):

“Few relationships lack instances of bad behaviour on the part of one or both parties at some time and it is a rare family case that does not contain complaints by one party against the other, and often complaints are made by both. Yet not all such behaviour will amount to ‘domestic abuse’, where ‘coercive behaviour’ is defined as behaviour that is ‘used to harm, punish, or frighten the victim...’ and ‘controlling behaviour’ as behaviour ‘designed to make a person subordinate...’ In cases where the alleged behaviour does not have this character it is likely to be unnecessary and disproportionate for detailed findings of fact to be made about the complaints; indeed, in such cases it will not be in the interests of the child or of justice for the court to allow itself to become another battleground for adult conflict.”

21. In relation to the way in which courts should approach allegations of domestic abuse, the Court of Appeal held at [37]:

“The court will carefully consider the totality of PD12J, but to summarise, the proper approach to deciding if a fact-finding hearing is necessary is, we suggest, as follows:

- i) The first stage is to consider the nature of the allegations and the extent to which it is likely to be relevant in deciding whether to make a child arrangements order and if so in what terms (PD12J.5).
- ii) In deciding whether to have a finding of fact hearing the court should have in mind its purpose (PD12J.16) which is, in broad

terms, to provide a basis of assessment of risk and therefore the impact of the alleged abuse on the child or children.

iii) Careful consideration must be given to PD12J.17 as to whether it is 'necessary' to have a finding of fact hearing, including whether there is other evidence which provides a sufficient factual basis to proceed and importantly, the relevance to the issue before the court if the allegations are proved.

iv) Under PD12J.17 (h) the court has to consider whether a separate fact-finding hearing is 'necessary and proportionate'. The court and the parties should have in mind as part of its analysis both the overriding objective and the President's Guidance as set out in 'The Road Ahead'².”

22. The use of Scott Schedules, as have been prepared in this case, was considered:

“[46] ... serious thought is now needed to develop a different way of summarising and organising the matters that are to be tried at a fact-finding hearing so that the case that a respondent has to meet is clearly spelled out, but the process of organisation and summary does not so distort the focus of the court proceedings that the question of whether there has been a pattern of behaviour or a course of abusive conduct is not before the court when it should be.”

23. The Court of Appeal did not lay down strict guidelines as to how otherwise the courts might case manage and hear allegations of domestic abuse but at [58] it offered some “pointers”:

“a) PD12J (as its title demonstrates) is focused upon 'domestic violence and harm' in the context of 'child arrangements and contact orders'; it does not establish a free-standing jurisdiction to determine domestic abuse allegations which are not relevant to the determination of the child welfare issues that are before the court;

b) PD12J, paragraph 16 is plain that a fact-finding hearing on the issue of domestic abuse should be established when such a hearing is 'necessary' in order to:

i) Provide a factual basis for any welfare report or other assessment;

ii) Provide a basis for an accurate assessment of risk;

iii) Consider any final welfare-based order(s) in relation to child arrangements; or

iv) Consider the need for a domestic abuse-related activity.

² President's Guidance 'The Road Ahead' (June 2020)

c) Where a fact-finding hearing is 'necessary', only those allegations which are 'necessary' to support the above processes should be listed for determination;

d) In every case where domestic abuse is alleged, both parents should be asked to describe in short terms (either in a written statement or orally at a preliminary hearing) the overall experience of being in a relationship with each other.

Where one or both parents assert that a pattern of coercive and/or controlling behaviour existed, and where a fact-finding hearing is necessary in the context of PD12J, paragraph 16, that assertion should be the primary issue for determination at the fact-finding hearing. Any other, more specific, factual allegations should be selected for trial because of their potential probative relevance to the alleged pattern of behaviour, and not otherwise, unless any particular factual allegation is so serious that it justifies determination irrespective of any alleged pattern of coercive and/or controlling behaviour (a likely example being an allegation of rape).”

Application of The Guidance in Re H-N

24. This finding of fact hearing was case managed before the Court of Appeal’s judgment in *Re H-N*. Following case management directions, the parties have produced Scott Schedules containing a total of eighteen specific allegations. As is far more apparent from the mother’s statements than from her Scott Schedule, her central allegation is that throughout her marriage to the father he was guilty of domestic abuse in the form of coercive and controlling behaviour. Her Scott Schedule of allegations includes specific examples of such behaviour and specific allegations of physical assault which would constitute abuse in themselves, if proved, but it is the cumulative effect of those and many other incidents and repeated behaviours, that constitute the most serious abuse, on the mother’s case. The mother’s schedule also includes three allegations of assault against the child, JK. Again, those allegations, if proved, would be physical abuse against the child, but they are also potentially relevant to the exercise of coercion and control of the mother. Similarly, the father’s case is that the mother has been guilty of controlling behaviour by persistently making false allegations and depriving him of contact with his daughter, so as to erode their relationship. A focus on specific alleged incidents do not do justice to the nature of his case.
25. Since Scott Schedules had been prepared and the case has been managed by reference to them, I did not dispense with them but, at my invitation, the parties prepared short narrative summaries of their respective cases about the allegedly coercive and/or controlling behaviour of the other. The summaries were very different in style and illustrated the complexities involved in presenting allegations for a finding of fact hearing such as this one where there are overlapping allegations by the mother against the father of coercion and control,

physical violence against the mother, physical violence against the child, and allegations by the father against the mother of control, fabrication, and abduction. How can the party alleging a pattern of coercion and control over a relationship that has lasted several years present that case for a finding of fact hearing in a way that is proportionate and manageable, and without giving a day by day account of the whole relationship?

26. Patterns of behaviour are formed from many individual incidents of conduct. It is difficult therefore to separate the pattern from the specific events said to establish the pattern. In this case every one of the mother's allegations is denied by the father. The court cannot make findings about a pattern of behaviour without evaluating the evidence in relation to specific incidents that allegedly contributed to that pattern. The difficulty is in identifying a limited number of incidents that would, if proved, establish a pattern of behaviour. Some specific instances of behaviour will not constitute abuse themselves and may appear to be relatively trivial if looked at in isolation but are in fact important evidence of a pattern of abuse, or the effects of abuse, when set alongside other findings. For example, there is evidence in this case of the mother texting the father to ask if she can use the toilet in his bedroom. Arguably, she did so because she was conditioned by him to ask his permission to perform many of her activities of daily living. How does the court keep a finding of fact hearing within proportionate and manageable limits without filtering out what might be highly relevant evidence of coercion or control?
27. Had this case been case managed after the judgment in *Re H-N* then, once it had been determined that a finding of fact hearing was necessary, it would have been helpful to have had, in addition to the witness evidence, concise statements on behalf of each party including (a) a summary of the nature of the relationship, (b) a list of the forms of domestic abuse that the evidence is said to establish, (c) a list of key specific incidents said to be probative of a pattern of coercion and/or control; (d) a list of any other specific incidents so serious that they justify determination irrespective of any alleged pattern of coercive and/or controlling behaviour. The court would have needed to know which specific allegations listed at (d) were admitted or disputed, but, in my view there would have been no need to have formal responses to the other sections of the statements.
28. As it is, and in the light of *Re H-N*, the primary issues requiring my determination are the allegations of patterns of behaviours said to constitute coercion and/or control. However, in this case the specific allegations of physical assault do require discrete determination because they are part of the alleged pattern of coercion and control. The use and threat of physical violence was, it is alleged, a significant element in the father's exercise of coercion and control. I shall therefore consider the specific allegations of physical violence alongside the allegations of patterns of abuse. In doing so slavish adherence to Schedules will not be helpful. Accordingly, I shall set out my findings in narrative form.

The Parties

29. Both parties gave evidence without an interpreter, although English was not their first language. Both gave evidence remotely over MS Teams. The father was alone in Z, the mother was at her solicitors' offices in England. I bear in mind these difficulties when assessing their oral evidence.
30. The mother was assured when giving her evidence. She is clearly intelligent. She was very articulate, if occasionally digressive, when answering questions. She was not at all evasive – she met all questions head on. She was assertive and not at all cowed by the scrutiny of cross-examination. The mother has benefited from support and therapy since returning to England in October 2019. She has been diagnosed as suffering from Post Traumatic Stress Disorder. She told me that the trigger for that was her experiences on 14 and 15 August 2019 which she found very frightening. Whilst she was seemingly assured when giving evidence, there were clear signs of emotion when talking of her experiences on those days, and of her desire to protect her daughter from the father. When challenged in cross-examination the mother tended to express disbelief at the questions, or the implications of the questions. She was dismissive of any version of event that did not paint the father as being in the wrong, and her as being wronged. However, she did admit to losing her temper and to using harsh words on occasion.
31. The father also gave his evidence in a confident and articulate manner. He was not evasive but he stuck firmly to his position that virtually all of the matters alleged against him, and all of the allegations in the mother's Scott Schedule, were fabricated. These were not incidents which he contended the mother had misinterpreted – on his case they simply did not happen. As cross-examination continued I was struck by how the father viewed every aspect of this case from the perspective of his own feelings and interests. For example, he was asked repeatedly how he thought his application for custody of JK in the Z court, might have affected the mother who had looked after their daughter since her birth. The father could only answer that he was upset and anxious that he was not seeing JK . He was either unable or unwilling to show any empathy for the mother, or to focus on how the applications might be relevant to JK's best interests. Rather like the mother, the father saw himself as innocent of any wrong – all the difficulties in the marriage had been caused by the mother. Unlike the mother, he did not admit to any behaviour that might be considered to be less than exemplary. Even when captured on camera kicking and beating at the mother's family's door, he excused himself by reference to abuse he had been subjected to from within the house.
32. Each party was challenged about inconsistencies with their statements to the Z courts. I am not helped by those statements. They are written in such a distinctive, archaic style, with florid expression, clearly prepared by lawyers and directed to particular legal tests for the courts of that country, rather than being in the words of the witnesses themselves, that I find I cannot rely upon them as evidence of what the parties believed to be true at the time that they made them.

Specific Allegations of Violent Conduct and Threatening Behaviour by the Father against the Mother

33. In addition to the evidence from the parties, I have viewed three videos relevant to the mother's allegations of physical violence and threatening behaviour by the father against her, and read other documentation including police records and a GP record following the alleged assault on 21 March 2018, the mother's immigration application alleging domestic violence, records from the Z court proceedings, and translations of text exchanges. Neither party has relied on witness evidence from family members or others. Some corroboration from others might have been expected but the court has to determine the allegations on the evidence presented. The mother's allegations of physical violence and threats are that the father slapped her on two occasions in October 2014, he kicked her in the chest in October 2017 he beat her around the face and head on 21 March 2018, and he kicked and beat on the door of her mother's house in Z when she was inside with JK on 15 August 2019. I have viewed Police Bodycam footage showing the father's arrest at the family home in England on 21 March 2018, a video taken on the father's brother's mobile phone outside the mother's family's home in Z on 15 August 2019, and CCTV footage from a neighbour's house filmed on the same day.
34. Not only did the mother not call any corroborative witnesses, but there are no photographs of injuries and little by way of contemporaneous documentation to support her allegations. Furthermore, her account of domestic violence in her immigration application lacks detail and does not appear to refer to all the allegations that she now makes in these proceedings. Likewise, the notes made by Social Services of her allegations are not wholly consistent with her witness evidence for this hearing. The burden of proof lies on the mother in relation to the allegations she makes and she must adduce sufficient evidence to prove her allegations. As against this, the father essentially asks the court to accept his blanket denials. The only admission he makes is that he kicked and beat on the door of the mother's parents' home in Z on 15 August 2019, but he could hardly deny that allegation since he was filmed doing so on a neighbour's CCTV camera. Even then, the father sought to account for his actions in a way that placed him as the victim rather than the aggressor in that incident.
35. In her witness statements, the mother's account of the assaults in October 2014 is brief. At paragraph 8 of her first statement, she merely says of the first incident, "he slapped me when we were in the bedroom". At paragraph 9 she says of the second incident, "We were driving back to Oxford Street when he slapped me 4 times only because I had asked him why he does not come near me and why we are not like a normal couple..." Under questioning in cross-examination she gave much more detail about these incidents and made a correction in that the second had occurred whilst parked up on a street in Oxford, not on returning to Oxford Street (in London). She said that on the occasion of the first assault the father had held her by the neck when he slapped her, a detail that is absent from her witness statements. The court has to be alert to the possibility of embellishment when a witness gives evidence at court that goes beyond that given in their written statement, but the mother's spontaneous and unhesitating provision of detail, when asked, appeared to be wholly genuine. As

she spoke about the assaults she could be seen to be visualising them. The father simply denied the incidents – they were completely fabricated. He offered no explanation as to why the mother may have been mistaken.

36. The assault in October 2017 was an alleged kick to the mother’s chest the morning after the father had spent about two hours shouting at and verbally abusing the mother, calling her ugly, a liar and shameless. The mother was heavily pregnant at the time and sleeping on a mattress on the floor, the father sleeping in the bed in the same room. In the morning the mother had, unusually, continued lying on the mattress whilst he was getting ready for work. She alleges that he considered this to be her showing “attitude” to him and he verbally abused her and kicked her to the chest as he was getting ready to leave. Again, the mother spoke fluently and convincingly about this episode. She did not suffer any significant injury. Again, the father denied the entire alleged episode – it was a fabrication by the mother.
37. The mother alleges that on 20 March 2018 the father yelled at her because she had disturbed him whilst he was sleeping. She tried to explain that she was washing his uniform trousers for work and he told her she was “barking” (the father accepted he had said this but said it was a poor choice of words for which he had immediately apologised, rather than a deliberate insult). The following day the father asked the mother to go to a shop to buy some make-up for his brother’s wife. When she returned he asked for the change and receipt, which the mother put on the kitchen table. The father lost his temper saying, “I will make you act like a dog, don’t show me attitude and don’t give me this crap.” The mother then says, “He grabbed me and started beating me. I was very dizzy as he had slapped me so many times. When he pushed me against the wall, I grabbed onto his shirt to try to steady myself.” She told the court that she lost an earring and pendant in the assault and found them on the floor on another day. When the attack finished the mother began to leave the room and the father asked her sarcastically to call the police, offering his phone. The mother took it and did call the police. They arrived half an hour or so later.
38. The police bodycam footage shows the mother to be disorientated and upset. The officer points to a reddening to one side of her face, where she told the officer she had been hit. He says that there is reddening there. She appears to have matching earrings in both ears, but no pendant. She tells the police that assaults have been “on and on but I never bothered”, indicating that there had been violence in the past which she had not reported. She could not say how many blows the father had struck on this occasion. The father is seen to be very calm and collected as he is told of the allegation by the mother and that he is being arrested to be taken to the police station. The police disclosure includes an account of the incident given by the mother at [D11] which corresponds with her account to the court, although it ends with an observation that “There are no injuries to [the mother].” That contradicts the bodycam footage to which I have referred. The mother reported to the police that “He is controlling if I don’t do everything his way”, and “she is concerned that the [father] is going to take his child out of the country.” She said that the father had never hurt JK. Arrangements were made, at the mother’s request for her and JK to be picked up from their home and taken to a police station with a view to them being

accommodated at a refuge. However, the father, who had by then been released home, called the mother and, according to the mother, apologised for what he had done. The mother decided that for the sake of JK, she would give the marriage and the father another chance, and to return home. In her first statement she says that this was “the biggest mistake of my life.”

39. The mother says that she was covered in bruises which she told the court were to her upper arms and the top of her back. She went to her GP in the late afternoon of 22 March 2018. The GP’s note shows that the reason for the attendance was a cervical smear but that the mother reported, “Yesterday had an altercation with husband who punched her face, grabbed and pulled L hand. Patient called the police who arrested husband No bruising observed, making eye contact and able to express self. L wrist a bit swollen.” The GP advised the mother how to seek help and about the availability of a refuge. She advised the use of paracetamol.
40. At page 37 of the file of documents associated with the mother’s immigration application, is a “Private and Confidential” letter from Social Services referring to a risk assessment on 26 March 2018. A referral had been made by the police. It records that the “risk assessment was completed in haste as the clients [sic.] husband was sue [sic.] home soon, she does not often have any free time unless her husband is at work.” In fact, the mother told the court, the father was in the next room but she felt unable to tell the social worker that. The letter about the assessment continues, “I consider the client has minimised during the risk assessment...” nevertheless the mother stated that “since she has been in the UK there have been 2 incidents of violence, the first in October when he slapped her across the face once and the recent incident where he has started verbally abusing her and has punched and slapped her across her face and head repeatedly.” The mother told the social worker that she was isolated and does not go out without the father, but he “is not controlling” although he “does get angry with her “when she “does not do things the way he likes”. She was going to go back to Z with the father and JK but to live separately “until she feels the [father] is trustworthy”. She wanted to “continue to work on the marriage” and felt that “he will be different.”
41. The mother gave a coherent account of the incident on 21 March 2018 to the court. Clearly, she was either lying to the social worker about the presence of the father in the house at the time of the risk assessment on 26 March 2018 or her evidence to the court was misleading about his presence. The father denied that he so much as lost his temper with the mother in March 2018. He was unaware of any visit by a social worker, or the mother’s attendance at her GP. On his account he was arrested for no reason and released because there was no evidence that he had done anything wrong.
42. The mother’s account of events in August 2019 is that the parties had returned about a month earlier from the trip to a Gulf State. On return they effectively separated and she and JK were living in her family’s home. She tried to secure the return of her possessions which remained at the father’s parents’ home. On 14 August she attended their home with her brother, sister, and mother with a view to retrieve some clothing and other possessions from the room she had

used to share with the father. She did so but was intimidated by the father and his brothers, who surrounded her. She received a kick during the melee. The following day the father turned up unannounced outside her family's house, with his brothers and some other men. They unloaded furniture which both parties described as her dowry furniture. The mother noticed the truck carrying the furniture and, at the other end of the lane outside the house, the father's brother's car. She was terrified that they had come to take away JK. She knew that the father had JK's British passport. She hid in a toilet away from the front of the house but was aware of the father trying to beat down the front gate to the compound outside the house, which they had locked.

43. A neighbour happened to have a CCTV camera outside their property which had filmed the incident. The mother viewed the footage and filmed it on a mobile phone. The footage lasts 4 minutes 29 seconds. There is no sound. It shows a fairly busy street with parked vehicles, and passing motorbikes, a man with a cart, and various pedestrians. It shows the front door, which I was told is a metal gate, to the mother's family's property and the dowry furniture propped up against the front of the building and to the side of the gate. At 33 seconds the father is seen walking up to the gate and pressing a buzzer button by the door. He then retreats to the opposite side of the road, standing with one of his brothers. About a minute and a half later a woman walks along the road and pauses outside the front of the house. She looks over her shoulder towards where the father is standing. She glances in the direction of the front gate. She walks on. At 2 minutes 40 seconds the father's brother is seen to walk into the road and stand by a parked car. The father then walks across the road and lands a violent kick at the door, striking it with the sole of his foot at a height of about two to three feet from the ground. He then beats the door with his hands. His actions cause the door to buckle inwards but it remains closed. He returns to the opposite side of the road. It can be seen that the attention of passers by is attracted to the incident. After a further 30 seconds or so the father walks purposively towards the gate once again. He raises his right hand in some form of gesticulation as he does so. He can be seen to be apparently shouting and jutting his head forward. He uses both hands simultaneously to beat hard on the door twice. He then pushes at what he told me was a dressing table mirror, which breaks. He told me that he sustained cuts. He then walks away, throwing his left hand at some of the other furniture as he does so. There are a few people gathered on the street by now and a man is seen looking towards the father and his brother and then using his mobile phone as if making a call. The mother told me that he was a neighbour (not the one with the CCTV camera).
44. The father was taken through this footage in cross-examination. On his account he was honouring a promise to return the furniture. He said that he was abused by the mother's family from behind the gate. They called him and his family "dogs". They shouted out that he was homosexual. He says that the only time he lost his temper was when they continued to abuse him and he put his hands to the dressing table. He denied having lost his temper at the time when he kicked the gate. Indeed, he told the court that at that point, "I did not want any confrontation." He told the court that when he approached the gate and struck it a second time, he was not punching the air but was "walking as normal." He

said that the passers-by were stopping to look at the gate from which the mother's family were shouting abuse, not to look at him and his brother.

45. The mother's account about the assault in March 2018 does include some inconsistencies. During her oral evidence she added a detail about having lost an earring during the assault whereas the bodycam footage shows her wearing matching earrings. There is no corroboration of the "numerous bruises" she says she sustained. Nevertheless, having regard to the totality of the evidence, in my judgment there is telling evidence that supports the mother's account of the allegations of violence and threatening behaviour in March 2018 and August 2019, and which undermine the father's accounts.
- a. The police bodycam footage clearly shows the officer remarking on and pointing out reddening to the mother's face consistent with her account that half an hour earlier she had been struck by the father.
 - b. The mother gave a broadly consistent account of the incident in March 2018 to the police, the social worker carrying out a risk assessment, and to this court.
 - c. The mother's account to the GP is also consistent with her having suffered the assault on 21 March 2018. The GP noticed swelling to her left wrist which is consistent with a struggle with the father after the mother grabbed hold of his shirt. The fact that no bruising was seen by the GP is explained by the fact that it had been to the mother's upper arms and back and therefore covered by clothing. There is no note of an examination involving removal of clothing. The facial reddening will very likely have subsided by the time of the GP attendance on 26 March 2018.
 - d. The CCTV footage clearly shows the father acting in an aggressive and threatening manner on 15 August 2019. He kicks the gate with great force and I cannot accept his evidence that he "did not want any confrontation" and had not lost his temper at that time. He was acting in a highly confrontational manner. Likewise, I reject his evidence that when he approached the gate again he did so walking "as normal". The footage shows that he was worked-up as he approached the gate, gesticulating and jutting his head forward before beating heavily on the gate and then smashing the mirror. His manner during this incident was intimidating and violent.
 - e. The passers-by appear to be mostly watching him and/or his brother standing with him, indicating that the greater disturbance was coming from the father rather than from inside the house.
46. The father has adduced a text message from the mother's sister of 15 August 2019 which says, "Watch out now you filthy gay!" [C321]. The father maintains that this supports his account that he was being abused by the same person and others from within the mother's mother's house that day. It would be unlikely that the mother's sister would have written this text after the incident if she had

been terrified herself. However, it does not provide persuasive evidence to contradict the mother's account that she herself was terrified by this incident. I also note that since coming to England in 2019 the mother has been diagnosed with, and treated for, post traumatic stress disorder. She told me that the incidents on 14 and 15 August 2019 were the triggers for her disorder. At C199 there is a doctor's letter which confirms that at a consultation in July 2020 it was noted that she had suffered domestic violence a year ago and she gets "flash back [sic.] of the domestic violence." That broadly corroborates the mother's evidence that the events of August 2019 caused her to suffer PTSD.

47. Ms Best for the father suggested several possible motives for the mother to fabricate allegations against the father. There was evidence that the mother asked the father for another child after they returned from a Gulf State but that he refused. The evidence suggests that this was the mother's final attempt to save a miserable marriage, but I cannot see that it would prompt her to make up allegations against the father during these proceedings as some form of vindictiveness. Likewise, suggestions that she is motivated to malice by the divorce, the lack of child maintenance and the father bringing proceedings against her, would not, in my judgment lead her to make up allegations of violence against him. In any event, she alleged the March 2018 assault well before those supposed triggers for her malicious fabrications arose. Further, the August 2019 incident was clearly not fabricated – it is shown on camera.
48. I find on the balance of probabilities that the father did beat the mother around the face and head on 21 March 2018 – he caused minor injury only. I do not accept that he dislodged the mother's earring – she has confused that occurrence with another occasion. He may have dislodged her pendant but I am not persuaded that he did so. I find that on the balance of probabilities the father acted in a highly threatening and intimidating manner, causing damage to property and causing the mother to be scared for her safety and that of JK, on 15 August 2019. The mother's accounts of both incidents were credible, there was corroborative evidence of the August 2019 incident from video footage, and there were broadly consistent contemporaneous accounts of the March 2018 incident. The father's evidence about the CCTV footage on 15 August 2019 was not at all credible. I accept that the father may have received some verbal abuse from the mother's sister on 15 August 2019 which he found provocative, but his own conduct was violent and intimidatory. I am satisfied that the mother's allegations regarding the incidents on 21 March 2018 and 15 August 2019, as set out in her Schedule, are proved.
49. There is no corroboration of the mother's accounts of the slapping in October 2014 and the kick to her chest in October 2017. The account to the social worker on 26 March 2018 rather suggests that the mother was alleging a single slap in October 2017 (not a kick to the chest) as the only other previous assault on her by the father, but they had taken place, if at all, several years earlier and may not have been in her mind during that interview. The mother gave much more detail about these alleged assaults in oral evidence than appears in her witness statements. Ms Best, for the father, accused the mother of embellishment. The mother's retort was that she was giving more detail in response to some very specific questions. There was only so much she could include in her witness

evidence without making them too long and burdensome to the court. In oral evidence the mother added a detail that on the first occasion she was slapped by the father he held her by the throat as he slapped her. The mother's immigration application does not mention the October 2014 incidents. For all these reasons I approach the mother's allegations about these alleged assaults with considerable caution. Nevertheless, as set out above, I found her oral evidence about the assaults to be coherent, spontaneous, and convincing. For example, she gave details about the assault in the car in October 2014 – she told the court where they were, what prompted the assault, how she responded, and how the incident ended. In contrast, the father's blanket denials of these allegations – they are simply fabricated – were unconvincing. The father told the court that he never lost his temper. I find that to be a misleading assertion – he was clearly consumed with anger on 15 August 2019, for example. The CCTV footage from that day also shows his capacity to be violent in anger, and to lose self-control: he smashed a mirror cutting himself in the process. His case was not that there were heated arguments and some pushing and shoving that the mother has exaggerated, but simply that the mother has wholly made up these alleged assaults. If so, it would be odd of her to concoct incidents from seven years ago and from four years ago.

50. Even approaching the allegations with caution, for the reasons given, I am satisfied that on the balance of probabilities these assaults on the mother in October 2014 and October 2017 occurred as alleged.

Alleged Assaults on JK

51. The mother alleges three assaults by the father on JK. The first was in December 2018 when she alleges the father hit JK on the bottom, over her nappy, with a flip-flop. She told the court that he struck her with force, not playfully or lightly. He did so because JK was standing in the way of his television. The second was in July 2019 on a flight to a Gulf State when JK was over-excited after they boarded, and the father held her too tightly and slapped her face causing reddening. The third was in the same month, whilst in a Gulf State, when the mother heard a disturbance and entered the room to see the father striking JK around her arms and hips. She noticed that her face was red and assumed he had struck her on the face. The father denied these alleged assaults. He produced video footage and photographs of JK on the plane to a Gulf State, and whilst there, which he claimed contradicted the allegations. The photographs and video footage were unhelpful.
52. I have considered the evidence in relation to these allegations with care. I find that because of her own experiences, the mother has been highly alert to anything the father has done that might be construed as physical violence against JK. I accept that whilst many parents would not use physical admonishment against a child of JK's age at the time of the allegations, some would, and would do so without intending to cause harm to the child and without causing harm to the child. In my judgement the mother's evidence about these incidents is consistent with a misinterpretation of what the father was doing. On

the balance of probabilities, I find that the father hit JK over her nappy with his flip-flop but did not do so violently, harmfully or with intent to cause harm. He held JK tightly on the plane so that she did not disturb other passengers and he patted her on the cheek, but he did not squeeze or strike her violently. He may have smacked her around her bottom when they were in a Gulf State, but I am not persuaded that he exercised excessive force nor that he struck JK to the face. The mother did not see that happen. In short, I am not satisfied, on the balance of probabilities, that the father was guilty of physically assaulting JK on these three occasions. I am not satisfied that he caused her any injury at all on these occasions.

Coercion and Control by the Father

53. On the mother's case the incidents of violence perpetrated against her by the father were part of a pattern of controlling behaviour. Other elements included ordering her to move to Z from North America, controlling her movements in Z, taking control of her immigration applications, working with his family to treat the mother as a "slave" when she was living with them, restricting her access to money, social contact and phone use when in England, forbidding her from joining a mother and baby group in England, yelling at her when she vomited on the floor during late pregnancy, and refusing to allow her to seek surgery for a haemangioma on JK's cheek.
54. In relation to the allegation about surgery, I am quite satisfied that the father had a legitimate difference of opinion from the mother about the need for surgery. It transpires that doctors in England have taken the same view as the father. I do not accept that this was an example of controlling or coercive behaviour by the father. Nor do I find the allegation that he shouted at the mother for vomiting on the floor to be convincing evidence of abusive behaviour. This was no doubt an anxious time for both parties – the mother was heavily pregnant and feeling contractions. She was offered coffee by the paternal grandmother but she was not, as the mother hinted, forced to drink it. She was sick and the father may have commented that it would have been better had she reached the toilet before vomiting. This may have been insensitive, but I am not persuaded that it was malicious.
55. In considering all these allegations, which amount to an allegation of a pattern of abusive behaviour throughout the marriage, and the evidence as a whole, I take into account the cultural context – this was an arranged marriage and the parties appear to come from families with traditional cultural expectations of their marriage, including for example the provision and return of dowries. Prior to the marriage the mother had achieved an independent life in North America. She is well-educated and had a good job. She was self-sufficient. Upon marrying the father, she had high expectations that they would have a close and loving relationship. Having heard the parties give evidence, and having read the documentary evidence, it is quite clear that that never happened. The mother believes that the father's sexual orientation is the underlying reason for their lack of intimacy and affection, but whatever the reason, the relationship was

cold almost from the outset. The parties lived apart for a long period after they were married. When they were together there was no passion, no affection, and the father remained aloof.

56. The mother had sufficient self-confidence to confront the father about his aloofness early on in the marriage and I have found that he reacted with violence in October 2014. The mother gave up her job and her independent life in North America to go to Z, without her husband, to live with his family there. I find that she did so because she thought that it was expected of her and she thought that it might help to make the marriage work. The father may well have asked her to do so, but I find no evidence that he exercised abusive control or coercion to cause her to move to Z. The mother was, I am sure, miserable for much of the time that she was there, before she moved to England, but this was due to the expectations and customs of the father's family, with which the father concurred, rather than the exercise of abusive control by him from his home in England, through his family or otherwise.
57. Nevertheless, once the mother came to England in August 2017, and the parties lived together in their own home for the first time, the mother was subjected to controlling behaviour by the father. I accept the following evidence from the mother. The father controlled all the family finances, providing the mother with £20 per month to spend. He controlled all the spending on shopping for the family. He dictated when the mother could go out to the shops and what she should purchase. He often went with her and he even chose the clothes bought for her to wear. He ensured the mother had no bank account. The father also restricted the mother's social interactions, for example preventing her from joining a mother and baby group. She could not leave the house without his permission. He was so demanding of obedience that the mother, previously an independent woman, would habitually ask the father's permission before carrying out even trivial tasks of daily living. If he was disturbed or inconvenienced by her he would lose his temper with her. This was a form of psychological manipulation designed to erode the mother's self-confidence so that she would be wholly obedient to him. He would not only use physical force when he lost his temper – I have made a finding that he beat the mother around her face and head on 21 March 2018 -but the ever-present threat of physical force from him would contribute to his ability to control and coerce the mother. He is physically much larger and stronger than the mother and he had shown her in October 2014 (and did so again in October 2017 and March 2018) that he was willing to use physical force against her when she displeased him. Given the evidence of communications by the mother I am not persuaded that the father excessively controlled her use of a mobile phone or access to the internet and social media.
58. The mother's evidence on these matters was compelling. The father's denials unconvincing. I have seen no evidence of social interaction outside the confines of the family home in England, no evidence to contradict the mother's evidence about financial control. The mother may have under-played the domestic abuse when speaking to the social worker in March 2018, but she did reveal some of it to the police that month. It is unsurprising that the mother, as a victim of such abuse, did not make more complaints to the authorities and chose to return to

the father after the assault in March 2018 and to continue to try to keep the marriage going. That is partly a result of the control and coercion itself, and partly due to cultural expectations and the mother's own will to make the relationship work for the sake of JK.

59. The evidence demonstrates to my satisfaction that the father wanted to have things his own way throughout the marriage, he demanded that the mother complied with his demands, he made sure that she had no financial means and no social contacts to allow her any measure of independence, and he used violence and the threat of violence to "correct" the mother and intimidate her so that she bent to his will. Prior to August 2017 he was not sufficiently proximate to the mother to exercise abusive control, but he was once she arrived in England, and his behaviour did amount to abusive controlling and coercive behaviour as defined in FPR PD 12J (above). His behaviour was intended to, and did, subjugate the mother to his will. This went well beyond any mutual acceptance of a cultural expectation of obedience within the marriage. Such was the effect of his behaviour that the mother decided to stay in the marriage and to relocate to Z even after he had assaulted her on 21 March 2018, and even though she had only recently come to England, as she had wished to do, and had no desire to relocate to Z.
60. The father's controlling behaviour continued after the family left England for Z in 2018. Whilst, once again, the parties were separated for long periods of time, he had so subjugated the mother during their time together in England that he was able to continue with his controlling behaviour throughout the rest of the marriage both when he was in the same country as her and when he was abroad. Examples of this can be found in some of the text messages between the parties in which the mother seeks the father's permission to see the paternal grandfather (the mother was in Z at the time, the father was abroad). In one text in February 2019 the mother asks the father's permission to use the toilet by his room when they are in the same building together. However, the parties did not live together in their own home as they had in England, and there are no allegations of physical violence, or threats of it, against the mother after the family moved to Z in April 2018 until 14 and 15 August 2019. I heard no evidence that the father's family endorsed the use of violence or threats by him when he was in their home. During those 16 months the father did not use violence or the threat of violence to coerce the mother. There is a difference between controlling behaviour, which I find continued during the remainder of the marriage, and coercive behaviour. It would be naïve to think that coercive behaviour can be turned off and on like a tap. The mother lived through the experience of coercive behaviour by the father when they were together and it will have continued to affect her. However, the father did not use physical violence, threats or intimidation whilst the parties were living with the father's family, or when they were living in separate countries, from April 2018 until the incidents in August 2019. During that period his controlling behaviour continued but I would not categorise it as coercive behaviour during that time.
61. The mother alleged that the father had JK's passport until she took steps, via the police to have it returned to her, with her own passport, following the incident on 15 August 2019. She produced a hand-written document confirming that she

had received the passports, which she said had been prepared by the father. The evidence about that document was not very satisfactory but I am persuaded that the father did have, and returned to the mother via the authorities, the mother's and JK's passports. I do not find that his possession of the passports after their recent trip to a Gulf State is sinister or part of a pattern of abusive behaviour.

The Father's Allegations

62. The father's first allegation is that the mother falsely alleged to the police and social services that the father was pressurising her to relocate to Z. In fact, the evidence does not prove that the mother made such allegations to the police. She did say that she feared that the father would take JK abroad, but that is a different allegation. On the evidence received by this court, I find that the mother did not wish to relocate to Z but that after the incident on 21 March 2018 she decided to stay in the marriage and to relocate to Z. I am sure that this was a result of the father's controlling and coercive behaviour. Accordingly, I find that the mother did not falsely complain that the father was pressurising her into relocating to Z. That was what he was doing, and she did not say anything untrue to the authorities in March 2018 as alleged.
63. The father's further allegations are that the mother limited his contact with JK from November 2018, stopped it altogether from July 2019, and abducted her from Z in October 2019. I have considered the evidence of text exchanges as well as the parties' own witness evidence. I can find no evidence that the mother unreasonably restricted the father's contact with JK prior to July 2019 when they returned from a holiday together in a Gulf State. There is simply no cogent evidence to support the allegations. JK was living with the mother in Z either at her own parents' home or at the father's parents' home. He would control where the mother and JK stayed and I can find no contemporaneous evidence of a request by him to see JK that was denied. On return from a Gulf State in July 2019 the relationship was clearly strained. The father told the court that it was the best time he had had with JK, but the evidence strongly suggests that the family was under strain during the holiday and lived separately on return to Z. Again, I cannot find contemporaneous evidence that the father was restricted from seeing JK. On 16 August 2019, following the events of the previous two days that have been discussed at length in this judgment, the father obtained a divorce. The mother then brought proceedings in the courts in Z and the father made his application. The mother left Z with JK on 10 October 2019. From 16 August 2019 to 10 October 2019 the father appears not to have seen JK but following the events of 15 August 2019 it is not surprising that the mother did not voluntarily offer contact with JK. Again, I cannot find any evidence that the father was seeking contact. In the circumstances I do not find that father's allegations regarding contact to be proved. The allegations numbered 2, 3 and 5 in his Schedule are not proved.
64. The mother admits that she took JK out of Z, to England on 10 October 2019. I find that she did so without the knowledge or consent of the father. I am not persuaded that she lied to the authorities about going on a pilgrimage to Western Asia for the purpose of taking JK out of the country. I accept that she mentioned to the Z courts that she wished to go on pilgrimage to Western Asia but it is not

established, on the balance of probabilities, that she made a false claim to enable her to abscond with JK. However, it is proved that she removed JK from Z without the father's knowledge or consent. She did so, I find, because she was genuinely afraid that the father would take JK away from her care either outside the court process, or through a court process that she feared would be prejudiced against her. She was trying to protect her daughter. That is not to condone her actions and I do not intend to imply that the process in Z would have been unfair, but I accept that that was her genuine fear.

Findings of Fact and Conclusion

65. For the reasons given in this judgment my findings of fact are as follows:

- a. The parties had an arranged marriage in Z in December 2013. The mother then lived in North America, the father in England. They met up in England for a holiday together in October 2014. During that trip the mother complained to the father about a lack of intimacy between them and when she did so on two separate occasions, the father assaulted her. On the first occasion he put a hand to her neck (but did not choke her) and slapped her across her face. On the second occasion he slapped her repeatedly across the face whilst they were parked up in a car. The mother suffered no significant injury on either occasion.
- b. The mother moved to Z in January 2016. In August 2017 she moved to England and the parties began to live together in their own home for the first time. The mother was pregnant with JK who was born on 9 December 2017. The parties moved to Z in April 2018. During the time that the parties lived together in England the father tightly controlled all the family finances, he gave the mother an allowance of only £20 per month, he prevented the mother from leaving the house without his permission, he chose what food and clothes the mother could buy, he restricted the mother's social interactions and movements. He lost his temper with the mother when she disturbed him or acted contrary to his wishes. In October 2017 he kicked the mother in the chest when she was lying on a mattress on the floor whilst heavily pregnant. No significant injury was caused. On 21 March 2018 he beat her around the face and neck, pushing her against a wall in their home. The mother struggled to protect herself. The father caused the mother to suffer reddening to one cheek, minor bruising to her upper arms and the top of her back, and swelling to her left wrist. Those injuries were minor and lasted no longer than a week.
- c. The father's behaviour between August 2017 and April 2018 constituted domestic abuse in the form of controlling and coercive behaviour. He used intimidation, the threat of violence, and violence, control of finance and social interaction, and psychological manipulation to subjugate the mother to his will.
- d. The mother only agreed to relocating from England to Z in April 2018 because of the father's controlling and coercive behaviour. Between

April 2018 and August 2019, the mother and father spent much time living separately in different countries, some time living in Z but in separate houses, and some time living together in Z at the father's parents' home. During that period, prior to 14 August 2018, the father did not use violence or the threat of violence or intimidation to coerce the mother. His past actions whilst the parties had lived together in England continued to exert a controlling force over the mother and the father did continue to use controlling behaviour including the control of resources and psychological manipulation such as requiring the mother to seek his permission to leave her home.

- e. On 14 August 2019 the mother visited the father's parents' home to collect some belongings. The relationship was very strained by that time. There was an argument in which the mother was surrounded by the father and members of his family and was intimidated, receiving a kick from someone (it is not alleged that it was the father) during the argument. On 15 August 2019 the father arrived at the mother's family's home unannounced, in the company of others, to deliver the mother's dowry furniture which was deposited outside the front of the house. The mother was inside with JK and members of her family. The father violently kicked the front gate of the property and beat on it with his hands. He received some verbal abuse from a member of the mother's family. In temper he approached the front of the property again and beat on the gate with his hands, then beat on a dressing table he had just deposited there, smashing its mirror. His conduct was violent and intimidatory and caused the mother to fear for her own and JK's safety.
- f. The relationship between the mother and the father broke down in July 2019 and they divorced on 16 August 2019. The father had no contact with JK after the divorce but both parties engaged in court proceedings concerning JK in Z. It is not proved that the mother prevented the father from having contact with JK between the July 2019 and October 2019. On 10 October 2019, after the father had issued an application for custody of JK, the mother removed JK from Z to England without the father's knowledge or consent and without permission of the Z court, fearing that JK would be taken from her care if she did not leave, and that travelling to England was necessary to protect her daughter.

66. Those are my findings of fact. The parties will reflect on the findings. Orders in relation to JK spending time with the father, by indirect contact, and directions in preparation for the final determination of child arrangements have been made.