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**IN THE FAMILY COURT SITTING AT OXFORD**

**IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF [C]**

Neutral citation number: [2023] EWFC 74 (B)

Date: 11 May 2023

Before: HHJ Vincent

**Between: -**

**Mr A (a father)**

**Applicant father**

**and**

**Ms B (a mother)**

**Respondent mother**

Hearing dates: 25, 26, 27 April and 11 May 2023

The applicant father represented himself  
Samara Brackley for the respondent mother, instructed by Emma Leavesley of Penningtons Manches  
Cooper LLP

**APPROVED JUDGMENT**

## Introduction

1. I am concerned with C, who is four years old.
2. C's parents were in a relationship for seven years. They separated in mid-April 2021 in extremely difficult circumstances, when Ms B experienced a serious episode of poor mental health that led to her making an attempt on her own life. She was in hospital for ten days to physically recover, and thereafter received treatment as a voluntary in-patient in a mental health unit for a further three weeks. When she was first admitted to hospital, the mother spoke about her relationship with the father to the medical staff, and this led to the father being prevented from attending the ward and being arrested. The mother did not seek to pursue this further, and no action was taken against the father.
3. On 27 May 2021 the father issued an application for a child arrangements order. At that time C was in his care, but in his application notice he said that he was applying on local authority advice to formalise the arrangements, and in particular for all contact between C and her mother to be supervised.
4. On 8 June 2021 the mother issued her own application. She alleged that the relationship had been characterised by coercive control and abuse from the father towards her, and that her suicide attempt had been a response to this. She sought an immediate order that would allow her to spend more time with C, and for that time to be unsupervised. In the longer term she sought for C to live with her.
5. At the first hearing on 24 August 2021 the Court did not consider there was a need for C's time with her mother to be supervised, and directed that contact could progress to overnight stays.
6. At a hearing on 10 November 2021 the Court directed that C should spend from Friday afternoon to Sunday morning every week with her mother, again unsupervised. It was recorded in the order that neither party sought a fact-finding hearing in respect of the mother's allegations against the father, and the Court did not consider one was required. A section 7 report was ordered from Cafcass.
7. The mother had another episode of poor mental health in March 2022, when she again attempted to take her own life.
8. Within these proceedings it was agreed that a report should be obtained from a consultant psychiatrist. After some delay, Dr Allen was instructed.
9. In June 2022 the mother had a seizure at work (in a children's nursery). She had experienced previous seizure-type episodes at work. In discussion with her employer she told her of difficulties she was having with the father, and said that the day before he had grabbed her around the throat. Her employer told her to make a report to the police, which she did. When interviewed, she

said that she did not wish to pursue any formal complaint but had made the report because her employer told her to. The police interviewed the father, but did not take any further action.

10. On 5 July 2022 the father applied for a non-molestation order against mother. He sought for her to be injunctioned against making 'false allegations' of abuse against him. That application was consolidated with the two Children Act applications, and they were all listed for the next available date, which unfortunately at that time was January 2023, with a pre-trial review on 23 December 2022. The parties had little choice but to wait. C continued to live with her father, and to spend time with her mother from Fridays to Sunday mornings, this contact was supported by members of the maternal family.
11. On 17 November 2022 the mother was once again admitted to hospital having taken an overdose of her prescribed medication. Whilst there she attempted to strangle herself with a monitor cable. Dr Allen classified these as incidents of self-harm rather than attempts by the mother to take her life, but on any view this further hospital admission was an event of significant concern.
12. On 21 November 2022 ER, the Cafcass section 7 reporter, filed and served on the parties a section 16A risk assessment, in which she recommended that overnight contact should be suspended, and that the mother should be supported by a third party when she spent time with C. ER recommended an updated report from Dr Allen should be obtained.
13. Dr Allen reviewed the updated notes and concluded that (i) his initial opinion that the diagnosis for the mother was of 'a major depressive disorder, single episode, moderate'; (ii) suicidality was a feature of her condition and, until the condition improved, this remained an intermittent risk; and (iii) her suicidality did not pose a risk to her child because it was directed to herself and because it was, *'partially driven by her hopelessness about the current contact situation with C. A more amenable contact situation would be a protective factor in my opinion.'*
14. ER was sent a copy of Dr Allen's update, but maintained her view that overnight contact should stop, and that contact should be supervised. The father proposed changing arrangements in line with ER's recommendations. The mother did not agree, but anticipated this could be reviewed at the hearing on 23 December 2022, and so accepted a change in the meantime. As a result, her contact with C shifted to time during the day each Saturday between 10am and 6pm and each Sunday between 10am and 3pm. This contact was supported by the mother's brother or parents. This arrangement has remained in place to date.
15. On 21 December 2022 the mother's solicitors were informed by Cafcass that they had been given to understand by the hospital that the mother had been hospitalised again on 17 December 2022, following a further attempt on her life, and that C had been in her care at the time. It was said that the maternal grandmother had been supporting contact.

16. In fact this report was incorrect. The mother had not made a further attempt on her life and had not been hospitalised.
17. However, understandably, having received this report, the father was extremely concerned for C's welfare in her mother's care, and further concerned that the maternal grandmother was said not to have been a protective factor. He sought to put some further conditions around contact that would reassure him she was safe. On the face of it, and given what he understood the position to be at the time, his proposals were not unreasonable. However, given that the report he had received was not correct, it is understandable that from the mother's perspective there was no need for any further change to the arrangements.
18. Unfortunately the mother's solicitors were not able to get the hospital notes to correct the record before Christmas. The hearing on 23 December 2023 was vacated from the Court list without explanation, so things could not be resolved in discussion at Court. C did not see her mother at all over the Christmas break.
19. The final hearing that had been due to start on 10 January 2023 was also pulled from the Court list, again without explanation.
20. The mother applied to the Court for directions on 14 February 2023. On 6 March 2023 directions were made for an addendum section 7 report, final statements, and this final hearing was listed.

### **Issues to decide at final hearing**

21. The addendum section 7 report was prepared by Rose Joseph, as the previous section 7 reporter ER is now on maternity leave. Ms Joseph does not recommend a move to a shared care arrangement at this time, although leaves open the possibility that it may work well at some time in the future. She recommends that the current arrangements remain in place for the next six months. Thereafter, she proposes that C's time with her mother would not need to be supported by a third party, and could move to overnights on Saturdays. After a further four weeks, she proposes that the arrangements shift from Thursday after school to Saturday at 6.00 p.m.
22. Ms Joseph recommends that in the future the parents might have recourse to mediation if they need help to agree changes to the arrangements, for example holiday contact.
23. Mr A proposes a similar progression to C spending two nights a week with her mother, although he prefers Friday after nursery/school until Sunday morning. He suggests C's contact with her mum should remain supported and on separate Saturdays and Sundays for the month of May. He says this same arrangement could continue through June but with no need for a third party to be there. By July he says the contact could be after nursery from Friday until 6pm on Saturday, and in August this could be extended to

include Saturday nights as well. He does not foresee a time when contact could safely progress to more than two nights a week, because he says this is something that has never yet been successfully achieved. Every time there has been progress, it has been interrupted by an episode of poor mental health, which has sent things back to where they started.

24. On behalf of Ms B, Ms Brackley does not disagree with Ms Joseph's proposal that contact moves towards every Thursday to 6pm on a Saturday. However, she proposes that matters could progress to that arrangement slightly more quickly. She says while Ms B's parents or brother are supervising contact on a Saturday and Sunday, and stay with Ms B in order to do that, there could be no harm to C staying overnight, and in fact it is likely to be less disruptive and to her benefit to do so.
25. Ms B would ultimately wish for contact to progress so that C spent three nights a week with her, from Wednesday through to Saturday at 6pm. In the longer term (once C has completed her first year at school) Ms B would like to continue the Wednesday to Saturday contact and share the school holidays equally.
26. On the face of it, this seems like a straightforward dispute to resolve. However, there are some complexities in this case which need unpicking, in order to help the parties move forward from a very turbulent few years, and to work towards successfully co-parenting C throughout her life.
27. Further, the father pursues his application for a non-molestation order.

### **Fact-finding**

28. This has been difficult to tease out.
29. The Court decided back in November 2021 that a fact-finding hearing is not necessary in respect of the mother's allegations of domestic abuse against the father (made in her application to the Court in June 2021). She was not directed to file a schedule of allegations, and no directions in respect of police disclosure, or obtaining witness statements or other evidence specifically relevant to these allegations were made. So what is before the Court are the records of her own reports, but no additional evidence that might serve to corroborate or otherwise add weight to what she says. Conversely, this process might have led to an opportunity for the father to undermine what was said. The father has not had the opportunity formally to respond to specific allegations, nor to properly interrogate the evidence
30. That decision has not been appealed or sought to be reviewed by either party.
31. The decision continues to make sense, because there is no question in this case about the father's ability to meet C's needs, and the mother said in her evidence that she would not describe the father as a violent man and does not suggest that he poses any direct risk of harm to C. To the contrary, she describes him as a good father who loves C dearly, has provided a stable home

with a good routine for her over the past few years. There is no question about his ability to meet C's daily needs.

32. So findings on the mother's previous allegations that the relationship was marked by coercive control and abuse are not relevant to the issues for determination in respect of C's welfare.
33. Further, the assessment from the Cafcass reporting officer is that notwithstanding the mother has made allegations against the father, any risk of harm in this respect is and can in future be managed by the current arrangements which ensure that the parents do not have any contact with one another.
34. There is no need therefore to have a fact-finding into those allegations, and it would not be proportionate to do so.
35. However, that is not quite an end to the matter.
36. Firstly, the father has made an application for a non-molestation order, in which he says the mother's actions in making allegations against him amount to harassment. She has sought to defend herself by asserting that her allegations were true. That has brought her allegations of domestic abuse into the evidence.
37. The father feels aggrieved by a situation where reports have been made to the police, social services or to the expert psychiatrists in which it is stated that the father has been abusive and operated in a way that was coercive and controlling. He strongly denies this, and yet without a fact-finding the mother was not going to be required to answer to the Family Court for the allegations she had made.
38. The father issued his application for a non-molestation order to prevent the mother from making such further allegations. But also, he told me that he saw this as a way of enabling him to put questions to the mother at the final hearing to challenge her on the allegations she had made. He wishes it to be established that they are not true.
39. I have considered whether or not I should come to conclusions about these allegations at the final hearing. I have decided that it would not be the correct course for the following reasons:
  - (i) There has already been a decision that fact-finding should not form a part of the final hearing;
  - (ii) there is a risk of unfairness to the mother should the Court dismiss her allegations, for example on the basis that there was no corroborating evidence, when she had not in fact ever been directed to prepare for such a hearing, for example by obtaining relevant police disclosure, witness statements, or notes of contemporaneous accounts;
  - (iii) equally there is a risk of unfairness to the father if findings were to be made against him, for example about allegations within the mother's evidence which he was not previously warned about, and did not have

opportunity to respond formally, and to consider ways of challenging what she said;

- (iv) these allegations have come back into the frame due to the father's application for a non-molestation order, but the question that I have to determine to resolve that application is not whether or not the mother's allegations are proved on a balance of probabilities to be true (which would be the domain of the fact-finding exercise which has been discounted). I have to determine whether she has engaged in conduct which amounts to harassment of the father.

40. The power to grant a non-molestation order is set out at section 42 of the Family Law Act 1996. The Court must first find that the respondent has behaved in a way towards the applicant that could be regarded as 'such a degree of harassment as to call for the intervention of the Court'. The Court must then consider whether or not an order should be made to prohibit that conduct.

41. I did hear evidence about the matters raised in the mother's witness statement. This is because the father's case is that the mother's allegations are fabrications, and were either made maliciously or could be considered to be a manifestation of her mental illness. She has maintained that what she has said is true.

42. I have heard this evidence in order to explore the issue of the mother's alleged conduct in making allegations that, it is said, she knew to be false, and to consider whether or not it could be said that her conduct amounted to harassment of the father.

43. Further, I have heard some evidence about the dynamics of the relationship because the mother alleges that the father's treatment of her has been a contributing factor towards her episodes of poor mental health. She says that it suits the father to use her mental health as a reason to restrict the time she spends with C, and to assert himself as the more capable and authoritative parent. While he continues to seek to excessively control the arrangements for her to spend time with C, she says this will impact adversely on her mental health and well-being, which in turn will impair her ability to parent C.

44. It has therefore been necessary for the Court to consider the dynamics of the parents' relationship in general terms, and the way that child arrangements have been managed since the parties' separation, in order to explore the impact of this upon C, and to consider how this feeds into the welfare checklist analysis.

45. There is a distinction between this and allegations of coercive and controlling behaviour. This is defined within Practice 12J of the Family Procedure rules with reference to the Domestic Abuse Act 2021 as follows:

*"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;*

46. The mother has not set out in a schedule any allegations of a pattern of coercive or controlling behaviour, and confirmed with the Court that she was not seeking a fact finding about this.
47. The allegations at paragraph 16 of the mother’s statement are of a series of separate incidents or descriptions of types of conversations that if proved, could possibly be regarded as part of a wider pattern of coercive or controlling behaviour, although it has not been pleaded or explained in the witness statement why that conclusion would follow in the particular circumstances of this case.
48. The witness statement describes more a difficult dynamic in the relationship, and *‘elements of [the father’s] behaviour which were unhealthy or inappropriate’*. She states that in her view, the accumulation of his behaviour, the failing relationship and the covid pandemic caused her mental health to deteriorate. This is what she says led her to attempt to take her own life in April 2021.
49. The father strongly denies that he has ever acted towards the mother in the ways alleged, and certainly not in a coercive and controlling way towards her.
50. I reiterate that no findings in respect of coercive or controlling behaviour have been sought against the father – if so, they would have had to form the basis of a fact-finding. No findings of such behaviour will be made against him.
51. That does not mean that the father can jump to a conclusion that the allegations are fabrications or were maliciously made. Similarly, it would be wrong to convey an impression to others that findings had been made in the Family Court that the father had acted in a way that was coercive or controlling within the meaning of the definition above.

### **Applications for child arrangements orders**

52. In reaching my decision about C, I must have regard to all the circumstances, but in particular those factors set out in the welfare checklist at section 1(3) of the Children Act 1989. Her welfare is my paramount consideration (section 1(1)).
53. Section 1(2A) of the Act says that the Court shall presume that involvement of a parent in a child’s life will further that child’s welfare.

### **The evidence**



54. I heard from Dr Allen, Rose Joseph, the mother and the father. The father had submitted a list of questions which I put to the mother on his behalf (proceedings in this case were issued before the provisions in respect of Qualified Legal Representatives performing cross-examination came into force).
55. Dr Allen's report was based on a comprehensive view of the medical records and having interviewed the mother. His conclusions were clear and well-reasoned and supported by the information he obtained, and his own evident experience and professional expertise. It is of note that his conclusions were also consistent with the earlier report from Dr B, who reported in June 2022, and Dr R. The expert evidence is consistent that the mother's overdoses and depression were in part a response to her feelings of, *'ongoing conflict and emotional abuse in her relationship and more recently due to fear about having her contact with her daughter further reduced.'*
56. Ms Joseph's report was based upon a thorough review of the documents, which included Cafcass case files, all the statements and professional reports within the bundle, and social services records. Ms Joseph spoke with each of the parents and also had conversations with Ms B's treating mental health clinicians, the manager at C's nursery, and children's services.
57. Her conclusions are well-reasoned, supported by the evidence she obtained and I found them to be balanced and fair. She saw strengths in each of the parents but also acknowledged concerns on both sides. Her recommendations are informed by clear-sighted analysis of those strengths and concerns, and in particular the need to maintain stability and security for C.
58. The father represented himself well. He was familiar with all the evidence in the bundle, had prepared focused, relevant questions for Dr Allen and Ms Joseph, which went to the heart of the issues in the case. In his written and oral evidence and submissions he conveyed his own perspective of the situation extremely clearly.
59. There was no question of his love for his daughter, his total commitment to her, and his desire to protect her from harm and ensure that all her needs were met. He did acknowledge the importance to C of her relationship with her mother. He has thought carefully about the recommendations from Cafcass, and clearly given a lot of thought to the best way to progress contact from here. His proposals for moving things forward are logical and clear and a reasonable response to the Cafcass report.
60. There is no question that the events of April 2021, which included the mother's attempt to take her own life, her subsequent hospitalisation, his arrest, and the end of a seven-year relationship, were devastating for him. But it does appear that he continues to direct significant anger towards the mother, in a way that holds her personally responsible for everything, himself entirely blame-free, and does not entertain the possibility of any different view, shade or nuance to the situation.

61. The father has engaged well with the local authority, C's nursery, Cafcass and other professionals to take advice and to support C to spend time with her mother. In the light of information he has had at relevant times, the reassurances he has sought have not been unreasonable, and his proposals for progression of arrangements moving forwards have clearly been the thought of careful deliberation.
62. The difficulty is that he appears to regard these decisions as his sole responsibility, he described himself several times as a single parent. He appears to have discounted the mother from his deliberations. He harbours considerable anger towards her, which has been evident in his dealings with her.
63. Much of what he said about the mother came across as paternalistic, dismissive and harsh. He talked repeatedly about the mother being 'incapable', and referred to improvements or deteriorations in her mental health as successes or failings on her part, and related to her 'behaviour', as if she were a child who simply needs to do better. For example:
- *I believe that [Ms B] has managed to achieve having C for Fridays and Friday nights and Saturdays and Saturday nights but not for very long – have been issues of mental health - she is capable of achieving that goal but not much more;*
  - [in response to a question suggesting the mother was capable of having C overnight], *she is incapable – she has had ample opportunity to behave in such a way to take things further and it fails at every point;*
  - [in response to a question about his statement that the mother had no moral compass], *I think she has one but she has lost it ... I regard trying to take your own life regardless of your own duties as a parent as a mother – I regard that as a loss of compass;*
  - *It is an imperfect situation – the fact she has these mental health problems is recognised – I have supported her – I am recommending she has more than she currently has – I do believe she is capable of doing better than she currently is – I do respect her – I have never sought to ensure she doesn't have any access to C – but all of that being said the situation is what it is – it is not a situation I have created and I am being honest about how I feel her behaviour is.*
64. Given the experiences of the past two years, I acknowledge the father's real fear that the mother may in future suffer a further deterioration of her mental health, that this may happen when she is caring for C, and that C may be exposed to seeing her mother distressed or incapable or unavailable to her, and at worst, that her mother may attempt to take her own life again, and all the trauma that this could bring to C in the instant and in the long term. This is also acknowledged by the mother in her evidence.

65. However, the mother has been assessed by psychiatrists whose reports are within the Court file. Dr Allen who gave evidence to the Court, was clear that he did not regard the mother as posing any direct risk to C and in his expert opinion she had demonstrated that she could put C's needs first and act protectively.

66. The father struggled to accept this. He suggested to Dr Allen that the mother had failed to protect C in April 2021 when she first tried to take her own life:

*From C's perspective – given as we discussed nature of first suicide attempt – she was in family home and physically had C – the thing that was on her mind at the time was not C – it was ending her life – she handed her over to me – within minutes attempted her own life*

67. Dr Allen said, to the contrary, what was significant for him in that situation was that the mother was suicidal, in a desperate situation, but despite her desperation, the mother was able to protect C by handing her to the father, the father and C went out, and then it was while they were they out that the mother made the attempt on her life.

68. The father said repeatedly that he was not responsible for the mother's mental health, he had done nothing wrong, he was not at fault. The mother had a history of poor mental health in her past, although any episodes as serious as those she has experienced since 2021. Of course the father is not responsible for causing those difficulties in the first place, but he did seem to be entirely lacking in any ability to reflect upon her evidence, countenanced by the experts, that the difficulties within their relationship was a contributing factor towards matters accumulating for her in April 2021.

69. He asserted that he could not possibly be responsible for the seizures that she had described experiencing, as he was not physically present for any of them. That is right, but that seemed to me to almost wilfully misunderstand her clear evidence that the stress of her interactions with him, and of the Court proceedings was a significant contributing factor to her well-being. She gave an example of having a seizure following a Court hearing. He did not seem able to consider or reflect on her perspective. The mother told me in evidence how she had discussed this with her employer who had noticed a pattern:

*'My manager said to me you often have them on Monday what is going on – or you have them after you come back from lunch break – and on lunch break I would go and look at my phone – not allowed phone [at work] - and I would have emails from Cafcass, from solicitor and it just - the whole situation when reminded of it – and on Mondays well because seeing C at the weekend and sometimes had seen [Mr A] – so she said what's going on – and then she was silent for ages and so I told her about the day before.'*

70. The father's evidence around his decision to report the mother for benefit fraud was another example of seeing matters only from his perspective. Since the parents' separation, C has as a matter of fact lived with her father. At the time proceedings were issued, the mother had only very recently been

discharged from hospital. It was her hope that she would recover and that C would be able to live with her. The mother says that before then she had taken on the majority of C's care. I do not know whether or not the father accepts that, but it doesn't make a difference to the present point, which is that at the time proceedings were issued the question of the arrangements for C had not been decided. There has not been any final order. The interim arrangements were designed to build up the time that C spent with her mother. As it happened those arrangements never progressed beyond two nights a week.

71. The parties have come to final hearing now accepting that for at least the next year the status quo of C living with her father for the greater share of the time will remain for at least the next year. However, I am not aware of a point during these proceedings where the parties formally agreed that C would live predominantly with her father in the longer term.
72. These proceedings were never anticipated to last as long as they have. In the meantime, it is not wholly unreasonable for the mother to have acted as she did, which was to continue to receive the child benefit payments to her account.
73. Her evidence, which has not been challenged, is that she has kept all of those payments in a savings account to which she has added other bits and pieces of money when she has had some spare, and the account is only for the benefit of C. So she has been receiving child benefit and allocating it to be spent on her child.
74. She has not formally informed the agency that C has in fact been living predominantly with her father. She has only recently set up a standing order to send the equivalent of the child benefit amount to the father.
75. The father says this misses the point, he should be recorded as the parent with whom the child is living with, that the mother has misled the agency by continuing to receive the benefits when C does not live with her and that this amounts to fraud. He did not show me in evidence correspondence between him and the mother to support his assertion that he had requested and she had refused to give him the benefit money.
76. The father has recently reported the mother for benefit fraud. On the face of it this seems a heavy-handed approach based on his own interpretation of events.
77. The father was similarly furious with the mother for telling the general practitioner that C's address had changed in August 2021 – to her home address. The father changed it back in October 2021 and has shown me a letter he wrote saying, *'there was no indication why this was changed but I can assure you'* that C's *'permanent address'* was his home address. It seems fairly obvious again that in August 2021 the mother was hoping and expecting that C would be returning to her care and that she would be the one to manage general practitioner appointments. It may well be that the father did not agree with this, and already at that stage had decided that it would be better for C to live permanently with him. However, his anger at the mother for not

conceding this publicly to the general practitioner, the benefits agency or later when applying for C's school, is in my judgement, misplaced. The court proceedings determining that question had only just started.

78. The father told me in evidence that he had secretly recorded handovers between him and the mother and her parents and brother. Covert recordings can be admissible in evidence in the Family Court in some circumstances. The father said he was entitled to make such recordings, it was not illegal, he saw no reason to tell anyone he was doing it and was taking the recordings to protect himself. He did not seek to put any of these recordings in evidence, although he had shown a couple to the Cafcass officer, who did not appear to have had any discussion with him about this. I have not seen them so do not comment on their content. However, this evidence was another indicator of the father's inability to see the potential adverse impact of his actions on the mother. He stood on his rights and did not seem able to reflect that taking such recordings in this way can only have reinforced a sense that she felt under surveillance by him, and is unlikely to lead to a co-operative and open relationship as co-parents.
79. In all these ways the father's attitude towards the mother has been rigid, aggressive and dogmatic, and lacking in insight and understanding of a perspective other than his own.
80. Ms B was softly spoken, visibly nervous and anxious, but very clear in the evidence that she gave.
81. She maintained her position that the father had hurt her a few times in the past, but said that she did not ever want to pursue allegations against him. She repeated that she did not see the father as a violent man, she never ever worried about him and C. She did not want him to be arrested, to get into trouble that might affect his job, which would affect his ability to pay rent and live in the house that is C's house. If the father was not allowed to see C because of findings of domestic abuse made against him, and she was not allowed to see her because of issues with her mental health, she was very worried about what the situation would be for C.
82. This is consistent with the evidence of her report to the police in June 2022 at the instigation of her employer. I accept her evidence that she went because her employer told her she had to. This police report is evidence that she told them there had been an incident the previous day, but that she did not wish to pursue the matter further.
83. She said that at the time of the relationship she did not see it as abusive. She said she had never had a long-term boyfriend before and didn't know what was normal. The father was nine years older than her. What she describes is a dynamic where she was younger, inexperienced and lacking in self-confidence, and by comparison, he was assured and certain of himself:

*'[H]e made me feel like it was normal and I believed him I didn't know what was normal – I never had a long term boyfriend before and – he would*

*explain things in a way that I felt it was normal or he was right – his opinion was the truth – and it wasn't like that at the beginning otherwise I probably wouldn't have liked him – he was really nice to me at the beginning and used to buy me things I thought was weird but then I got used to it and no man had ever shown me any interest and when he did I thought this was great and he was nice to me mostly for the first couple of years so yeah – and then of course we were really close so I believed what he was saying to me was normal and because he's older than me he's had more experience in life and I know he'd had two but probably more than that long term relationships before me so he knew what was normal and what wasn't.'*

84. This kind of power imbalance can often set the context for a relationship which is or becomes abusive, but it is not in itself evidence of abuse. I do not make any finding in this respect.
85. It was put to the father that during the relationship he had belittled the mother about her mental health, that he did not value her opinions, or that he would make comments about her appearance that had a negative effect on her self-esteem and ultimately caused her mental health to deteriorate. He denied all these things, and described a different perspective, where the mother already had low self-esteem and he tried to support her. He denied ever mocking or belittling her.
86. It was put to the father that he would stonewall the mother and 'give her the silent treatment'. He said that he did not agree with that description, but there were times where if they had a disagreement he might withdraw, walk away rather than get in a fight. He said that sometimes he would find her in bed with covers pulled over her face, but he would decide to leave her be. He accepted that they did have arguments.
87. I repeat, it is neither necessary, nor would it be fair, to engage with a fact-finding process about this. But at the same time it is necessary to highlight that in all the circumstances of this case there does appear to be room for both parents to hold true to their own perspectives of their experience of the relationship, while acknowledging that on the other side, there is a different perspective which has validity.

## **Conclusions**

### **Non-molestation order**

88. The father has not proved to the standard of probabilities that the mother has acted maliciously in making false allegations in order to paint him in a bad light within these proceedings.
89. She has not pursued allegations against the father with the police, and there is no current investigation concerning him.
90. She contacted the police because her employer told her to make a report.

91. Within these proceedings she did assert within her application notice that the relationship had been characterised by coercive control and abuse, and has continued to assert that to professionals. However, she has not sought a fact-finding in respect of any allegations of coercive control, controlling behaviour or physical abuse. No findings have been made against the father in that respect.
92. The mother has explained the reasons that she did not seek to pursue her allegations further. Those reasons are credible. The Court has determined that there is no need for a fact finding, because the mother has confirmed it is not her case that the father poses any risk to C, and as the parents are not having any contact with one another, there is no need for there to be a fact-finding in respect of the allegations she raised.
93. The mother is however entitled to have set out in her witness statement to the Court in her own words, the experiences that she has lived for herself, how she has felt and interpreted the actions of others towards her. This is relevant to her case about C's welfare needs going forwards, because she says that the way the father behaves towards her has impacted upon her mental health, and in turn affects her ability to provide consistent care to C. She is entitled to raise the same points with treating clinicians, experts, with social work professionals and the police.
94. She is entitled to have a narrative that does not necessarily match in all respects with the father's, in the same way that he plainly has a narrative of events that differs from hers.
95. I have described the ways in which the father's attitude towards the mother has been unhelpful, unsympathetic and dogmatic. For the avoidance of doubt, I make clear that this does not amount to a pattern of behaviour that could be described as controlling or coercive within the meaning of the practice direction.
96. At the same time, that no findings of coercive control or controlling behaviour have specifically been sought within the Children Act proceedings does not mean that the mother has made false allegations against the father.
97. Making a report to the police or raising an issue within litigation and then not pursuing it, is not on its own evidence that the person who raised the issue has fabricated it, or that their initial report was malicious.
98. I found the mother to be a clear and straightforward witness. I have not been taken to any evidence that might suggest the mother has told lies, given inconsistent information, made a threat to make a report to the police or any other agencies, actually made reports to the police or other agencies other than the report in June 2022 at the instigation of her employer. The father has been deeply affronted by what she has said, but I am not satisfied that she has set out to harass him or pester him or otherwise engage in conduct that would call into question the need for a non-molestation order.

99. The father is the one who has brought these allegations back into focus at the final hearing through his application for a non-molestation order, which the mother has defended by denying that she fabricated any allegations against him. The father has not established that the mother's conduct towards him has amounted to a course of harassment or molestation.
100. The father has not established that there are any grounds for the Court to intervene to make an order to prohibit the mother from making allegations against him. To the contrary, it would be entirely inappropriate in all the circumstances of this case for the mother to be prevented from stating in her own words, her own account of her own experiences.
101. The father has stated clearly that he denies specific allegations and he has an entirely different perspective from the mother about the relationship. In refusing his application for a non-molestation order, I am not making any finding that he himself was not a truthful or credible witness, but for the reasons I have repeated a number of times, I have decided that it would not be appropriate to reach conclusions about this element of the parental dispute.
102. For the avoidance of doubt, I reiterate again, that the mother has not sought specific allegations within these proceedings of physical abuse or coercive control or controlling behaviour within the meaning of the statute or practice direction and the Court has not made any findings in that respect.

### **Analysis**

103. I have had regard to all the evidence in the case and the factors on the welfare checklist.
104. C is now four. She is bright engaging child, who is thriving at nursery, and has been seen to be equally happy and content in the company of each of her parents. She is dependent on adults to take care of her. She has two parents who adore her, are devoted to her and are each well able to meet her daily physical, emotional and educational needs. She loves them both and would want to grow up with the benefit of their love, interest and attention throughout her life, to develop meaningful and loving relationships with each of them, and with members of her extended family on both sides.
105. The seismic change in her circumstances came in April 2021 when her parents separated. To their great credit, and despite the turbulence of the past two years, the parents have worked hard to try and maintain stability for C and not to expose her to the difficulties they themselves have been experiencing. The child arrangements order that will conclude these proceedings will not bring about any major change in the current arrangements for C to spend time with each of her parents, but will look to progress the amount of time she spends with her mother in a planned way that looks to ensure stability for her.
106. There are two main risks to C's future stability. The first comes from her mother's mental health condition. The second risk to her stability comes from the difficulties that the parents have in co-parenting and the continuing



conflict between them, which has been particularly focused on management of the mother's mental health condition, but has also been exposed in issues around applying for schools and receipt of benefits.

107. In discussion in evidence with me, the father did accept that when in good health, C's mother can meet all C's daily needs. The risk to C would come at times when C's mother's health deteriorates, such that she would have to be supported with her own mental health, would not be able to give C the care and attention that she needs, and there remains a risk that C could suffer emotionally from being around her mother at a time of poor mental health, be anxious for her, suffer loss and confusion if unable to see her, or if separated for her for any length of time.
108. The mother told me that she understands that while she does not pose any direct risk to C (confirmed by Dr Allen in evidence), if she is not stable, then C will not be stable, and she would not want her to *'pick up anything if I'm in a bad place mentally ... she is impressionable and young and I don't want her to feel guilt or worry about me.'*
109. If something happens that impairs either parent's ability to care for C, it is important that the parents are able to share information about this and make plans, so that C does not experience sudden and bewildering changes in arrangements, is not exposed to conflict between her parents and does not become sad, worried or confused by a change that she does not understand or is receiving conflicting information about.
110. The key to managing these risks will be good communication. Ms Joseph has set out some concerns in her report about whether or not the mother would be open and honest about her mental health in the future. She noted that the mother did not mention having a seizure at work, did not tell the previous Cafcass officer about her hospitalisation in November 2022, and in June 2022 gave the impression to the that Cafcass officer that there were no issues between her and the father, when in fact she has subsequently suggested that at that time things were extremely difficult during that period.
111. The mother accepted in cross-examination that there might have been times when she did not say what was going on. She could not remember some of the instances described, but said that was at a time when she was not well.
112. She fears that the requirement to be honest feels to her more like a requirement to regularly report to the father in order to give him reassurance as to her mental health, in circumstances where he will never be reassured, but will only use information received as grounds to limit and restrict the time she spends with her daughter.
113. Having regard to all the evidence I have heard and read, while I acknowledge there have been some concerns about the mother's ability to communicate to the father, there are a number of good indicators that her communication will be better in the future. Those indicators are as follows:

- (i) The evidence of the current situation with mother's mental health is positive. The expert psychiatric evidence is that her relationship with the father has contributed towards a negative impact on her mental health. As they move forwards in their lives as separated parents, this stressor should reduce over time.
- (ii) Despite some difficulties, in general the parents have consistently been able to agree arrangements in C's interests, and seek help from third parties where necessary. A clear and settled plan for the arrangements should allay some fears that contact arrangements will be subject to sudden change without discussion. A clear plan for communication through third parties and via a parenting App and broad agreement of what circumstances the parents should share information will help. The parents have both indicated their willingness to sign up to such a plan.
- (iii) I accept the mother's evidence that there have been instances of good communication which have enabled C to be protected. She told me that she had in the past been able to spot signs, that twice she had asked her solicitor to contact the father to tell him, and she had contacted the crisis team to say she needed help. This having happened in the past, there is good reason to think that it will happen again in the future.
- (iv) Going forward, the mother has a good network of support around her. She has her parents and brother. She told me she has a good relationship with her general practitioner and sees a lady at the surgery – a social prescriber – who started out helping her to fill in forms to do with her job but has now because a person to whom she can talk to about things, and she sees her every week. As well as providing support, the mother has indicated she is willing for the father to receive information from third parties if they have concerns about her mental health;
- (v) In addition, the mother is just starting on a phased return to work in a nursery, building up at her own pace to a pattern of working hours that works for her. Her employer has a good understanding of her situation and should be a further line of support in the event of a future episode of poor mental health, which will include consideration of whether or not she is in a position to look after C.
- (vi) Once C is at school, her mother will be doing some of the pick-ups and drop-offs. As with nursery, the staff will have a clear eye on C and will be seeing the mother regularly. It would be expected that they would share any concerns with both parents.

114. The mother does need to make a commitment to sharing information with the father in these ways.

115. At the same time, there is a need for the father to rebalance his thinking towards the mother. A number of times he referred to himself as a single parent, the person who had responsibility for making the decisions for C, and the person who had responsibility to act protectively for her. These are responsibilities that he shares with the mother. When she has episodes of poor mental health, it should not be assumed that she has lost her capacity to make decisions for C or even to be consulted about her. The father's responsibilities towards C are also to support her relationship with her mother. The father has of course ensured that C has continued to see her mother throughout, but that is not the same as acknowledging her as an equal parent to him, which she is.
116. In evidence the father said that in future he only needed to receive information about the mother's mental health condition, and nothing else. For example he said if the mother were to have been in a car accident and broken both her legs it would be of no interest or concern to him, because that did not amount to a risk to C. This was illustrative of his perspective that the very fact of the mother's history of poor mental health presents a direct risk to C. But further, it is a narrow view of co-parenting. He does need to know in a wider sense some essential information about what is going on with the mother so that he can support her to parent C, as he would then have an understanding of what might lie behind feelings and behaviours that C was presenting with. It would enable him to support C's relationship with her mother, and if need be, help C by putting in place measures that helped her mother with whatever was going on. For example, if her mother had been in a car accident and could not drive, her father might be expected to support C by driving her to contact with her mother.
117. In turn, the father should inform the mother of significant events in his life that may also impact upon the parenting that C receives from him, for example if he were to be in a car accident and break both his legs, or move house, or enter into a relationship with a new partner.
118. In the event of a further deterioration in the mother's mental health, it is not for the father to determine what will happen unilaterally. There will need to be full and frank discussion, possibly supported by other family members and talks with clinicians so that C's welfare may be safeguarded. C's welfare in this situation may be met by not seeing her mother for a time, but it may be that the contrary is true, and that it is detrimental to her welfare to be prevented from seeing her mother, when there are ways that she could see her, supported and safeguarded by members of the maternal family. It will depend on the circumstances.

## **Conclusions**

119. I consider that the appropriate order in this case is one that provides for C to live with each of the parents. That may act to restore a sense of shared and equal parental responsibility, even though she will be spending more of her time in her father's care.

120. I would hope that C will be able to spend more time with her mother at some point in the future. A shift to three nights a week during term time and half the holidays may well be the answer. However, I agree with Ms Joseph that at the moment C needs stability and certainty. While the mother is still in recovery from the experiences of the last few years, and while the conflict between the parents is still at a high level it would not be appropriate to look to make too much of a shift. Her father has been able to provide her with the stability she needed for the past two years and will be able to continue to do so as she makes the transition from nursery to primary school. I note that the mother is not suggesting any further change should happen before the end of C's first year at school. Whether or not that will be the right time for a shift cannot be predicted right now. A lot will depend on how things transpire over the next year.
121. I would agree with Ms Joseph that these arrangements should be kept under review and if not agreed, then the parties could consider mediation in the future.
122. It is right to note that although the mother is in a better place now than she has been for some time, it is still only six months since she was hospitalised following a deterioration in her mental health and so it is sensible not to rush at any changes. She remains vulnerable to future episodes and is only now starting a phased return to work. It is important not to put too much pressure on her at once.
123. In the short term, Ms Joseph suggests keeping the current arrangements (supported contact and no overnights for six months) and then suggests a move quite quickly to both unsupported contact and overnights at the same time, and within a month of that to two nights a week unsupported.
124. The father suggests removing the supported contact earlier, but going to overnights later, building up the time that C spends with her mother by stages.
125. The mother suggests moving to overnights sooner, but keeping the support from her family in place for longer.
126. I understand Ms Joseph's recommendation for a longer period of consistent arrangements before changes are made, but on balance I am concerned that her plan stalls progress and then brings in overnights and unsupported contact very fast, moving from one night to two nights within a short period of time, which will also be close to the time that C has made the transition to primary school. I prefer the general proposition advanced by both parents which is to use the summer holidays to make changes at a more steady pace so that not everything comes all at once in the autumn.
127. Further, there has now been a consistent period of time where C has spent time with her mother on consecutive days at the weekend which has gone very well with the support of wider family members.

128. Where the parents have both shown willing to develop the child arrangements plan at a slightly faster pace, I would support that happening.
129. Given that the mother's parents and brother are on hand to continue to support the contact, in my judgement it would be of benefit to use that resource. It will enable continued communication between wider family members and the father to build understanding and trust. I would agree with the father that there should be stepped progression of the time that the mother spends with C on her own over the summer.
130. I will leave the parents to fine tune particular dates and times around holidays and existing diary commitments, but broadly speaking, I would suggest the following:
- Supported contact continues for the next four to six weeks with the addition of an overnight. This would be a natural and incremental progression of contact following six months of successful day-time contact. Overnight would reduce the disruption of going backwards and forwards for C, minimise handovers and represent greater 'normality' of arrangements, and allowing her mother to join in the very important ritual of bath, bed-time stories, and tucking in at night. If this fitted in with the maternal grandparents'/ brother's commitments this would ideally be from Friday morning/lunchtime nursery pick up to Saturday at 6pm. The father should be able to spend quality time with his daughter at the weekend. However, if the parties prefer to continue with the Saturday to Sunday at 3pm that would of course be fine;
  - In the last two or three weeks of that contact, C could spend extended times with her mother without the need for third parties to be there to support;
  - From July onwards, the whole session of contact would take place without the need for support from maternal family, although they could of course be there to support the mother as and when she chose;
  - From August onwards, the contact could extend to a second night. This would enable C to have a month of the 'new normal' before starting school in early September – (Thursday afternoon until 6pm on Saturday, but again, if the parties prefer Friday to Sunday morning then that is an option);
  - From September, C to spend from after school Thursday until 6pm on Saturdays with her mother every week. This is in line with Ms Joseph's recommendation and I would consider it helpful for the mother to have two pick-ups and one drop off to school so that she can visibly participate as an equal parent in C's school life. It shares the burden more equally between the parents of managing work and child care;
  - In addition, during the summer holidays (and again depending on schedules and diaries) it would seem to me to be in C's welfare interest if

she could spend at least one extended period of time with her mother (up to a week). I would expect this entire week to be supported by the maternal family.

131. I appreciate that these proceedings have been very difficult for both parents, and have gone on longer than they would have wished for. Despite the difficulties that they have all experienced, it is positive that each of them has acknowledged the importance of C having a loving and meaningful relationship with each of her parents, and I hope this will be something they will be able to build on. I sincerely hope that once these proceedings have concluded, the parents will feel some respite, be able to recover from the experiences of the past two years, and look forward to the future.

HHJ Joanna Vincent  
Family Court, Oxford

Draft judgment sent: 9 May 2023  
Approved judgment handed down: 11 May 2023