

IMPORTANT NOTICE

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Neutral citation: [2024] EWFC 156 (B)

IN THE FAMILY COURT SITTING AT LEICESTER
IN THE MATTER OF THE CHILDREN ACT 1989

LE22P00160

Date: 19 January 2024

Before:

HIS HONOUR JUDGE REDMOND

Re S (Private Law: Fact Finding) (No.1)

BETWEEN:

FATHER

-AND-

MOTHER

The Applicant Father appeared in person
Counsel for the Respondent Mother: Jenna Allen

FINDING OF FACT JUDGMENT

1. In these proceedings I am dealing with an application for a child arrangements order. I am concerned with S, a girl who is now aged 6. For the purposes of anonymisation, I have referred to her parents as mother and father throughout.

Background & Positions

2. The parties generally agree on the timeline that the court should consider. I shall put the background as neutrally as possible. The parties married in Country A on 26 December 2015. However, the father did not live with the mother and visited her on only a few occasions during that year. On 13 December 2016, they travelled together to the UK and the mother entered on a spousal visa. The father held Belgian citizenship and, at the time, the UK was within the EU. Mother fell pregnant a few months after entering the UK and gave birth to their daughter on 6 November 2017. There were difficulties in the marriage, and there is a dispute as to what they were and where they originated from. On 22 January 2018, the parties travelled from the UK to Country B, leaving their daughter in the care of paternal grandmother. There is a dispute as to whether this travel was voluntary on the part of the mother. They were ticketed to return on 12 February. However, approximately a week later, a report was made to the police from a concerned third party. For a reason that is disputed, the parties returned to the UK early on 3 February 2018 and the mother was questioned by police at the airport. There was further input by the police the next day and the father requested that she leave the family home. The mother went to a refuge with her daughter. There was an attempt to secure contact through solicitors and such was put in place some 8 months later but subsequently ceased.
3. Father would like to spend time with his daughter, who is now 6 years old. However, mother alleges some very serious abusive behaviour from him, comprising coercive and controlling behaviour throughout the whole of the relationship as well as specific incidents of abusive behaviour, including sexual abuse after its conclusion. The father denies any such behaviour.
4. The mother makes an overarching allegation that, throughout the relevant time, the father subjected her to coercive and controlling behaviour and provides the following as examples of that behaviour:
 - *Allegation 1: At the beginning of the marriage, the Applicant fraudulently altered the Respondent's date of birth on papers, by paying off the officials in Country A. The Applicant threatened that if the Respondent did not agree to this, he would leave her in Country A and find someone else to marry.*

- *Allegation 2: The Applicant and his Mother* were both psychologically abusive and exercised coercive control over the Respondent. When the Respondent was 3 months pregnant, the Applicant was physically abusive to her and further subjected her to psychological and emotional abuse. (*the inclusion of his mother in this allegation is dealt with in the body of the judgment below)*
 - *Allegation 3: The Applicant filmed the Respondent, under duress, saying she was not a virgin at the time of the marriage. He then took the Respondent to Country B with the aim to show everyone the video and leave her there. In Country B, this circumstance would be punishable by death by stoning.*
 - *Allegation 4: The Applicant kicked the Respondent and the child out of the home. The Respondent and the child then sought help at a women's refuge, where they stayed for eight months.*
 - *Allegation 5: The Applicant Father raped the Respondent at the Hospital A.*
 - *Allegation 6: The Applicant Father has continued to indirectly harass and stalk the Respondent through his friends/family members.*
5. Father's response to the specific allegations is a denial to all, with the addition in relation to allegation 4 that he replies: *"I did not kick the respondent out of the house. I did ask her to leave."* However, I also have full narrative statements from each.

Law

6. This hearing is to determine the facts of the matter underlying the application made before the court, which is for the applicant to spend time with his daughter and for her to live with him. I remind myself that I ought only make factual findings on those matters relevant to welfare decisions moving forward rather than exploring every issue that the parties bring before me.
7. There are clear guidelines as to when and how I should make factual findings on the evidence I have heard. When I do so I take account of all of the evidence presented to me:
- a) Whoever makes an allegation has the burden of proving it is true. It is not for the other party to disprove the allegation.
 - b) The standard of proof is the balance of probabilities. An allegation will be proven by establishing on a view of all the evidence that it is more likely than not to have

happened. If this standard is met the allegation will be regarded as a fact. If not, it will be disregarded.

- c) The seriousness of the allegation does not alter either the standard or burden of proof.
- d) The court acts on evidence, rather than suspicion or speculation. The evidence of the key participants (here the parents) will be central to any evaluation and should be considered with care. However, all evidence is relevant and the Court should have regard to the wide canvas of evidence in assessing whether something happened or it did not.
- e) The court can have regard to the inherent probability or improbability of an event taking place but should guard against over-reliance on this noting that there will be many allegations which are inherently unlikely at a general population level, but which are known to occur at a micro level in society. Over-reliance on inherent probability in such circumstances may lead to an incorrect outcome. Therefore, the touchstone for all cases is the evidence before it and what it suggests as being more likely than not in all the circumstances. Inherent probability is but one aspect of this assessment and does not alter the standard of proof detailed above.
- f) In considering where the truth lies the court may have regard to the demeanour of a witness as one factor within a constellation of others. I have not come to any conclusion based solely on this matter. I have approached my assessment of the witnesses with care noting that in the case of emotive evidence given under the pressure of family proceedings there are a range of emotions at play on both sides. As just one example, a truthful witness may stumble and struggle in giving their evidence whilst an untruthful witness may give their evidence in a composed and attractive manner. The court may find assistance in the internal consistency of evidence and how it fits with other parts of the evidence or indeed outside corroboration of evidence from an external source.

8. In relation to that wide canvas I have spoken about above, I note the description of Lord Nicholls in **Re H and R [1996] 1 FLR 80**:

“The range of facts which may properly be taken into account is infinite. Facts include the history of members of the family, the state of relationships within a family, proposed changes within the membership of a family, parental attitudes, and omissions which might not reasonably have been expected, just as much as actual physical assaults. The

court will attach to all the relevant facts the appropriate weight when coming to an overall conclusion on the crucial issue.”

9. I must take care that if I seek to rely on a lie that is told in order to directly corroborate proof of guilt of an allegation. Sometimes people lie in court. People can tell lies for all sorts of reasons, and sometimes that includes them being embarrassed or scared, or because it's too hard to tell the truth among lots of other reasons. Just because someone has lied about one thing, does not mean they have lied about something else. If I were to rely on a lie for the purpose of corroborating proof of guilt then I would need to be satisfied that: a) it is a deliberate untruth, rather than confusion or mistake; b) that it relates to a significant issue; c) that it was not told for some other 'innocent' reason other than guilt.

10. The Court is reminded through the guidance found in **Re H-N & Others [2021] EWCA Civ 448** as to the insidious nature of domestic abuse and the need for sophisticated analysis which spans the timeline. This includes awareness as to the potential for abuse to be maintained notwithstanding parental separation and even so where there are protective orders in place. The **Domestic Abuse Act 2021** contains definitions of domestic abuse to which I have had regard. Behaviour is “abusive” if it consists of any of the following and it does not matter whether the behaviour consists of a single incident or a course of conduct:
 - a) physical or sexual abuse;
 - b) violent or threatening behaviour;
 - c) controlling or coercive behaviour;
 - d) economic abuse;
 - e) psychological, emotional or other abuse;

11. Prior to the coming into force of that Act, and in any event, the definitions were in widespread use and contained most readily within paragraph 3 of **PD 12J FPR 2010**. Such also included a more expansive definition of coercive behaviour and controlling behaviour:
 - a) ‘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;

b) ‘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.”

12. The above definitions appear in **F v M [2021] EWFC 4**. In paragraph 108, Hayden J breaks them down to assist the fact-finder and the definitions are further endorsed in **Re H-N [2021] EWCA Civ 448**. In that cojoined appeal concerning domestic abuse, further guidance was given primarily in the context of private law:

“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).”

13. In cases involving alleged domestic abuse it may be helpful to focus on clusters of allegations. However, over-reliance on schedules will likely be unhelpful. Often the court is concerned with patterns of behaviour occurring across the course of a relationship. This case has been prepared with the central allegation being that of coercive and controlling behaviour while other specific behaviours rising to the necessary level have been specifically pleaded and responded to. Such is in line with the guidance in **Re H-N**. The Court will benefit from a holistic evaluation and should avoid a compartmentalised approach. It must, however, take a proportionate approach to the evaluation before it and follow the guidance provided in **K v K [2022] EWCA Civ 468** as to matters that will ultimately be relevant to welfare determinations for the child and I have at times reminded the parties of that approach through these proceedings.

14. In **Re A (No. 2) [2019] EWCA Civ 1947** Peter Jackson LJ said that the questions for every fact-finder, in no set order, are What, When, Where, Who, How and Why? Some answers, he said, will be obvious, while other questions may be extremely hard or even unanswerable. Sometimes a question may not need answering at all. The answers to the

questions will be provisional until they have been checked against each other to provide a coherent outcome. Further to this, the court of appeal in the conjoined appeal of **Re H-N** endorsed the approach of Peter Jackson LJ in **Re L [2017] EWCA Civ 2121** in noting that not all bad behaviour will be abusive behaviour – it is a question of fact and degree and the court, having heard all of the evidence and observed the witnesses, must consider this:

“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.”

15. The Court should look at the reality of the behaviour rather than becoming tied down in any criminal legal definitions. Authorities such as **Re H-N** set out with care the change in understanding as to the reality and impact of domestic abuse for victims of the same. Such includes the different behaviours of victims of abuse which may not always follow logical patterns including, among a wide variety of behaviours, withdrawing statements, not reporting allegations straight away or at all, or remaining with an abuser when an outsider may have taken a different course of action.

16. A court may need to distinguish between abusive behaviour and poor behaviour which falls short of being domestically abusive. Not every act of unkindness, rudeness or misconduct will be such as to justify the label and indeed which label. The Court needs to delineate between those findings which have a material impact on child arrangements and those which do not. It is not for the Court to resolve all disputes between adults and it is positively unhelpful for the court to allow the proceedings to become another battleground for adult conflict. That overall factual evaluation will look at a holistic picture of the relationship and whether there are findings that materially alter the welfare decision to be undertaken bearing in mind the definitions and case law presented above.

However, it will not go into every aspect and there are a number of matters I have been referred to that I do not consider are ultimately relevant or helpful to my overall evaluation. I have, at times, refocused the parties upon S's welfare as being the reason I am undertaking this evaluation.

17. I should remark that while this is a finding of fact, I am grounded by reason of **K v K** in the welfare decision to come. It is always helpful to remind myself that when I come to make that decision, in relation to any decision as to their upbringing whether interim or final, I must consider all the circumstances and, in particular, the welfare checklist in section 1(3) of the Children Act 1989, reminding myself that S's welfare is my paramount consideration. Such includes the presumption, unless the contrary is shown, that the involvement of both parents within the child's life will further the child's welfare. Involvement need not be equal and may be direct or indirect. The presumption is of course rebuttable. Any decision on welfare must be arrived at after a balance of the child's and each party's article 8 rights to private and family life, interfering with those rights only where it is necessary and proportionate to do so. Although, where there is tension between the parents and child's article 8 rights, it is the child's that ought to prevail.

Hearing

18. I had originally listed the matter for a finding of fact hearing in May 2023. However, that was adjourned generally at the request of the father as he had not yet had the opportunity to respond to the police's investigation and wished to do so. Matters were reconvened and listed to a finding of fact in December 2023, but father dispensed with his legal representation and with the added complications of an interpreter and the need for the court to assist with cross-examination and further time to prepare, I adjourned for a short time to January 2024.

19. I have listed the matter commensurate with the needs of this case against those other cases that require hearing in line with the overriding objective at r.1 FPR 2010.

20. I have, at the various case management hearings, and at the beginning of this hearing focused the court's attention on the vulnerability of the parties in a variety of

circumstances under r.3A and PD 3AA. I have considered participation directions for each as to how their participation in the hearing itself may be improved as well as the specifics of them giving their best evidence. Significant allegations have been made from which vulnerability flows. I have also taken account of the applicant not having the benefit of legal representation. I reminded the parties that I would be keeping this issue under active review and that they should at any time feel free to raise it with me. Screens were erected for the entirety of the hearing, including the giving of evidence so the parties could not see each other while that was being done. The parties had separate waiting areas, including a room for the mother and her legal team including her interpreter. I have at times made adjustments to the flow of the hearing such as offering or imposing breaks when I considered it would help them give their best evidence.

21. Father does not have legal representation at this hearing. However, he was represented at all previous case management hearings and was given assistance there in preparing his case for trial over a lengthy period of time. It was originally anticipated that he would be represented. As this application was made prior to the appropriate date laid down in statute, the QLR provisions are not available to the court or to him. Despite the practice direction (which anticipates the QLR provision), I have considered the only manner I can conduct the case fairly is to ask for him to produce questions to me that I may then, with his input, put to the respondent. I did not consider it was appropriate, in line with statute, for him to question mother directly given the allegations, made clear case management directions in that regard when he was represented, which were agreed. It took some time for him to provide his questions, despite three orders requesting that he did so. I received them the day before the hearing and was able to consider them. I consider I have been able to understand his case and the questions he has produced also show me that, running as they do to over 100 in number and spread over 21 pages. I asked the vast majority of those questions as put, although I had to ask the father about a number of matters he was suggesting as there was often some confusion between his putting a question to the witness and making an argument to me. As it was, I extended the time he was permitted to ask questions and the mother gave evidence for the whole of the first day, barring a short case in the morning.

22. Interpretation was raised at various case management hearings. Mother sought and has been provided with the benefit of an interpreter and while she originally wished to use

that interpreter in her evidence, it became clear that she wished to answer in English and I permitted this with the clear caveat that she should refer to her interpreter for anything not understood. She did so. Father expressly did not seek the benefit of an interpreter. His command of English is good and he was able to respond to questions. There was an occasion where he could not express a phrase in English and the mother's interpreter, with my permission, assisted him to provide the English word. There were certain English words and metaphors that I did not permit when used by counsel and counsel rephrased these. Overall, I consider this hearing has allowed me to hear each party on those matters I have found relevant to my determination and to do so fairly.

23. I spoke with the parties at the beginning of the hearing as to how I would be analysing the overall picture presented to me. It was agreed that I would consider the overarching allegation of coercive and controlling behaviour of which several examples were put forward in specific allegations comprising behaviour which amounted to different types of abuse. Such is in line with the case law outlined above. The court's task is a difficult one, bringing a forensic microscope to bear on matters normally private between two people and taking place behind closed doors.

Evidence

24. I have read carefully all the evidence filed in this matter contained in the bundle. I had already excluded some evidence in May 2023 following statements and exhibits filed contrary to my orders. I have focused the evidence on matters that are relevant for me to determine the issues before me, using the court's powers under r.22.1 FPR 2010. Those case management directions at the hearings in May and October were not subject to reconsideration.

25. I have heard oral evidence from both parties. Neither has sought to call additional witnesses. I have been assisted by their written evidence and that given orally, but also by evidence from other sources including the police and local authority, applying the appropriate weight to each. In relation to allegations made, mother has given a police interview and father was interviewed under caution giving a 'no comment' response to all questions put. He read out a prepared statement and that is also in the bundle.

26. When discussing the evidence or coming to my decisions, nothing I say here is intended to be any commentary or criticism on another jurisdiction or culture, but simply the reasons that I have reached my factual findings as to what took place in this marriage which are then relevant to welfare considerations for S.
27. It is important for me to form a general opinion of the credibility and reliability of the witnesses before me. Demeanour has not been determinative of matters for me, but is right that I record it.
28. The mother was tearful at moments, understandably when speaking about matters intimate and private to her. She was clearly struggling at points in her evidence, but continued to answer questions openly in my view and in an attempt to assist the court. Understandably, when talking to me about the horrific prospect of being executed, she broke down but valiantly carried on. It was very difficult evidence to hear and I cannot imagine how difficult it was to give. In my judgment, she was precise and consistent throughout her evidence. She readily made concessions and accepted the evidence that the father put to her which she considered true, including that he assisted with all of her tuition. She was, in my view, a highly credible witness.
29. Sadly by contrast, the father was a highly unsatisfactory witness, even with persistent assistance and reminding him of the value of the evidence he was giving. He would repeatedly not engage with the substance of the question asked and proceeded to give large narratives already within written statements that did not address the point being asked or answer a question with a question.
30. I turn then to the substance of the allegations, noting that I have come to my conclusions having heard all of the evidence and submissions and reminding myself that any preliminary conclusions I reach are provisional until I have cross-checked them against the whole of the evidential picture. Various parts of the evidence have pertained to more than one example and I have inserted them below where I consider they are most pertinent to discuss.

Allegation 1: At the beginning of the marriage, the Applicant fraudulently altered the Respondent's date of birth on papers, by paying off the officials in Country A. The

Applicant threatened that if the Respondent did not agree to this, he would leave her in Country A and find someone else to marry.

31. The mother's case is as alleged above, stating that he did so because she could not come to the UK on a spousal visa under the age of 18, and at the time of her entry in December 2016, on her case, she would have been only 17.
32. The father's case on this is somewhat muddled. At times he suggests that the 1995 date of birth is correct. However, at other times he suggests that it was altered, but that this was actioned by the maternal family rather than him.
33. When analysing the competing cases, I consider that there is a ring of truth in the assertion of the mother that it was changed from August 1999 to 5/5/95 because that was really easy to remember. She is clear that it was he who changed it, and asserts that this was because she could not enter the UK on a spousal visa below the age of 18 due to immigration laws. He gave highly confusing evidence as to what he accepted that he knew in relation to the spousal visa or not at the time. In my judgment, he did have full knowledge of this.
34. There is a submission made by father that there are several dates of birth in the papers: 5/5/95, 15/8/1999, 16/8/1999, 16/8/2000 and 5/5/1999. I have had regard to those. It is not, however, that there are 5 wildly different dates. There is commonality between them. There is a minor discrepancy in the mother's police interview where she states the true date of birth is 16 August 1999 rather than 15 August 1999. However, the month and year are identical. There is a single reference within the police summary to 2000, but such does not appear to originate from a log or an interview. I have also been provided with the 'family passport' issued in 2007 of her mother, which includes all of her siblings with their pictures (other than her youngest brother, who was not yet born). It was produced on the second day of evidence in rebuttal to a question answered by the father and, in my judgment, bears out the evidence having been given the day before by the mother. Against the mother is the entry '200'. It shows her elder sister is some 2 years older than her, and it shows the dates of birth in the Farsi calendar. I accept that there is a complex translation between the two calendars, including the problems of leap years, and that none

of the days and months are filled out in the English calendar. That has further informed the confusion. The year is provided for her sister of 1997, which would align, if it were correct, with the relative age of her sister being not only 2 years older but also as to the age that mother asserts herself to be. I remain mindful that the mother knows her date of birth through her parents and that such was told to her in a different calendar than ours.

35. Father told me in oral evidence that he had no idea how old she was when he married her. He was challenged on this point and I reject his evidence. He is not a man who would have left such matter to chance, or would not have enquired.
36. Having considered all of that evidence, and subsequently weighing that against the credibility of the mother and the father in relation to this specific allegation, I come to the conclusion on the balance of probabilities that it is more likely than not her month and year of birth is August 1999 and that she is 24 years old as she claims. I further find that the father knew of this and that she would not be allowed into the UK on a spousal visa and so altered her documents fraudulently by paying officials in Afghaistan. Those are the documents on which she entered the UK and have become her official documents. I prefer the mother's account than the father's that he made threats to her so that she would go along with this or would marry someone else. He would have known that if she did not, he could not bring her to the UK before her 18th birthday.

*Allegation 2: The Applicant was psychologically abusive and exercised coercive control over the Respondent. When the Respondent was 3 months pregnant, the Applicant was physically abusive to her and further subjected her to psychological and emotional abuse. (*the inclusion of his mother in this allegation is dealt with later in judgment)*

37. The mother alleges that she was brought, under the age of 18, to live in the UK as his wife in a household comprising him and his mother. She asserts that a number of family members would regularly come to stay for periods of time including his dad and sister. She alleges while there, she was not allowed to go out other than for specific purposes, such as college. She was not taken out shopping, as he would do that, and did not have a mobile phone with which to contact her family. She was isolated from her family. Any communication was done on their devices. As one example of the controlling behaviour, she alleges that she was not allowed the food she wished during her pregnancy and it was

instead chosen for her. She makes a number of allegations in her evidence as to physical abuse, but the one she brings as an example to be determined by the court is when she was three months pregnant and gave an account of it in her written evidence as to a slap to the face.

38. The father highly disputes this account, saying that he always provided what she wanted. He submits that were there to have been any abusive behaviour, she would have reported it to the police when detained at Birmingham Airport in February 2018 upon their return from Country B. To be fair to him, the police seem to suggest the same, recording in their notes of that day: “[mother] was provided with ample opportunity whilst away from her husband and father in law for a period of 45 minutes to make disclosures but has not disclosed anything of concern”. In my judgment, that is an unfortunate remark by the police in the context of what had been reported to them by the unknown third party of coercive and controlling behaviour. Our understanding of the same has now moved on. This was put to the mother in evidence and she answered tearfully, telling me that “*they had my daughter*”. I accept that evidence. Such was not a piece of the jigsaw the police appeared to appreciate when writing that note and it may be that such remarks do not fully appreciate the delicate nature of what they were investigating. However, I have the benefit of the wider picture and all of the evidence to see patterns that have emerged.
39. The police are then called by the father the next day and it is requested that they attend at the property. I therefore reject any suggestion by the father that he was tired and not prepared properly to be questioned as he suggested in evidence. They provide a full narrative summary of their visit within the police disclosure. There are times the father takes issue with this, saying that it may be the subject of miscommunication. However, it is lengthy and each part follows on from the previous. I will detail an example of this in the allegation below when discussing the issue of virginity.
40. However, the return itself on 3 February is significant following so closely to the report of the unknown third party on 29 January. The police check E-Borders records and discover that the ticket was originally issued to return on 12 February and question why the parties came back 9 days earlier. The father says this is because there was nothing more to say to the relatives in Country B. He denied to me that it was connected to the third party report.

I reject that evidence. There is not an innocent explanation for it and he is telling me a lie. The father accepted that he had told his mother to tell untruths to the health visitor about their return date saying that he did not want people knowing the reason for their return to Country B as it was embarrassing.

41. The police record their view that the father seemed very controlling of the mother. I accept that is an opinion of someone who I have not heard from in oral evidence. The police go on to record that when asked if she could speak alone to an officer upstairs that he was hesitant and wanted to know why and then go on to say that throughout the conversation they were having with him kept asking if they were done yet but “*in the next breath acted like he was fine with it*”. That is something I have seen mirrored in evidence: that he becomes highly agitated about a matter but after some engagement he then switches quickly to say that it is okay. Throughout reading that police summary I have reminded myself of the caution that an officer has not come to give evidence and I have not elevated it unduly in the weight I have attached to it. I do, however, reject the father’s suggestion that it was all a miscommunication and his suggestion at various points that the police just added to it with details that he never said, such as referring to it as a ‘love marriage’ are in my judgment fanciful.
42. I find nothing in the submission of the father that the matters complained of generally within the schedule filed by the mother were only raised after he started a new relationship, was married and had another child in 2021. I do not understand that submission in the context of the case I have heard. Her allegations of coercive behaviour were raised in 2018 after moving to live at the refuge with her daughter.
43. The father makes the submission that he paid for her to attend college. On the first day of the hearing, despite the many months of case management and even a 9 month pause, I permitted late evidence to be filed but limited it to what was handed to me on that day. I was told clearly there was nothing else. I explained that I would allow it in at this late stage reluctantly and gave time for both sides to consider its contents. Later in evidence, towards the end of his cross-examination, I was told there was reliance placed on a further document. Having given that very clear warning and being previously lenient noting the effect on the timetable to pause and possibly needing to recall a witness, I did not allow that in. However, it is not disputed between the parties that he paid for her to attend

college. The dispute is whether that ended early and I do not find that materially relevant to the decision I am making. In any event, college was only two days a week from 12:15 to 3:15pm. It was not a significant time spent outside of the house.

44. I have listened carefully to the picture painted by both parties as to their life in the UK from their arrival to the break up in 2018. I have further heard evidence as to the allegations of physical abuse, confined as they are to the occasions complained of. Mother gave a free narrative explanation of these. It did not deviate from her written evidence though was in different words and expressions. The father gave bare denials as to the physical abuse. As to this allegation overall, I prefer the evidence of the mother which is cogent and credible. I find on the balance of probabilities that the allegation is proven.

Allegation 3: The Applicant filmed the Respondent, under duress, saying she was not a virgin at the time of the marriage. He then took the Respondent to Country B with the aim to show everyone the video and leave her there. In Country B, this circumstance would be punishable by death by stoning.

45. The parties agree that the concept of virginity at the point of marriage is highly important in their culture. As this is a highly personal and sensitive matter normally completely private to the individual, it is unfortunate that I must go into detail concerning this subject in order to arrive at a finding. However, it becomes directly relevant to risk of harm given the matters complained of. I wish to be clear that my explorations and findings do not relate to any commentary or findings on the laws or customs of Country B *per se*, but simply what each or both parties *believed* to be true at the time regardless of whether that was accurate.

46. The mother's case is that she was a virgin at the time of her marriage. However, the father has subsequently lied about that in order to gain control over her. She alleges that she was forced, while sitting in the family home on loudspeaker on his phone to her mother to 'confess' to her that she was not a virgin. Such was recorded by him. That recording was subsequently played to family members. Further, that she was taken to Country B in January 2018, which placed her in great danger given the existence of the recording. It is

agreed by the father that they went abroad to confront the family members who were, in his view, making trouble and seeking to make them stop.

47. One of the father's complaints evidentially is that this recording that the mother says was made of her in relation to her virginity was not made available at court. He is correct that it has not been. However, the context of this needs analysis. The mother explains that there was a time at which she was talking to her family on a device owned by the paternal family where she is being told what to say and says to her family that she is not a virgin. She does not allege that it was ever in her possession. The mother explained to me that within the culture that she originates from, a lack of virginity is so important upon one's wedding day that deception around it would result in death by stoning. It was palpably clear from the witness box that she was terrified of this possibility and considered that it was both true and could realistically happen to her. I can therefore understand why there is no recording that I can listen to, for even on the mother's case she never had the recording in the first place and it was not hers. I do however understand the applicant when he urges caution against analysing that accusation because I do not have the recording and I have given appropriate weight to that in the context of the whole. I have, however, relied upon the direct evidence of both parties, both written and oral, presented to me when coming to my conclusions.

48. The mother has been clear to me that she was a virgin at the time of her wedding; she was emotive when discussing this point. However, the father's evidence on her virginity is highly confused, even within the same episode. On 3 February 2018, when the police attend at this property at his request, he discusses the issue with them. His first account is recorded in summary as being "*her mother had informed him that she had previously had a long term boyfriend and they had had sexual intercourse, which in his religion, is deemed bad and if she had remained in Country B, then she would have been killed or stoned to death*". It is notable that he suggests the punishment. For the avoidance of any doubt, I do not accept that this has been added by the police; it is included because it was said by him. He later in the same narrative summary explains that "*their relationship [was] very happy until a couple of weeks ago when [mother] told him that she had been raped and that is why she was not a virgin when they met. [Father] thought she was lying to him as rape is impossible in Country B. When I asked him to state what he meant by "impossible", he told me that Country B is such a strict country and [mother] had told*

him she met a man in a park and he had raped her, which would not happen in Country B.” In the context of the whole document, I accept this has been accurately recorded in summary. His account to the police on 3 February was therefore that first he had been told by maternal grandmother there was sex before marriage with a boyfriend and that later, only some weeks before, he had been told by mother that she had been raped in a park. However, that account then clashes with his own written statement dated 23 May 2023, prepared and filed when he was represented by solicitors. That says: “[mother] told me that she had been raped in prison when her and her family had been held there due to attempts by them to enter Turkey illegally”. His explanation was that there may have been a language problem. I do not accept that. There is a clear difference between the park and the prison, the events of a stranger and of the family being held while entering a country illegally. The two are highly in conflict. I further took him to each of his statements in his evidence in chief and he very clearly confirmed their contents to me as true and that he had no amendments to any of the evidence contained therein.

49. Further, the father was evasive when addressing whether he knew what the punishment would be in oral evidence before me. At one point he suggested to me that “*I have no idea about Sharia law, I grew up in Europe*”. Such conflicts completely with what he said to the police on 3 February 2018, recorded in narrative form in their summary. In my judgment, taking account of what he said to the police and comparing that with his evidence, he was being deceptive when telling me that he did not know. I find that, at the relevant time, he believed that it would result in death by stoning and such aligns with the understanding of the mother.

50. I have been addressed on the issue of risk. Such has formed the subject of cross-examination. Were I to find the allegation of the recording being made under duress to be true, and the parties belief at the time to be that they understood that it could be punished by death by stoning, and that further the mother was taken to Country B, it follows that there was a grave risk in relation to going back to that country, particularly in circumstances where it was to confront family members about that very issue. That risk would be to the life of the mother.

51. When weighing all of the evidence, I find the mother’s account to be credible and the father’s account is evasive and unconvincing. Mother described the recording in great

detail including the model of phone and that father was sitting there writing matters down for her. I consider father is being dishonest to the court about what he knew at the time concerning the punishment and that there is no innocent explanation for this. I prefer the evidence of the mother in relation to this allegation and find on the balance of probabilities that it is made out, although I have altered the wording of the finding to more accurately record my decision: *“the father filmed the mother, under duress, being made to say that she was not a virgin at the time of the marriage, which was untrue. He then took the Respondent to Country B with the aim to show family members the video, which he believed placed her life in danger. They both believed this would be punishable by death by stoning.”* Such a finding is, in my judgment, rooted in the evidence that both have given to me and had the opportunity to address.

Allegation 4: The Applicant kicked the Respondent and the child out of the home. The Respondent and the child then sought help at a Women’s Refuge, where they stayed for eight months.

52. The evidence for this allegation is heavily tied with that considered in relation to the previous ones. It is accepted that he asked the mother to leave the house with the child. That was the only home they had and they had nowhere else to go. The father suggests this was for their safety, including that of himself, mother and child as to allegations that were being made. I note at this point there was no allegation of sexual abuse made and the allegations that later emerged to the local authority were made at the time mother entered the refuge. This explanation in oral evidence conflicts with his written statement where he says *“it was a free choice made by the respondent.”* Father’s evidence on this point is not credible.

53. However, I would phrase matters differently than alleged and, on the balance of probabilities, I find that the father excluded the mother and their child from the family home, knowing they had nowhere else to stay. The mother and the child then sought help at a Women’s Refuge, where they stayed for eight months.

Allegation 5: The Applicant Father raped the Respondent at the Hospital A.

54. Following the separation of the parties, on which I have made findings above, there were difficulties in father seeing his daughter. Quite properly the matter went through solicitors. I do not consider that is relevant to my determination as to fact.
55. In 2018, there were two hospital admissions for the parties' daughter. One was in June 2018 and one was in October 2018. The details are not relevant. It is suggested that, in June, mother requested assistance from the father to help her with a taxi to hospital. She accepts doing so. It is suggested that this means her allegations are less likely to be true. I do not accept that submission. I also reject the submission that she had an uncle who was a taxi driver and so should have asked him or the, rather odd submission, that she should have asked social services to call her a taxi at 9:50pm.
56. There were submissions that the father gave as to general credibility of the mother, in regards to some dates that she gave. That was in relation to when contact stopped and restarted. Some of those ended up not being discrepancies and some were explained adequately in my view. He also suggests that there are text messages showing she was trying to get in contact with him. She candidly accepted the messages before me and did not try to shy away from them. She pointed out that they were selective and showed only his side of the story with his messages having been deleted. In my judgment that appears to be born out in what I see with lack of reply from his end. In any event, these are around the two times that S was in hospital in June 2018 and October 2018. These arguments do not in my judgement lend credence to a lack of credibility in the case of the mother when weighed against that of the father.
57. There was a further hospital visit in October 2018. The father says that the mother text him to come to hospital. Even on his own written and oral evidence that is not correct and the text message he supplies simply tells him that his child is in hospital, which despite the allegations is a dutiful compliance of the mother with his parental responsibility. He now says that there was then a phone call by her to tell him to come. I reject that. There is no evidence to support it and I prefer the account of the mother who says he simply turned up.
58. The accounts of what happens at hospital differ. Mother alleges that he became close with her, and spent 45 minutes being amorous, which included a description of him licking her

face and then her neck. Such a description stood out for me as a notable and was consistently described across her written evidence and police interview. Mother alleges he took her into the bathroom and, knowing that she was saying no, proceeded to forcibly have sex with her while she was braced against the sink. She told me “*he said you have to, you have no choice. There is no choice for me.*” She alleges that he threatened her with deportation if she did not comply and that he would kill her. She said while this was happening a nurse came into the hospital room, though not into the bathroom. She alleged he put his hand on her mouth and told her “*ssh*”. He then went out of the room.

59. The father says that mother was trying to get back with him and that is why there was some intimacy between them that night in the hospital room, but he firmly denies that any sex took place at all whether in the bathroom or otherwise.

60. It was put by the father that there was a discrepancy in the mother's account about the duration of this event. She explained to me in oral evidence that the entirety of the episode lasted around one hour, with that being 45 minutes while in the room itself where he was making amorous advances, and the portion which occurs in the bathroom comprising the sexual act took approximately 15 minutes. That is entirely consistent with what she said in her police interview.

61. There is a pertinent entry in the hospital notes from the day after the alleged event as follows: “*at time of discharge, Dad asked to speak to a doctor because he was upset that the social services team had said that we reported he and [B's] mum were “having sex in the bathroom all night”. Since I was the one that had spoken to social services I went to speak to dad to clarify what was said and to allay his concerns. I clarified that what was said was that it was noted by the night team nurses that he and mum had been physical in the night. When I spoke to the social worker I used the term “canoodling” as this was the term used @ handover. When social services spoke to mum they used an interpreter and this is likely where the misunderstanding came from. I reassured dad that at no time was it reported that they were having sex. Dad seemed ok with this. [a witness] was present as a witness and dad recorded the conversation*”. I do not have the recording.

62. The father's submission is that she was trying to get back with him and that is why they were physical that night, however his explanation of the extent of their physicality is

limited. He firmly denies that any sexual intercourse took place at all, whether in the bathroom or otherwise.

63. I have weighed all matters, including hearing the parties' oral evidence in addition to their written evidence and interviews given to the police. The father chose not to answer questions put to him by the police under the caution that it may harm his defense to fail to mention when questioned something he later relied on in court. I have listened to the competing accounts. I accept the evidence of the mother when she said one of the reasons that she did not complain at the time was that she did not understand that her husband, and they were at this point still married although separated, could indeed rape his wife. There had been no divorce. I bear in mind that this occurred in 2018, that she had only come to the country in December of 2017, that her English was not good at this point and that she was still trying to assimilate into British culture.

64. I prefer the evidence of the mother as being credible and reliable. In the mother's description of the event, he subjects her to his will contrary to her wishes, frightening her and making her subordinate to him. I find the allegation proven.

65. I should note for background that this is not the only allegation of rape that is made within the police interview, but it is the only one on which I have had presented to me to hear all the evidence upon.

66. For the avoidance of doubt, I do not find the evidence presented to me about the involvement of the Imam referred to regarding either a reunion or divorce has assisted me in my determination. It was agreed that this gentleman was discussing matters with the parties. I have a text message from him that is accepted by both parties and, whereas the validity and legal effect of the certificate of divorce (whether by Sharia or UK law) is disputed by the father, its existence is accepted. Such evidence does not alter my determination on the facts above.

Allegation 2 where it alleges that paternal grandmother was used by the father as an extension of his abusive behaviour and Allegation 6: The Applicant Father has continued to indirectly harass and stalk the Respondent through his friends/family members.

67. It is alleged that these matters implicate third parties. The manner in which allegation 2 was originally drafted effectively sought a finding against the grandmother directly perpetrating abuse. She is not a party and I have not allowed that to proceed. In any event, I do not consider that finding would be relevant to the welfare determination in this application and so it has not been considered in the context of this hearing. However, the mother's legal team suggested that it should be refined to allege that the father used third parties, such as the grandmother, to further his abuse. I therefore deal with the part of allegation 2 that makes that suggestion. I note, with caution, that none have provided witness statements nor been called as a witness. In any event, I have struggled to see in the evidence the linkage between that behaviour, whether it occurred or did not, and the instigation or instruction on behalf of the father. I do not find that it has been proved that such was done on the instigation of the father.

68. In a similar vein, there are places in the written evidence where it has been suggested that various members of the extended family and friends have waded into the fray. The father was not cross-examined directly on his role in this. I again do not find that it has been proved that such was done on the instigation of the father.

69. I say generally, for the avoidance of doubt, that I do not consider it relevant to consider any alleged bad behaviour of third parties in and of themselves and have not done so. This case is about the welfare of the parties' daughter and I confine myself to the roles that her mother and father are playing.

Overarching allegation: patterns of coercive and controlling behaviour throughout the relationship

70. I have considered the examples above and placed those back into the context of the relationship as a whole, even after separation. I am of the clear view that, on the balance of probabilities, mother has proven to me that it is more likely than not that throughout their relationship, including at its inception, the father behaved in a way that can be described as controlling and coercive and that, on multiple occasions, crossed the boundary from bad behaviour into abusive behaviour. Such was not a one-off incident. The patterns are present and pervasive from his fraudulently altering documents to bring

her to the UK when not permitted by immigration law when she was only 17, through to his behaviour during the marriage including physical and emotional abuse, and, due to the allegation proven at 5, the controlling and coercive behaviour continued after their separation in the form of sexual abuse.

Findings

71. I consider the following factual findings relevant to welfare decisions moving forward. I have found each on the balance of probabilities, having weighed all of the evidence relevant to that determination:

- a) At the beginning of the marriage, father fraudulently altered mother's date of birth on papers, by paying off the officials in Country A, in order that he could bring her to the UK on a spousal visa. Father threatened that if she did not agree to this, he would leave her in Country A and find someone else to marry.
- b) Father was psychologically abusive and exercised coercive control over mother. When she was 3 months pregnant, father was physically abusive to her and further subjected her to psychological and emotional abuse.
- c) Father filmed mother, under duress, being made to say that she was not a virgin at the time of the marriage, which was untrue. He then took mother to Country B with the aim to show family members the video, which he believed placed her life in danger. They both believed this would be punishable by death by stoning.
- d) On 8 October 2018, father raped mother at Hospital A.
- e) The father excluded the mother and their child from the family home, knowing they had nowhere else to stay. The mother and the child then sought help at a Women's Refuge, where they stayed for eight months.

72. For the avoidance of doubt, findings have not been made concerning the involvement of third parties.

HIS HONOUR JUDGE REDMOND