

First Avenue House

42-49 High Holborn

London

Before HER HONOUR JUDGE ROBERTSON

IN THE MATTER OF

SA (applicant)

-v-

IP (Respondent)

Georgina Rushworth appeared on behalf of the Applicant

Teertha Gupta KC appeared on behalf of the Respondent

JUDGMENT

10 July 2024; then corrected and handed down in final form on 24 July 2024.

WARNING: This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of

the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Parties and applications

1. The child at the centre of the case, C, is a girl aged two, who lives with her mother. Her mother is IP, represented by Teertha Gupta KC. Her father is SA, represented at this hearing by Georgina Rushworth of Counsel. Both parents have successful professional careers. The father has a shared care arrangement in relation to his two older children, by agreement with their mother. The parties had a relatively brief relationship. They never married, but the father does have parental responsibility. The relationship ended when C was 4 months old. Initially the father had contact with C twice per week for an hour with the mother supervising. However arrangements broke down when the mother came across diary entries written by the father in erotic terms recounting a sexual relationship he had with his older sister as a child. In response to contact breaking down, the father made his application to the court on 5 August 2022 for a child arrangements order, seeking shared care of C.
2. The mother has made a number of allegations against the father including that he pinned down her arms with his knees and pressed on her neck to the point where she struggled to breathe. She also alleged that the father engaged in non-consensual sex with her whilst she was recovering from a C-section and whilst C was asleep next to her, and made a separate allegation that the father had stared at C's private parts. The s7 reported dated 5 April 2024 recommended that a fact-finding hearing be held. The court determined that a fact-finding hearing was necessary in relation to those allegations and in the interim directed that the father have three hours of contact with C per week, professionally supervised in the community. A risk assessment of the father was directed to be prepared by the Consultant and Forensic Psychologist Dr Dowd.
3. Dr Dowd reported on 11 October 2023. He noted that the father had been the victim of sexual abuse as a child and had never received any therapeutic support in relation to that. He said the father may well benefit from that now. He found that the father did

not have Compulsive Sexual Behavioural Disorder and said that he could not suggest that the father presented as offering a direct sexual risk to his daughter. There could be indirect risks to her in terms of stability caused by his sexual behaviours with others causing instability in his own life.

This hearing

4. This hearing has been the fact-finding hearing in relation to the mother's allegations. The case was listed for three days. I used the first two to read, and to hear evidence and submissions. I have had the benefit of a full bundle and a supplementary bundle coming to a total of 675 pages. I have heard oral evidence from
 - a. Dr Dowd
 - b. AB, who is a friend of the mother's
 - c. The mother
 - d. The father

I have used the third day of the hearing to prepare this written judgment.

5. Both parties participated well in proceedings. I record that the mother had the benefit of a separate waiting room, and screens in court throughout.

The Law

6. There are well established guiding principles in considering allegations of this nature, which can be summarised as follows:
 - a. The burden of proving a fact is on the party that seeks to prove the allegation. It is not reversible.
 - b. To prove the fact asserted, that court must be satisfied that it is more likely than not that the event occurred.
 - c. A binary analysis applies. Either an allegation is proved or not proved.
 - d. Findings of fact must be based on evidence, including any inferences that can be properly drawn from evidence. There is no room for suspicion or speculation. The court can have regard to the inherent probabilities.

- e. When considering the facts, I must evaluate strands of the evidence and consider them in the context of the whole. Some features of the evidence will weigh more heavily than others and evidence which may not be significant in isolation, may gain greater relevance when placed in the context of the wider evidential canvas.
7. Abusive behaviour is defined by the Domestic Abuse Act 2021 as behaviour which takes place between persons who are personally connected to each other, and which consists of any of the following:
 - a. Physical or sexual abuse
 - b. Violent or threatening behaviour
 - c. Controlling or coercive behaviour
 - d. Economic abuse
 - e. Psychological, emotional or other abuseand it does not matter whether the behaviour consists of a single incident or a course of conduct.
 8. I remind myself that ‘not all directive, assertive, stubborn or selfish behaviour, will be ‘abuse’ in the context of proceedings concerning the welfare of a child; much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour’ (paragraph 32 *Re H-N and Others (children) (domestic abuse: finding of fact hearings) 2021 EWCA Civ 448.*)
 9. I also remind myself of the approach taken by Peter Jackson LJ in *Re L (Relocation: Second Appeal) [2017] EWCA Civ 2121 (paragraph 61)*

“Few relationships lack instances of bad behaviour on the part of one or both parties at some time and it is a rare family case that does not contain complaints by one party against the other, and often complaints are made by both. Yet not all such behaviour will amount to ‘domestic abuse’.”

Dr Dowd’s report

10. Before I turn to the individual allegations in this case, I wish to consider the merits of Dr Dowd's assessment of the father. Four of the allegations are explicitly related to the question of whether the father poses a sexual risk to C and that is a question which Dr Dowd has given his opinion on. His opinion is that the father does not pose a direct sexual risk to C, but that view is vigorously challenged by the mother. It seems to me that I must begin by considering whether I accept Dr Dowd's evidence, or whether in my view the father's challenges to his report have merit.
11. There is no suggestion that Dr Dowd lacks the qualifications, expertise or experience to provide an expert opinion in this case. There were three challenges to Dr Dowd's report. First, that that Dr Dowd failed to challenge the father by putting to him the mother's allegations. Second that he failed to challenge the father by putting to him inconsistencies in his various accounts. And third, that Dr Dowd relied on the father's self-report. Dr Dowd was cross examined on all these points.
12. On the first, Dr Dowd was clear that he was not required to put the mother's allegations to the father in order to assess sexual addiction, which was what he had been asked to do. He explained that the term "sexual addiction" is not a clinical term, and that the nearest diagnosis would be a diagnosis of compulsive sexual behavioural disorder. He had felt able to come to a view about that without putting the mother's allegations to the father.
13. In terms of putting the mother's case to the father, I agree with Dr Dowd that he was not required to do that. There had been no fact-finding at that stage and the factual matrix was not clear and it would have been difficult for Dr Dowd to know what he could fairly put to the father. I am not clear how challenging the father in that way would have assisted him in the clinical process of assessing the father psychologically. It seems to me that the process of challenging the father with the mother's account is one more suited to the court room than the consulting room. I do not find that Dr Dowd's report was deficient on that ground.
14. On the second point, Dr Dowd was asked why he had not put to the father the fact that there were inconsistencies between what the father said in his diary entries and what the father had told Dr Dowd. As an example, the father told Dr Dowd that the sexual

abuse had happened around four times whereas the father's diary entries said it had happened very often. Dr Dowd was not persuaded that this was an inconsistency if it was properly understood what the diaries represented. In listening to the cross-examination it seemed to me that there was a great disparity between the way in which the mother through her counsel viewed the diary entries and the way in which Dr Dowd viewed them. The line of questioning taken on behalf of the mother was based on a view of the diary entries as historical documents to be read closely and with an assumption that they should be accurate, with any inaccuracy being a weakness. From Dr Dowd's perspective, the diary entries were something much more nebulous. At the front of his mind was the fact that he was dealing with a victim of child sexual abuse. To Dr Dowd, the diaries were the self-reflection of an adult trying to think back to events when he was sexually abused by an older sibling. Dr Dowd said he struggled to understand how it was possible to question accuracy and timings on the basis of such a document. He said that from the diaries he would not be able to say how often the sexual abuse took place. He agreed with the mother's counsel that there was one diary entry which suggested that the father had been rather older than he claimed when the sexual abuse took place. When it was put on behalf of the mother that this was an inconsistency which should cause doubt about the father's honesty, Dr Dowd said it would make no difference to him in his assessment of the father because the father had written it as part of a self-therapeutic process which was not uncommon. He said that diary entries such as these would inevitably include information which does not necessarily reflect reality, and that these diaries showed a high level of self-reflection and that the father was being unrealistically negative about himself. He described this as all being part of the therapeutic process.

15. It is not in issue that the father was sexually abused by his sister when a child. She was eight years older than him. The father has said that she might have been 13 and he five. In oral evidence he was less sure but said it happened when he was at primary school. The relevant diary entries were made between 7 January 2020 and 17 March 2022. They set out in explicit terms sexual activity, including sexual intercourse, which took place between him and his sister on a number of occasions, sometimes including his brother as well. He writes about it with some relish, saying that they were some of the best sexual experiences he has ever had, and that writing it make him want her again. The diaries do not only deal with his childhood sexual

experiences. They also deal with his sexual fantasies about the father's ex-partner B who is the mother of his two older children, as well fantasies about a colleague and an old friend. He refers to them as "girls" but I accept they are adults. The father writes about his lust being overpowering and making him weak. He says B is like a drug and he can't stop thinking about sex with her. There is all this and much more in the diaries. It is Dr Dowd's view that there is nothing in the diaries nor in his interview with the father which places the father outside normal heterosexual thought and activity, and he found no evidence of paraphilia. He accepted that the father's sexual interest featured impulsivity and sensation-seeking, for example in his admitted wish to explore threesomes, but said that was not illegal, not paraphilic and was not behaviour that would feature in the diagnostic criteria for sexually compulsive behaviour disorder.

16. Having read the diaries, I come to the following conclusions:

- a. They were never intended to be read by anyone else. They contain difficult, dark and embarrassing information and it would be very surprising if the father wanted anyone to read them. I have taken into account a curious phrase the father used about "any ladies reading this" but I consider it likely that was a part of his fantasy life, not based in reality. I do not consider it meant he meant the diaries to be read.
- b. I accept they were part of the therapeutic process for him. He had spoken to a helpline after his breakup with B and they had advised him to try it. He did so and found it helpful.
- c. As a result, I prefer Dr Dowd's approach to the diaries. SA was an abused child. Everything he has written must be seen through that filter. The diary is not to be seen as an accurate historical document but as part of a therapeutic process. Challenges to it on the basis of accuracy are, as a result, futile and do not have any impact on the father's credibility.
- d. I therefore conclude that it is not a weakness in Dr Dowd's report that he does not investigate the so-called "inconsistencies", which may not be inconsistencies at all.

17. The third criticism of Dr Dowd's report is that it is based on the father's self-report. Dr Dowd was very open about the fact that it was so based, and noted that the diary entries themselves were a form of self-reporting. He had not seen the father's medical notes. The father's case to the court, which I have no reason to disbelieve, is that extensive efforts were made to obtain them but his records prior to 2023 have been lost due to his moving GP surgery. Be that as it may, it meant that Dr Dowd did not have that source of information to help him triangulate his views. However Dr Dowd said he had read the whole bundle of over 500 pages and had all the information which was available, including the mother's allegations. He said his opinion was based on the evidence the father was providing. His view was that the father had not sought to conceal his sexual behaviour and was willing, for example to answer questions about pornography and masturbation. Dr Dowd had taken into account what he called "social desirability" by which he meant the possibility that the father would wish to manipulate facts and information in order to produce a good impression. However he had not had the impression that the father was trying to present himself falsely as to his sexual history.
18. I do accept that it would have been better if Dr Dowd had had the father's GP notes. However I do not consider the lack of them invalidates Dr Dowd's report. He had not only the father's self-report but also the evidence of the narrative of the case as shown in the actions taken by the parties as set out in the various statements. That is important triangulating information. So also is the clinical interview. The clinical interview is a crucial part of the assessment process and consists of more than mere self-reporting. An experienced clinician is used to gathering evidence not only from answers but from the way in which answers are given. Finally I note that all clinical assessments involve an element of self-reporting and this case was perhaps not so unusual in that regard. Although self-reporting was a significant part of what Dr Dowd had to rely on, it was not his only source of information. I am satisfied that he had enough information from other sources to allow him to come to the views he did on a solid basis.
19. I have considered whether I have seen anything in the father's evidence or demeanour to cause me to question Dr Dowd's assessment. I found the father to be open in his answers, and my impression was that he was being honest. He is still trying to make

sense of all that has happened to him. I was struck by an exchange during cross examination where he was asked whether there would be likely to be further “disclosures”, which I took to mean incidents of sexual activity as a child, which would come to light if he underwent therapy. The question was designed so that if the father said “no” it would seem as if he was closed off to the idea of therapy having any realistic effect, and if he said “yes” it would look bad for him because there would be yet more sexual activity to be discovered. The father did not hesitate but instantly replied “I’d hope so”. What is striking is how that very short, instinctive answer fits so completely with Dr Dowd’s angle on the case, namely that the father is a man coming to terms with his abuse as a child, trying to make sense of it, and who knows that these memories are incomplete and need further work. I found nothing in my own observations of the father to contradict the view taken of him by Dr Dowd, and much to support it. Taking all that into account, I come to the view that I accept Dr Dowd’s opinion as to the level of risk posed by the father. I accept that he does not pose a direct sexual risk to C, but that he poses an indirect risk to her because of his lifestyle choices, namely having multiple partners, sometimes overlapping, which can lead to disruption and instability in the living arrangements for a child.

The allegations

20. It is against that background that I turn now to consider the individual allegations. I note at the outset that these are helpfully set out in chronological order. The timeline is important in this case, and I have it firmly in mind to help me obtain a coherent overview of the relationship and the disputed events within it.

Allegation 1

21. Allegation 1 is that the father was physically, emotionally, sexually and psychologically abusive to the mother over a period of 15 months. I will return to that overarching allegation at the end when I have considered the individual allegations.

Allegations 2 and 3

22. The mother alleges that in late January 2021 the father sat on her chest while she was lying on the floor and bent his legs around her neck resulting in her almost suffocating. She says that she tried to scream but it was impossible as she was unable

to catch her breath. The father eventually let her go but when she tried to talk to him about it afterwards he turned the incident into a joke.

23. The background to this incident was that the parties were in the relatively early stages of their relationship and had been living together for only a month or two. The mother was not yet pregnant with C. Both parties agree that this incident began as an incident of playful, enjoyable mutual tickling. The mother's evidence is that in the midst of this, taking her by surprise, the father suddenly sat down on her chest and held her arms by her wrists so she could not get up or move. At that point she stopped laughing as she felt the air leave her lungs and she was in pain. She began to panic, gasping for breath and desperately trying to get him off her, but she could not. After struggling for what felt like a long time, she said she started to feel a lot of tension in her face and neck. She says she was wriggling frantically underneath the father and she was sure that he saw her desperation. He did not stop, but continued to hold her down. She says her eyes were wide open and there were tears streaming down her face. She thought she was going to suffocate. He suddenly released her and got up. She tried to speak to him about it and he told her she had brought it on herself. Later, when she tried to discuss it again he ridiculed her eventually becoming angry.
24. The father says that he and the mother would often tickle each other for long periods at a time as a prelude to further intimacy. He said that they would both climb on top of each other. She said it was always mutual, enjoyable and consensual. He says that the mother has embellished one of these incidents to provide an account which is untrue.
25. There is limited further evidence about this allegation. There is a statement in the bundle from a friend of the mother is called AB. She attended to give oral evidence. She struck me as an honest witness who did her best to answer truthfully, even when her evidence appeared unfavourable towards the mother. When that happened she appeared surprised and saddened, but did not let that stop her from giving the answer she felt was truthful. She had given up a hospital appointment in order to attend because she felt so strongly that she needed to support her friend. In her statement she says that in January 2021 the mother told her about an incident where the father had sat on her chest and she almost choked. I have no doubt that the mother did tell her

that, and whilst that supports the mother's version of events, it does not necessarily mean that the mother's allegation is true.

26. For his part of the father relies on the following evidence in support of his version of events: that on 24 January 2021 the mother sent the father by text message two photographs of herself holding a new kitten, which she had bought for herself for her birthday. The father replied these messages saying "beautiful". He says that that shows that the relationship was well and happy at that time, which would not have been case if he had just tried to strangle the mother. I note that the mother has not put a specific date on this incident, and so I have no way of knowing whether the kitten photos came before or after the alleged incident.
27. What I do know is that although the mother told her friend about the incident, she did not tell the police or the GP or seek medical attention. She did not produce any photos of any bruising, or mention the incident in any text messages that I have been shown. She did not move out, and indeed very soon after that she became pregnant with C. There is no suggestion that she became pregnant through non-consensual sex, and so it appears that following the incident she continued a consensual sexual relationship with the father. In short, the incident does not seem to have disrupted the progress of her relationship with the father.
28. In my view, it is more likely than not that the truth lies somewhere between the polarised versions presented by the parties. Clearly an incident did take place. Clearly it went too far. The father admits that he saw the mother become distressed but says he got off immediately. The mother agrees that he got off her, but says it took a bit longer. The difference between the two accounts may only have been a second or two. I am troubled by the fact that in the mother's account there is no motive for the father suddenly to assault her in the middle of a tickling session which, to him, might have looked promisingly as if it might lead to sex, as he said it often had done in the past. It makes no sense for him to interrupt that with a sudden assault out of nowhere. In my view it is more likely that that he was slightly slow to notice the mother's distress and she perceived that as an assault. If he was slow to react her distress, that would have been a horrible experience for her. However, her continuation of the relationship, including becoming pregnant, suggests that on one level she knew it was not

intentional and perhaps therefore did not have quite the character which she ascribes to the incident. **I find that in January 2021 the parties engaged in a tickling game which got out of hand. The mother became distressed and had difficulty breathing and the father was slow to react. The father did not intend to hurt the mother, but it was very distressing for the mother nonetheless.** I do not find I am able to make any further findings in relation to this incident and I make no finding that the incident was abusive.

Allegation 4

29. Allegation 4 is that on 21 or 22 August 2021, when the mother was heavily pregnant, the father yelled at the mother during an argument. The mother was so upset by the father's behaviour that she became afraid she would miscarry, suffered a panic attack and was sick all over the ensuite bathroom. She called for an ambulance as soon as she started experiencing severe pain in the lower part of her abdomen. She then texted the father from the bathroom to say that she had called an ambulance and he responded immediately suggesting they get a taxi instead, but he did not come to check on her in the bathroom. When the ambulance came they found she had elevated blood pressure but nothing else. The following day the father told her she had made herself sick on purpose to seek sympathy. In her statement the mother says she felt devastated for several days following this incident and that she wanted to move out, at least temporarily, as she was scared that the father would drive her to a miscarriage but he refused to accept this.

30. In support of the mother's version is the statement of her friend AB, which again shows that the mother did tell her about this incident soon after it happened. She described the mother as seeming devastated and said that seeing her in that state was very hard. She said she was very concerned for her friend.

31. In further support of the mother's position it is argued that a mere two weeks earlier, on 7 August, the father had written a diary entry which showed extreme levels of sexual frustration and an all-consuming wish to have sex. In those circumstances it is said he was likely to lash out and be argumentative. I find that argument weak. His state of mind two weeks previously casts very little light on his state of mind at the time of this incident. On behalf of the mother it is also argued that the father was

unsympathetic and uncaring and that his response to suggest calling a taxi demonstrated that.

32. The father remembers the incident. He says that they did have an argument and both shouted at each other. It is part of his general case that the mother also had a temper and that she would smash glasses and cups and he provided a photograph of damage to the laminate flooring which he said had been caused by her smashing a cup. He also relied on a note from the contact supervisor on 9 September 2023 when the mother was angry with the supervisor for coming back at the end of contact late. The supervisor records the mother as being confrontational, raising her voice and ranting. She says she felt embarrassed and intimidated. Using that as evidence of the mother's temper, the father says that both of them were arguing on the date of this incident, and that the argument resolved by them going into separate rooms. He accepts that he received a text from the mother saying she had called an ambulance and he texted back to suggest they get a cab together to the hospital. He denies saying that she made herself sick on purpose to seek sympathy.
33. On the father's behalf it is argued that the following day the mother sent the father a text message saying "can you please start up a bath for me" and he responded "sure". It is said that that is not the sort of text exchange that would have taken place if the mother's version of the events of the previous day was accurate. In oral evidence the mother accepted that the father did indeed run her a bath following this text exchange.
34. In my view, this was another incident which would have been distressing for the mother. However, there are indications from the evidence that she may have presented an exaggerated version of the incident.
 - a. It is notable that in both her schedule of allegations and her statement she says that the father's behaviour was so bad she was afraid she would miscarry. She is an educated and intelligent woman and it seems to me likely that she would know, as general knowledge, that being shouted at cannot cause a miscarriage. Bringing miscarriage into the equation was in my view an exaggeration calculated to increase the drama of the situation.

- b. It is notable that when the ambulance crew arrived they found no symptoms of a panic attack or any other physical ailment other than raised blood pressure. I have no evidence as to why her blood pressure might have been raised: there are many possible explanations and I cannot necessarily lay the blame for that at the father's door. The calling of an ambulance may have been an overreaction on the mother's part
 - c. She described herself as being scared of the father, yet she elected to stay with him when the ambulance crew gave her the option of accompanying them to hospital.
 - d. She texted him to ask him to run a bath the following morning. The fact that she texted him tells me that he was not in the same room as her at the time. I cannot see why she would summon him to come and run her a bath, which is surely something she could have done for herself, if she was scared of him as she claimed to have been the previous day. If she was scared of him she would surely have been glad that he was in a different room and that she was safe from him for the time being.
35. As a result I do not accept the mother's characterisation of the incident. I come to the conclusion that **on 20 or 21 August 2021 the parties did have an argument and the mother did become upset. The mother's reaction of saying that she feared she would have a miscarriage and of calling an ambulance was an over-reaction. I do not find that the incident was domestically abusive.**
36. I pause to note that between the date of this allegation and the date of the next allegation C was born by Caesarean section.

Allegations 5 and 6

37. The fifth allegation is that in mid-December, shortly after the mother's Caesarean section, when she was asleep in bed with C beside her, she woke to find the father on top of her. She says that even though she clearly communicated to him her doctor's advice was not to be intimate for at least six weeks after the birth as it was unsafe, the father nevertheless had full sexual intercourse with her starting whilst she was asleep. She says there was no consent to any sexual contact on the mother's part and that C was present throughout.

38. In her statement the mother puts it slightly differently saying that she woke to find he was having sex with her, meaning that his penis was in her vagina, but that when she opened her eyes he stopped and got off her. That seems slightly different from saying he had sex with her which “started” while she was asleep and I view that as a discrepancy, although it may not be a material one.
39. The sixth allegation is that the same thing happened again later the same month, but this time the father was more aggressive, saying that he had been frustrated and that having to wait to have sex with her “had him climb up all these walls for months” and that he “could not wait any longer”. In her statement she says that this time he had a monstrous expression on his face which terrified her, and that he was in a trance-like state and would not stop. She says she froze and could not do anything. She says the incident left her feeling embarrassed, violated and deeply vulnerable. She did not tell anyone at the time, but told her friend AB a few days later.
40. AB’s witness statement corroborates that, saying that the mother told her about these two incidents on 15 December 2021. She said that the mother told her she had not consented, and had not taken any contraception because she was not planning on having any sex. She said that the mother’s face was pale, and she could tell that the mother did not want to talk about it any more, and so she stopped asking questions. Again, I have no reason to doubt this evidence from AB and I accept that is what the mother told her.
41. The mother asks me to take here a holistic view of the state of the parties’ relationship, and of the father’s state of mind, at the time. In August 2021 the mother was about six months’ pregnant. On 8 August 2021 the father wrote in his diary that he could not stop thinking about sex, and sex with B. He talks about falling asleep thinking about sex with her and having “wild fantasies” about her. It is in this diary entry he says “she’s like a drug”. Mother’s counsel suggests that this shows the father was feeling sexually frustrated at that time, and further that because he did not start his affair with her until early 2022, the frustration which was being written about in August 2021 was at a high level by December 2021. That might be right: or it might not be. The fantasies about B written in August 2021 might represent the father’s

normal sexual state, irrespective of whether he was having sex with the mother or not. It is not the mother's case that there was no consensual sex between her and the father between August and December. It may be that the father was able to relieve any sexual frustration he may have had in the course of his normal sexual relationship with the mother. I am not able to say whether that is so. What I am able to say is that this diary entry, on its own, is insufficient to persuade me that by December 2021 the father was necessarily seething with frustrated sexual desire.

42. The father seeks to build on that picture though by relying on a further diary entry which is dated 9 November 2021. It says "I don't feel like I will last much longer". He does not say what he means by that, but goes on to talk about feeling like a failure because he will never have a relationship like that of his parents. He says "I feel sad thinking that I'll not be there to help my boys or daughter, if I go. Guilt is also heavy as my daughter might not know her father". This entry is relied on by the mother as part of a picture of what she says is growing sexual frustration, but in my view there is nothing in this diary entry to link it to sex. The natural meaning appears to be that the father is very low and even thinking about no longer living. That could be caused by lack of sex, but it could be caused by other things – by arguing with the mother for example and not having the kind of relationship his parents have. Indeed later in the same entry the father links his low feeling to dyslexia, Aspergers and pectus excavatum (an abnormal development in the breast bone). Those seem to be the issues at the root of this diary entry. I am not able to say that this diary entry adds to any picture there might be of growing sexual frustration. The mother relies on no further evidence in support of her case that the father was sexually frustrated in December 2021. I can not find that the evidence she has relied on is enough to persuade me that it is more likely than not that the father was particularly sexually frustrated at that time.

43. Neither can I find evidence to say that his drug-taking made it more likely that he behaved as the mother alleges. This was suggested in the mother's submissions, and there is a hair strand test for the father which is positive for MDMA from 5 December 2021 to 3 June 2022. However this was not actively pursued as a line of questioning in the hearing, and I have neither read nor heard any evidence about how that drug affected the father's behaviour or even whether it did so at all. In those circumstances

there is no evidence to support the view that his drug taking made it either more or less likely that he forced the mother to have non-consensual sex in December 2021 and I cannot make any such finding.

44. The mother further relies on the inherent improbability of her having given consent at that time. She says that she had just given birth. She had received medical advice not to have sex for 6 weeks, and she knew there would be risks if she did so. She had received advice that she should not get pregnant again too quickly and that if she did have sex she should use contraception. It is not in dispute that no contraception was used on these two occasions in December 2021, and the mother says it is inherently unlikely that she would have put herself in the double risk of injury and pregnancy, given her vulnerable state. I agree with the mother on those points. They are in my view supportive of her version of events.
45. The father denies the allegations. He says that the parties did have sex in December 2021 but that it was consensual. He describes them as a passionate couple. He says they both woke up in the night and there was a lot of kissing and that is what led to it. The father relies on various sources of evidence to corroborate his case.
46. He points to a letter sent to him by the mother's solicitors on 22 August 2022. That was soon after the father made his application to the court which was dated 5 August 2022, and it appears that the letter is likely to have been a response to his application. In the letter the solicitors set out the "concerns" which the mother has about him having contact with C. Those concerns were
 - a. The diary entries, which the mother had found in March 2022 which related to "inappropriate sexual behaviour including a sexual relationship with your sister" and "ongoing issues with the use of drugs, sex addiction and using prostitutes"
 - b. An incident at contact which forms the substance of allegation 10 in this hearing and to which I will return, but in essence an incident where the father is alleged to have been aggressive at the handover and to have grabbed the pram forcefully, almost tipping C out of it
 - c. Two further incidents at contact in which the father is alleged to have used C's arm (on one occasion) and leg (on another) to slap his older children.

47. It is the father's case that it is inconceivable, if the allegations of rape and indeed strangulation and further allegations which I will come to including an allegation of staring at C's private parts were true, that they would have been omitted from the list of the mother's concerns in this letter. The mother says that she did mention them to her lawyers but they chose to omit them because the letter was about contact arrangements, not the abuse the mother had suffered. She confirmed that she did see the letter in draft before it was sent, and she must therefore have approved the omissions.
48. I am troubled by the omissions from this letter. The mother's argument would have more force if the issues of drug use, sex addiction and prostitutes had not been raised, but they were raised. It is hard to see why they were felt to be relevant to contact but rape and strangulation were not. It is even harder to see why the issue of staring at Cs' private parts would have been left out as that appears to be a current concern about a direct sexual risk to C. I find the mother's explanation for the omissions to be somewhat short of the mark. An alternative explanation is that the omitted matters were left out of the letter because the mother had not told her lawyers about them at that stage. On balance, that seems to me more likely given the gravity of the allegations and the importance of including them in the letter if they had been known about. That of course does not mean that the allegations are not true, but it raises the possibility that the allegations may have been made up later. It also goes to the issue of credibility, as the mother has said that she did tell her lawyers at the time, and I have found that to be unlikely.
49. The father further relies on a text message sent by the mother on 17 December 2021, which is two days after she told AB about the incidents, that conversation on the mother's account being "a few days after" they took place. The text was therefore sent a matter of days after the incidents. I have seen a screenshot of the text, and its authenticity is not in dispute. The text says "You are welcome to sleep with us. You were right. I should not have asked you to leave last night...". On behalf of the father it is said that that text is simply incompatible with the mother being forced to have non-consensual sex, on two occasions, a few days before. As father's counsel puts it, it is unlikely that if the mother saw the father as a sexual predator she would invite

him into the bedroom where she and C were sleeping. I agree that that text makes it unlikely that she had been recently forced into non-consensual sex twice.

50. The father relies also on a later text from 15 January 2022, so a month or so later, from the mother to the father saying “Don’t intend to exclude you from the bedroom fyi.”. Again Miss Rushworth on behalf of the father says that is not something you say to someone who has raped you twice when you were recovering from a Caesarean section. Again, I consider there is merit in that argument. It makes the mother’s version of events more unlikely.

51. I must now balance the evidence, taking into account all the circumstances of the case. I found both parents to be persuasive and genuine. I gained no help from their demeanour. Both appeared sincere. In support of the mother’s version of events is the fact that she told her friend AB about it soon afterwards, and that it is inherently improbable that she would have consented given the double risk of injury and pregnancy. In support of the father’s version is the troubling omission of the allegation of non-consensual sex from the solicitor’s letter in August 2022 and the mother’s text saying “you are welcome to sleep with us” only a few days after the incident took place.

52. On balance, the omission of the allegation from the lawyer’s letter and the mother’s text a few days later cast sufficient doubt on the accuracy of the mother’s account to prevent me from being able to say that on the balance of probabilities the mother was forced to have non-consensual sex on either of the occasions pleaded in December 2021. I therefore **do not make any findings on Allegations 5 and 6.**

Allegation 7

53. This is an allegation of rough-handling. The mother says that when C was 20 days old the father stood her up on the floor and dragged her feet across the kitchen floor saying “look everyone, I am walking”. It is said that the father was drinking and appeared to be under the influence of drugs at the time. This allegation was not actively pursued at this hearing, and in submissions the mother’s counsel made it clear that the mother accepted there were very many positive contact notes describing successful supervised contact between the father and C. It is not the mother’s case

that the father cannot handle C. I take it from this that this allegation is no longer actively pursued and **I make no finding on it.**

Allegation 8

54. Allegation 8 is that one afternoon in January 2022 the father got angry. The mother, with C in her arms, ran into the living room seeking shelter and tried to close the door. The father barged through the door with such force that the door hit the mother on the forehead and nose. The mother felt dizzy but managed to keep C in her arms. When the father realised what he had done he immediately stopped and calmed down.
55. In her statement AB records that the mother told her that the father would pressurise her to go out with his friends and family whilst C was aged 1-2 months, and that when she refused he would have a go at her. AB does not record that the mother told her about being hit with a door.
56. The mother seeks to rely on police evidence which they say shows that the father has a history of violence in relation to his previous partner, B. I have looked at the police evidence. There was an incident in 2016 in which B came home drunk, and attacked the father causing a long red scratch to his neck, scratch marks on his arms, a small cut on his face and a ripped t-shirt. In the course of the attack the father pushed her in self-defence and she hit her head on a door. The police viewed the father as the victim and arrested B.
57. There was a further incident in 2018 in which B told the police that the father had hurt her by twisting her thumb. However the father alleged that he had pushed her in self-defence when she had attacked him, scratching his face. The police took photos of the facial injuries which they described as a scratch running down the right cheek to the right nostril. They took the view that the father was the victim and they arrested B for ABH. I do not find that either of these incidents show the father to have had a history of perpetrating violence against his previous partner.
58. The father says that he recalls the incident which the mother raises in this allegation, and says that they argued because the mother did not want him to go out with friends in case he brought covid back into a house with a new born baby. He says the mother

has embellished the incident and that he never forced his way into the room or hit her with a door. He says they did argue within their relationship but at no point were either of them injured. He says she was the one who smashed plates and glasses and slammed doors, even causing damage to the door.

59. The father relies on a picture of a damaged door to substantiate his claim that the mother was aggressive and slammed doors. The mother says the photo is of the bedroom door and is unrelated to this event. She says the door was damaged when the father tried to change the lock. That does appear to me to accord with the damage I can see in the photo where the damage is in a neat rectangle shape, as if caused by a tool. I do not therefore find that this photo corroborates the father's allegation that the mother habitually slammed doors.
60. The mother did not accept that she was aggressive, nor that she had smashed plates and cups. She accepted she had had an accident with a glass. She did not accept she had caused the damage to the laminate floor. However she also denied being aggressive to the contact supervisor, and I have already set out the contact note written by the supervisor calling the mother confrontational, raising her voice and ranting and making her embarrassed and intimidated. The mother's response to this evidence was to say "that did not happen". I did not find that a satisfactory response. Although the contact supervisor was not challenged in evidence, she is a neutral third party reporting on matters within her expertise. She is a professional person. There is no scope for misunderstanding her, given the detail she goes into and the way she uses several different words to describe the mother in order to make her meaning abundantly clear. I do not consider it likely that the supervisor made up the incident, or was mistaken about it, or that we are mistaken in her meaning. I am left with the conclusion that it is more likely that the mother is lying about her aggression on that occasion, or is minimising it.
61. That does not mean she is lying about the father hitting her with a door. However it does cast doubt on the way she characterises the relationship. Her characterisation, taking her evidence as a whole, is one in which the father was frightening, unpredictable and abusive and in which she was nothing other than the recipient of that abuse. I do not accept that was the dynamic of the relationship. The text

messages show that she sometimes made him sleep on the sofa. That is not in dispute. She did, then, have some power in the relationship. Her power can also be seen in her summoning him to run her a bath, and after they had split up, in March 2022, her sending him to the shops to bring her wine, bin bags, orange juice and rocket. She felt able to supervise his contact and was able to insist on that when the parties first separated. And she has displayed aggressive, angry confrontational behaviour to a third party which she has denied.

62. I must consider whether there is enough evidence for me to make the finding the mother has sought in relation to being hit by the door. I accept that it could very well have happened the way the mother said. But in this case there is an absence of a pattern of physical violence from the father, there is an absence of any photographs of bruising or cuts, there is an absence of the mother having told her friend about it and there is no evidence, in my view, of an imbalance in the dynamic between the parties which would make such behaviour on the part of the father likely. I can not rule out that the incident occurred as the mother alleges. But taking the evidence as a whole, I can not find that there is enough evidence to substantiate the allegation, and I therefore **make no finding.**

Allegation 9

63. The ninth allegation is that in February 2022 after removing C's nappy the father stared at her private parts in a way that left the mother concerned that he may pose a sexual risk to C. The father vehemently denies the allegation. On behalf of the mother a thorough line of questioning was put to Dr Dowd about the father's diary entries referring to an interest in "girls". Dr Dowd said there was no evidence the father's interest in girls was paedophilic (or indeed paraphilic), and that was borne out by the father being able to say who the three named "girls were". All are adult women. Likewise a robust line of questioning was put to the father about the way in which his early sexual experiences had been of looking at his sister's vagina when she was a child. The implication appeared to be that because the first vagina he had seen was a child's, and that had been one from which he received sexual pleasure, that he would be likely to have a sexual interest in female children. The father simply denied it. I note that Dr Dowd was well aware of the mother's allegation of staring, and was

aware of the father's earlier experience. He still concluded that the father posed no sexual risk to C. I did not hear anything in the cross examination of either witness which caused me to doubt Dr Dowd's assessment.

64. In submissions the mother's counsel argued that the father was undiagnosed and untreated. The implication appeared to be that there was an unknown risk. With respect, I do not agree with that analysis which appears to contain within it a confusion between "undiagnosed" and "unassessed". The father has been assessed, and has been found to have no diagnosis. That is not the same thing as being "undiagnosed". I do not accept that he is undiagnosed. As to his being untreated, whilst it is true that he has not yet had the therapy which Dr Dowd considers he requires, Dr Dowd was clear that the purpose of any such therapy was to help the father himself and to alleviate any *indirect* risk to C. It was not needed to reduce direct sexual risk to C, since that was not a feature of the case. That being so, the fact of him being "untreated" is not relevant to my consideration of this allegation, which is an allegation about him being a direct sexual risk.

65. I have already said that I accept Dr Dowd's conclusions and given reasons for that. None of the submissions or cross examination on this topic caused me to change my view. The fact that the mother did not mention this allegation in her solicitor's letter of 22 August 2022 or in her conversation with the Cafcass officer casts further doubt on the allegation. Taking that into account, and having accepted the expert opinion that the father does not pose a sexual risk to C, **I decline to make the finding sought about him staring at her genitalia.**

Allegation 10

66. The tenth allegation is that on 4 July 2024 at a contact handover the father got angry, and yanked the pram from the mother's hands, tilting it so that it almost toppled over and C tilted to one side. He then took her away for a 10 minute walk with the mother not knowing where they were.

67. The father was asked about this in cross examination. He said that the pram did not fall over and C was not harmed. That did not appear to be challenged. The allegation was not actively pursued in evidence, and I **decline to make any finding on it.**

Allegation 11

68. The eleventh allegation is that because of the diary entries and the activities which they record, the father poses a risk of sexual harm to C by way of her suffering sexual abuse and/or being exposed to inappropriate sexual behaviours and boundaries. It is alleged that the father has demonstrated no insight into the risks for C.

69. I have already made findings about some of these issues, but I extend them and set them out formally here. I find that **the father poses no direct sexual risk to C, but his sexual behaviours create an indirect risk to her. An example of an indirect risk would be his having had a relationship with his ex-partner which contributed to the breakdown of his relationship with C's mother, with consequences for C. As a further example of an indirect risk (but not making any finding that it applies in this case) if the father (or any father) were to engage in the use of sex workers that could have an indirect impact on the child in terms of the family's financial resources being used for that, and in terms of the implications for a child if their father's activities are disclosed in a public forum. I give these examples to make it clear that an indirect risk is not a risk of the child being exposed to pornography or witnessing sexual activity by her father. Those would be direct risks, and I have made it clear they do not apply in this case.**

Allegation 1

70. I return then to the first allegation which is an allegation that the father has been physically, sexually, psychologically and emotionally abusive to the mother from January 2021 to March 2022. It is clear that there has been bad behaviour within this relationship. I have already said I do not accept the mother's characterisation of the relationship as a whole, and I have found that she has had some power and control in the relationship. I prefer the father's characterisation that this was a relationship which featured arguments. I do not doubt that the mother often found these distressing and that she told her friend about them, albeit sometimes in exaggerated

form. I do not doubt that she considers herself a victim. But I remind myself of the definition of domestic abuse and the case law quoted at the start of this judgment. I have not made any findings which amount to physical, sexual, emotional, psychological, economic or other abuse. I have made no findings as to violent or threatening behaviour or controlling coercive behaviour. I have considered both the individual allegations in the schedule but also the overall characterisation of the relationship, in other words the parties' narratives. Within the arguments which the parties had there may have been bad behaviour on one or both sides, but I remind myself that not all directive, assertive, stubborn or selfish behaviour, will be 'abuse' in the context of proceedings. Although this has been an unhappy relationship, and one which caused both parties distress, **I do not find that it has been an abusive relationship.**

71. That concludes my consideration of the allegations.

Post script

72. This has been an unusual case. The diaries, and the father's willingness to take ownership of them and to discuss them, has set it apart from the ordinary run. Having considered the overarching issues of the case I find that I can understand why the mother was horrified at what she read in the diaries. However it is my view that much of the difficulty in this case has been caused by various people taking what I consider to be the wrong view of those diaries. I note, for example, the description of them in the mother's solicitor's letter which characterises the contents as "inappropriate sexual behaviour including a sexual relationship with your sister". In my opinion this is the wrong description. The correct description would have been "the sexual abuse of the father as a child". I cannot help but think that if it had been a little girl who had been abused by her older brother it is likely that that is the description (substituting "mother" for "father") that would have been used. I am concerned that there is a double standard here. As it was, the view taken, namely that the father had engaged in inappropriate sexual behaviour with his sister, has led into a cul-de-sac of anxiety and blame. We must now come out of that cul-de-sac and accept the father for what he is: an abused child who poses no direct sexual risk to his daughter.

73. My next task will be to consider where we go from here. The father is currently having three hours of contact per week, supervised. In light of the outcome of this fact-finding hearing, and in light of the overwhelmingly positive contact reports, it is my view that that needs to be urgently increased, and that it can now become unsupervised. I would be grateful if the parties would have discussions on that basis and try to reach an agreed way forward before the next hearing.
74. In my view it would be beneficial if the court were able to make a final contact order at the next hearing by consent. If that cannot be achieved, the parties are asked to consider the terms of a direction for a s7 report. I hope that will not be necessary. S7 reports are currently taking 23 weeks, and it will not be in the interests of C to have her parents continue this litigation into 2025 when they should now be focussed on her, and not on court proceedings.

END OF JUDGMENT