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IN THE FAMILY COURT

Re TQC (Domestic Abuse: Findings)
Neutral Citation Number: [2024] EWFC 279 (B)
9 October 2024

Before His Honour Judge Middleton-Roy

Between:

A Father

Applicant

- and -

A Mother

1st Respondent

**The Children ‘T’, ‘Q’ and ‘C’
through their Rule 16.4 Guardian**

2nd, 3rd and 4th
Respondents

Lucy Taylor, Counsel for the Applicant

Kate Grieve, Counsel for the First Respondent

Danniella Betsworth, Counsel for the Second, Third and Fourth Respondents

Hearing Dates 2 and 3 October 2024

APPROVED JUDGMENT

This judgment was handed down remotely at 09:30 on 9 October 2024 by circulation to the parties’ representatives by email.

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His Honour Judge Middleton-Roy:

1. The Court is concerned with three children under the age of seven. They will be referred to in this judgment as 'T', 'Q' and 'C'. Their father applies for a Child Arrangements Order seeking the Court to determine with whom the children should live and how much time the children should spend with each parent.
2. The mother asserts that she and the children have each been the subject of domestic abuse perpetrated by the father. The father denies those allegations.
3. The mother has two older teenage children ('U' and 'D'), who are not the subject of these proceedings. In interviews with the police, the older children gave the following accounts of life in the family home with the father:

The child 'U':

"He was always very aggressive and angry...if something didn't go his way, he'd throw something...or he'd end up lashing out on one of us...he...used to tend to hit the little ones a lot more...he used to lash out on the little ones...he would be verbally quite horrible to us and say horrible things...if something didn't go his way, he would throw things or he'd break something...there was a time...when he strangled ['C'] and threw him out his high chair when he wasn't eating his dinner properly...he just got annoyed and picked him up...got rid of him and pushed the high chair and stormed out...he literally...lifted him and chucked him...he did push him to the ground and just kind of stormed out...['C']...started screaming...he was screaming like he was really hurt...I went straight over to him but I didn't want [the father] to see I was with him too much or else he would have come and had a go at me for giving him sympathy...when ['C'] gets his nappy changed...he used to like hit him...he'd smack him on the leg or something like that...he used to be quite aggressive towards him...he would slap him on the leg or push him...and shout at him...if ['C'] cried quite a bit...he used to kind of shake him to shut him up or at least try to...scare him so he'd be quiet...if he saw something he didn't like, he would hit ['Q'] or he would push her...if ['T'] done something...he would hit him or push him or slap him in the face, slap him on the back...['T'] kept on asking for chocolate when he hadn't eaten his dinner...[the father] kept on going to him, 'I dare you to say it again, I dare you to say it again', so ['T's] not really thought twice about and said it again then [the father] slapped him around the face and he's fallen over...['T's] ended up on the floor...he was crying...when he was in the bath...[the father] was bathing ['T'] and he hit him around the neck. There has been a couple of times where there has been slap marks left and stuff...he was telling me that Daddy had hit him, smacked him...[there was an incident when] ['T'] was probably about three...he started drawing and colouring...he's drew on one of the chairs...when [the father's] seen it, he lost it and slapped him off the chair and on the ground because he was angry that he vandalised his property....He's slapped ['Q'] across the room before quite viciously...

['D'] and I used to watch it...it used to be really hard for us...['D'] used to wanna say something but he knew if he said something, he'd probably end up hitting him...we were scared because he was gonna hit us...['D'] like had watched [the father] pick on ['Q'] the whole night and ['D'] said to him 'stop it, leave her alone' after he slapped her and [the father] just went off on one, he kept going to him, 'You're lucky you're not my son. I would have been hitting you by now'...he slapped her and she's kind of flopped like flopped where he's pushed her...he smashed ['D']'s phone...he just asked ['D'] to do something and then ['D'] kept his phone in his hand...[the father's] grabbed it, started shouting...he took ['D's] phone, put it on the sofa and...started throwing [a toy] bus at it...that actually smashed it...it was all cracked...['D'] was too scared to tell mum about it...he used to say to ['D']... 'I feel sorry for your dad that you're his son...you're lucky you're not my son'...he used to say to me that I'm lucky I'm not his daughter or else he would have knocked 10 bales of shit out of me...he used to threaten us a lot with hitting us...if he got really angry, he'd be like, 'I don't care who your dad is, I'll hit you and I'll take him on as well if I have to' and just actually make you scared because it's like if

he doesn't care what my dad says or what my mum says, what's stopping him...at first like I used to be really scared, especially if he mentioned that like my dad into it because like a part of me, like my Dad will defend me but at the same time would he twist it and make it out like it wasn't what I say it is...so I was scared but it got to a point towards the end where I got, I thought it was like empty threats but then when he hit my Mum that's what scared me the most that he's show that he's not afraid to hit somebody older and a woman so that's what I think made me think ok yeah, he's gonna like do that to me now....

[He's been in my life] six and half years. [I've been scared of him for] six years...he just didn't like me and everybody in my family knew that he didn't like me...he just used to be like, you're stupid, you've got no common sense...you're too stupid...you're useless, you're lazy...you'll be leaving when you're 16, you're not staying here...he used to make me really like feel unwelcome at home because he used to always...mention it, he'd be like, or even in front of his mates, like, you know ['U's] moving out next year...he used to always try and pick arguments...he's quite mean to ['D']...he started throwing digs at him and just saying not really nice things whenever he could....it got to a point like where it was so bad me and ['D'] didn't want to stay downstairs. As soon as the babies went to sleep, we'd go and sit in my room...we just kind of disappeared...it got to a point where I thought hitting a kid...where it happened so much I thought I started to think that like that was normal as such and it wasn't as bad as what it always used to seem to me...but the more I think about it...the more its spoken about at school...I know that it's wrong...hitting them like full force or like using heavy handedly, that's completely different, that's wrong.

Since he's not been at home...it's a lot more peaceful...there's not many disagreements. We're all kind of quite happy and we all spend a lot more time together now...we all have to help each other to get through it because it's hard on all of us...I would rather never see him again..."

The Child 'D':

"When [Mum] was out...if [the children] started saying something and it used to annoy [the father], he used to just go and whack 'em...my younger sister...he hit her, she landed on the floor...and I shouted, I shouted, I built up the courage, because I was scared of him at that moment but I'd had enough. I just kind of was like really sad at seeing...how he was like hitting her all the time. So, I built up the courage to tell him to stop. And then he shouted at me about it, and said, 'If you were my kid, I would have hit you or something.' And then there was this other time, it was about erm Easter time, because there was these decorations about...['T'] asked for a chocolate and he hit him, he landed on the floor near the front door...He slapped him across the back of the head, he fell on the floor...he was just crying...that really hurt them...he used to like shout at ['U'] like a lot like all the time...he used to just call her lazy all the time and err yea he'd just be horrible to her. Like shout at her and that lot...there's been incidents where I've done stuff like that are wrong, like, years ago. He's just bring it up in front of other people, and he'd usually just like shout at me sometimes...he was angry at me about something. He basically threw my phone onto the sofa, got one of the baby's toy buses and smashed it against the phone...smashed up my phone with it...It makes me feel sad...I like got a mixture of anger and like sadness mixed with it. Like sad about like how I see him hitting and I haven't done anything about it...there was one time when I told him to stop, it's like...I see him hit the kids like a few times, like why have I not done anything about it? I feel that guilt as well...for like ages like I, I was, I was actually really scared of him when I saw what he did to the kids...I was more scared that he was gonna hit my sister ['U'], or my Mum...I was more scared he was gonna hit one of the people in the house, like obviously I was a bit fearing like is he gonna hit me soon or something but it was more about if he hit my other family members...like every few days or something or every like couple of days like hit the kids, if they did something...he said to me, he feels sorry for my dad for having like me as a son...He's like, just angry...he'd usually get quite angry at them...it was usually when mum went out...he would usually like hit them or something...it just made me sad like how someone could say that to me. Or something like, how can someone say that?...He'd used to, like, hit ['C'] when he had his nappy changed when he was whinging cause ['C']'s a bit different to like the other ones. He doesn't really understand...about stuff. So yeah, he'd usually start whinging if he had his nappy

changed. He'd usually, like, slap him or something...At the dinner table...there's like only...a couple of times when he had to feed him. If ['C']...messed about or something, he'd hit him as well, he'd get violent at him. And ['C'], at this, at this point was like, he didn't understand what he was doing and it wasn't really helping him at all...I found...if we wanted to hug [the children] or something, or pick 'em up, they would like flinch if we raised our hand 'cause he used to hit them so they'd usually like flinch when he's hit them. So, they obviously were frightened of it when someone raised their hand, so that's what he's done to them."

4. Domestic abuse can inflict lasting trauma on victims and their extended families. That is especially so for children and young people who either witness the abuse or are aware of it having occurred: *"Domestic abuse is rarely a one-off incident and it is the cumulative and interlinked physical, psychological, sexual, emotional or financial abuse that has a particularly damaging effect on the victims and those around them"* (*JH v MF (Rev 2)* [2020] EWHC 86 per Russell J).
5. The disputed assertions made by the mother of domestic abuse perpetrated by the father requires the Court to make determinations in respect of the facts, prior to making any decision in respect of the welfare of the children in order to provide a factual basis for any welfare report or other assessment, to provide a basis for an accurate assessment of risk, to consider any final welfare-based orders in relation to child arrangements and to consider the need for a domestic abuse-related activity.
6. In line with the Practice Guidance of the President of the Family Division issued in December 2018, the names of the children and the adult parties in this judgment have been anonymised, having regard to the implications for the children of placing personal details and information in the public domain.
7. The Applicant will be referred to in this judgment as 'the father'. The Respondent will be referred to in this judgment as 'the mother'.
8. The children 'T', 'Q' and 'C' are parties to these proceedings through their Guardian, appointed under Family Procedure Rule 16.4. The children live with their mother. The children have had no contact with their father for two years.
9. The father lodged his application with the court on 23 March 2023. The action was initially allocated to Lay Justices before being re-allocated to a Circuit Judge. The allocated Judge considered it was necessary for the Court to hold a separate hearing to determine the disputed allegations of domestic abuse. In determining that a separate Fact Finding Hearing was necessary, the allocated Judge gave further directions to identify that only those allegations which are necessary to support the processes should be listed for determination. Directions were given by the allocated Judge for the provision by the parties of a schedule of allegations, narrative witness statements and disclosure of documents, including evidence held by the police. A decision was taken in the course of the proceedings not to permit the older, non-subject children to give oral evidence in Court. The allocated Judge then listed the Fact Finding Hearing before me.
10. There is a background of proceedings under Family Law Act 1996 in which the mother applied for a Non-Molestation Order and for an Occupation Order. A Non-Molestation Order was made by the Court against the father on 1 November 2022 and subsequently extended to 1 August 2024. An Occupation Order was made by the Court on 16 December 2022, requiring the father to vacate the premises they previously shared as a family, permitting the children and the mother to remain in the premises. The Occupation Order remains in place until the parties have resolved all financial claims between them. There are ongoing Court proceedings under Trusts of Land and Appointment of Trustees Act 1996. There are further civil proceedings wherein the father made a claim against the mother in respect of a car.
11. On 4 August 2023 the father was convicted in the Magistrates Court of assaulting the mother. He appealed that conviction. The appeal against conviction was dismissed. The appellate Court increased the sentence against him.

12. As this case concerns allegations of domestic abuse, including coercive and controlling behaviour, this Court has followed the principles and guidance at PD 12J of the Family Procedure Rules 2010, and the guidance given by the Court of Appeal in Re H-N and Others (children) (domestic abuse: finding of fact hearings) [2021] EWCA 448 (Civ). The Court expressly records that the safeguards necessary under Family Procedure Rule 3A, Practice Direction 3AA and Practice Direction 12J have been put into effect. Separate waiting areas in the Court building were made available for the parties. A privacy screen was in situ in the court room. Breaks in the evidence were provided, with ground rules identified at a pretrial review and revisited at the commencement of the Fact Finding Hearing. Judicial continuity has been maintained since the pretrial review. The action will further be reserved to me for future welfare decisions. In giving those directions, this Court has put into effect the overriding objective under FPR 1.1.
13. Practice Direction 12J reminds us that there are many cases in which the allegations are not of violence, but of a pattern of behaviour which it is now understood is abusive. This has led to an increasing recognition of the need in many cases for the court to focus on a pattern of behaviour.
14. 'Domestic Abuse' is defined in Practice Direction 12J as including any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, psychological, physical, sexual, financial, or emotional abuse. Domestic abuse also includes culturally specific forms of abuse including, but not limited to, forced marriage, honour-based violence, dowry-related abuse and transnational marriage abandonment.
15. 'Coercive Behaviour' is defined in PD12J as meaning 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.
16. 'Controlling Behaviour' is defined in PD12J as meaning 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.
17. The circumstances encompassed by the definition of 'domestic abuse' in PD12J fully recognise that coercive and/or controlling behaviour by one party may cause serious emotional and psychological harm to the other members of the family unit, whether or not there has been any actual episode of violence or sexual abuse:

“In short, a pattern of coercive and/or controlling behaviour can be as abusive as or more abusive than any particular factual incident that might be written down and included in a schedule in court proceedings. The harm to a child in an abusive household is not limited to cases of actual violence to the child or to the parent. A pattern of abusive behaviour is as relevant to the child as to the adult victim. The child can be harmed in any one or a combination of ways for example where the abusive behaviour is directed against, or witnessed by, the child, causes the victim of the abuse to be so frightened of provoking an outburst or reaction from the perpetrator that she/he is unable to give priority to the needs of her/his child, creates an atmosphere of fear and anxiety in the home which is inimical to the welfare of the child, risks inculcating, particularly in boys, a set of values which involve treating women as being inferior to men” (Re H-N and Others (children) (domestic abuse: finding of fact hearings) [2021] EWCA 448 (Civ)).

18. This Court has had the unique benefit of hearing oral evidence from the parents. To have seen the witnesses puts me, as the Judge determining the facts, in a permanent position of significant advantage. I, and only I, have had that advantage of seeing and hearing the witnesses give evidence and be the subject of cross-examination. Mindful as I am as to the fallibility of memory and the pressure of giving evidence, it is essential that I form a view as to the credibility of each of the witness, utilising this Court's accumulated experience of seeing and hearing witnesses and assessing credibility in the investigation of truth. To this end, oral evidence has been of great importance in the unique environment of the court room, enabling this Court to discover what

occurred in the investigation of the truth and in assessing the reliability of the witnesses. The oral evidence of the witnesses has been considered together with all the documentary evidence in the case, including a bundle of documents comprising 572 pages, in addition to a series of audio recordings relied on by the father and recorded videos of the police interviews of the father and the older two, non-subject children. The Court had the benefit of receiving written submissions from Counsel for each party for which the Court is grateful. It is neither possible nor necessary for the Court to address in this judgment each piece of evidence read or heard nor to address each submissions made. Nevertheless, the Court has considered the same and given it careful scrutiny.

The Relevant Law

19. The following principles apply, which this Court has expressly taken into consideration and applied in its decision making, summarised in *Re JK (A Child) (Domestic Abuse: Finding of Fact Hearing)* [2022] 1 FLR 657.
20. The burden of proof lies on the party making the allegation.
21. To prove the fact asserted, that fact must be established on the civil standard, that is, on the simple balance of probabilities. There is only one civil standard of proof, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Neither the seriousness of the allegation nor the seriousness of the consequences makes any difference to the standard of proof to be applied in determining the facts. If the Court finds it more likely than not that something did take place, then it is treated as having taken place. If the Court finds it more likely than not that it did not take place, then it is treated as not having taken place. Where a fact is required to be proved, a 'fact in issue,' the Court must decide whether or not it happened. There is no room for a finding that it *might* have happened. The law operates a binary system. The fact either happened or it did not. If the Court is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, the fact is treated as not having happened. If the party does discharge the burden of proof, it is treated as having happened (*Re B* [2008] UKHL 35, per Lord Hoffman).
22. Findings must be based on evidence, not suspicion or speculation (*Re A (A child) (Fact Finding Hearing: Speculation)* [2011] EWCA Civ 12 per Munby LJ).
23. The Court must take into account all the evidence and consider each piece of evidence in the context of all the other evidence: *Re T* [2004] EWCA Civ 558, [2004] 2 FLR 838. Per Dame Butler-Sloss.
24. If the evidence in respect of a particular finding sought is *equivocal* then the Court cannot make a finding on the balance of probabilities as neither the burden nor the standard of proof is discharged: *Re B (Threshold Criteria: Fabricated Illness)* [2002] EWHC 20 (Fam), [2004] 2 FLR 200).
25. The decision on whether the facts in issue have been proved to the requisite standard must be based on all the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors (*A County Council v A Mother, A Father and X, Y and Z* [2005] EWHC 31 (Fam)).
26. In assessing whether the evidence is sufficient to lead to a finding, it is not necessary to dispel all doubts or uncertainty (*Re D (A Child)* [2017] EWCA Civ 196).
27. The Court must not evaluate and assess the available evidence in separate compartments. Rather, regard must be had to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence to come to the conclusion whether the case put forward has been made out on the balance of probabilities. The Court must take into account all of the evidence and consider each piece of evidence in the context of all the other evidence. A Judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion

whether the case put forward has been made out to the appropriate standard of proof (Re T [2004] 2 FLR 838 at 33, per Dame Elizabeth Butler-Sloss P).

28. Failure to find a fact proved on the balance of probabilities does not equate, without more, to a finding that the allegation is false. An alleged fact not proven is not a fact in English law. That is the effect of the binary system of proof: if a negative is to be proved, that has to be proved with cogent evidence, just as if the positive is to be proved. It is not a correct proposition of law that a rejection of evidence mandates a judge to find that something is false (Re M (Children) [2013] EWCA Civ 388).
29. The evidence of the parents is of the utmost import and to this end the Court will make a clear assessment of their credibility and reliability. The Court is likely to place considerable weight on the evidence and the impression it forms of the parents (Re W (Non-Accidental Injury) [2003] FCR 346).
30. In assessing and weighing the impression which the Court forms of the parents, the Judge appraising witnesses in the emotionally charged atmosphere of a contested family dispute should warn themselves to guard against an assessment solely by virtue of their behaviour in the witness box and to expressly indicate that they have done so: *“No doubt it is impossible, and perhaps undesirable, to ignore altogether the impression created by the demeanour of a witness giving evidence. But to attach any significant weight to such impressions in assessing credibility risks making judgments which at best have no rational basis and at worst reflect conscious or unconscious biases and prejudices. One of the most important qualities expected of a Judge is that they will strive to avoid being influenced by personal biases and prejudices in their decision-making. That requires eschewing judgments based on the appearance of a witness or on their tone, manner or other aspects of their behaviour in answering questions. Rather than attempting to assess whether testimony is truthful from the manner in which it is given, the only objective and reliable approach is to focus on the content of the testimony and to consider whether it is consistent with other evidence (including evidence of what the witness has said on other occasions) and with known or probable facts.”* (Re M (Children) [2013] EWCA Civ 1147 per of Macur LJ).
31. In principle, the approach in private Family Court proceedings between parents should be the same as the approach in care proceedings. However, there are specific risks to which the court must be alive. Allegations of abuse are not being made by a neutral and expert local authority which has nothing to gain by making them, but by a parent who is seeking to gain an advantage in the battle against the other parent. This does not mean that they are false but it does increase the risk of misinterpretation, exaggeration or fabrication (Re W (Children) (Abuse: Oral Evidence) [2010] UKSC 12).
32. Intention to cause harm does not need to be proved to make a finding of abuse. None of the authorities require that a positive intent to molest must be established (GK v PR [2021] EWFC 106, Peel J. and Re T [2017] EWCA Civ 1889).
33. The definitions of rape, sexual assault, and consent used in the criminal justice system should have no place in the Family Court. The fact that adult parents had previously or subsequently engaged in consensual sexual activity of any sort does not mean that they were not raped or sexually assaulted on another occasion. The intelligence or otherwise of a victim of sexual assault or of any assault in the context of an intimate relationship is nearly always irrelevant to the reporting of an assault to the authorities. Victims of whatever age, race, sexuality, appearance, intelligence, and background often have the greatest difficulty in reporting when an assault has occurred because of shame, fear of being disbelieved or fear that the process of reporting an assault will itself be traumatic. A Family Court Judge must consider a “wide canvas” and scrutinise the family relationships, whether of adult to adult or adult to child over a period of time in order to arrive at a factual determination relevant to both risk and welfare. (A and Another [2022] EWHC 3089 (Fam), per Knowles J.)

34. The focus and purpose of a fact-finding investigation in the context of a case concerning the future welfare of children in the Family Court are wholly different to those applicable to the prosecution by the State of an individual before a Criminal Court. The primary purpose of the Family Court process is to determine what has gone on in the past, so that those findings may inform the ultimate welfare evaluation as to the child's future with the Court's eyes opened to such risks as the factual determination may have established. Criminal law concepts, such as the elements needed to establish guilt of a particular crime or a defence, have neither relevance nor function within a process of fact-finding in the Family Court. As a matter of principle, it is fundamentally wrong for the Family Court to be drawn into an analysis of factual evidence in proceedings based upon criminal law principles and concepts (*Re R (Children) (Care Proceedings: Fact-finding Hearing)* [2018] EWCA Civ 198 ["Re R"] at [82] per McFarlane LJ).
35. The Family Court should be concerned to determine how the parties behaved and what they did with respect to each other and their children, rather than whether that behaviour does, or does not, come within the strict definition of "rape", "murder", "manslaughter" or other serious crimes. Applying criminal definitions narrows the court's focus inappropriately away from the wider consideration of family relationships at play in a fact-finding hearing (*Re H-N and Others (Children) (Domestic Abuse: Finding of Fact Hearings)* [2021] EWCA Civ 448).
36. Behaviour which falls short of establishing 'rape', for example, may nevertheless be profoundly abusive and should certainly not be ignored or met with a finding akin to 'not guilty' in the family context. For example, in the context of the Family Court considering whether there has been a pattern of abusive behaviour, the borderline as between 'consent' and 'submission' may be less significant than it would be in the criminal trial of an allegation of rape or sexual assault (*Re H-N and Others (Children) (Domestic Abuse: Finding of Fact Hearings)* [2021] EWCA Civ 448).
37. It is not uncommon for witnesses in these cases to tell lies during the investigation and the hearing. The Court must be careful to bear in mind that a witness may lie for various reasons, such as shame, misplaced loyalty, panic, fear, distress. The fact that a witness may have lied does not necessarily mean they are guilty of the matter alleged against them and the fact that the witness has lied about some matters does not mean that he or she has lied about everything: see *R v Lucas* [1981] QB 720.

The Allegations

38. The mother's assertions about the father's behaviour fall into five categories:
 - (1) Sexual abuse of the mother;
 - (2) Physical abuse of the mother;
 - (3) Physical abuse of the children;
 - (4) Emotional abuse of the mother;
 - (5) Controlling behaviour against the mother; and
 - (6) Emotional abuse of the older non-subject children, 'U' and 'D'.
39. It is accepted between the parents that their relationship began in January 2016. They started to cohabit in May 2017. Their relationship ended in August 2022.
40. It is not in dispute between the parties that, prior to their relationship commencing, the father had an historical criminal conviction for possessing an offensive weapon in public, under s.1 Prevention of Crime Act 1953. He was bound over for 12 months. It is significant in these proceedings that, notwithstanding the fact of that conviction, the father denies he was culpable.
41. Further it is not in dispute that the father has a conviction dated 4 August 2023 for common assault by beating of the mother. Once again, notwithstanding the fact of the conviction, the father denies he was culpable. His appeal against conviction was dismissed. This Court does not go behind the fact of the conviction.
42. The details of the offences for which the father was tried are recorded in the evidence from the police:

“[The mother] has alleged that on Thursday 4th August 2022 at around 0900hrs [the father] has turned up at their home address...unannounced shortly after returning home from work and accused [the mother] of having an affair with one of the builders that was working on their house extension. [The father] has played a Dictaphone recording to [the mother] of what he stated he believed to be heavy breathing sounds. [The father] and [the mother] have then had a physical altercation and he has jumped on top of her and placed his hands around her neck. [The mother] has bitten [the father] on the nose during this in attempts to get him off her. [The father’s] elbow struck [the mother’s] lip amongst the struggle and caused it to bleed. [The father] has then thrown [the mother] to the floor and punched her to her right eye causing a large black eye. Once stood up [the father] has then thrown [the mother] into their ensuite bathroom door frame causing her head to strike it. [The father] has then gone to punch [the mother] to the face again and their children have then intervened, and the physical altercation stopped.”

43. The mother gave a statement to the police on 4 August 2022 in which she stated that, during sexual intercourse, the father grabbed her by the throat, *“I have been upset. I have not directly told him no but due to be crying he could see I did not want him to do that.”* The mother further stated that in March 2019, *“He grabbed me by the neck and has restricted my breathing for 4 or 5 seconds and my face went numb and lost sensation in my face and I feared he could of killed me...I was concerned for my safety.”*
44. The mother further recorded in her police statement that in November 2020 the father, *“was taking [‘T’] who was 3 years old for a bath and would not stop crying...[the father] has hit him on the back. I believed it to be a punch and left a mark on the back of his neck and he had to miss a day of school.”*
45. The statement further records, *“On 4 August [2022] [the father] has returned him from work and accused me of cheating and by playing a Dictaphone of me breathing and stated I was sleeping with the builder. He has then grabbed me by the neck with both hands...I have then bit him the nose [sic] for my own safety to get him off of me, [the father] has thrown me to the floor and knocked me to the floor and punched me to the left eye causing a black eye. Both of us have got up and ended up shuffling and he has thrown me into the door and caused a lump to my head. He has then gone downstairs and an argument has continued and he has left the scene.”*
46. The mother did not seek to bring a criminal prosecution against the father, *“due to not wanting to criminalising my partner as he is the father to my children and believe this is a one off and that his behaviour would change after this.”*
47. Photographs were taken of the mother by the police showing a bruising to her eye, a lump to her head, a swollen lip, a red mark to her neck and bruising to the leg.
48. On 15 August 2022, the mother provided a further statement to the police, recording, *“between April 2019 and June 2022 when [the father] and I have had sexual intercourse, I have often found myself crying. This was due to [the father] frequently putting his hands around my neck very tightly and applying pressure. Although I have clearly been crying, I have not told [him] to stop but I have also not consented to this...in March 2019 I was having sexual intercourse with [the father]...during this he has grabbed my neck firmly with both hands and squeezed hard for around 4-5 seconds...this restricted my breathing and caused me to feel a numbing sensation in my face...I was crying when this happened as it was causing me so much discomfort. It is my honest belief that if he held me down any longer then I could have died. At the time I accepted this as anormal part of the relationship. He would often pinch me, slap me and pull my hair and I would often have bruising on me. My family often commented on this bruising...on reflection, I believe that [he] would use sexual intercourse as a way of exerting his domination and power over me. On every occasion that I had sexual intercourse with [him] I saw it as one of my chores such as ironing and cooking and I felt as if I had to have sexual intercourse with [him] as it was my duty and due to my Multiple Sclerosis (“MS”) it often feels painful. I informed [him] of this and that I did not enjoy it mainly because of my MS. He was initially upset by this and said that he felt neglected by me.”*

49. The mother further recorded in her second police statement that the father, *“has always had what I call a tracker on me which is [an app] which we both used. [He] has regularly turned up at my location when I have been out of the house walking in order to help my MS because he was worried about where my location was and would say that my tracker had stopped moving and he was checking my safety. However, he has never called or messaged and has just turned up there.”*
50. In respect of the incident of 4 August 2022, the mother recorded in her second statement to the police, *“At around 0900hrs I was in my bedroom upstairs inside my home and I was steaming the curtains. [The father] has returned home from work at this time after leaving at 0800hrs and has started a verbal conversation with me inside the bedroom and has shut the door behind him. He immediately told me to sit down, and I sat at the end of the bed. He was standing in front of me and pointed at me and said, ‘You’ve been cheating on me with the builder.’ [The father] looked visibly angry at this point. He then pulled out a silver Dictaphone device out of his pocket with his right hand and played what sounded like a recording of me breathing heavily. He said ‘I’ve got proof. I’ve got the recording. I put in the room last night. I’ve been recording you for several weeks’ ...[He] has instantly jumped on top of me and has put both of his hands around my neck. There was not pressure being applied but it felt uncomfortable. [He] continued to shout in my face and his face was around 10cm from my face and I could feel his spit hitting my face as he shouted. I have then bit him on the nose for my own safety to get him off of me as I was trying to protect myself and this has caused him then to apply further pressure to my neck. [He] has then jumped up out of anger...His elbow then struck my mouth and went inside it. This made my lip bleed and caused swelling and a small lump. I then bit his elbow trying to protect myself. [He] has then thrown me on to the floor to the left of the bed and has then lent over me and has held my neck with his right hand and punched my right eye with his left hand which was clenched into a fist. I know that [he] used a lot of force as it caused me an extreme amount of pain and nearly 2 weeks on I am still in a lot of discomfort. I was kicking my legs out in desperation to get away from [him] and managed to stand up. At this point, [he] threw me into the door frame forcefully to our ensuite bathroom door frame. My head struck the door frame and I fell to the floor. At this point I did not feel that I would be able to stand up as I was in so much pain. I felt a sharp throbbing to my head and felt dazed however I did not lose consciousness. [He] has then got hold of me again and I recall his hand being around my throat again. [He] has then gone to swing at me again however did not make contact as at this point my eldest son [‘D’] and my eldest daughter [‘U’] had entered the room due to hearing the commotion. I noticed that [‘U’] was in the room too and [‘D’] immediately ran at [the father] as his fist went into the air and pushed him to get him off me. [‘T’] has also then run outside of the bedroom door, following his siblings but never entered the bedroom. The children were all shouting at [the father] that he was being ridiculous and that I had been with them the whole night previously. Shortly after this happened [the father] has then run downstairs towards the back garden, and I threw his keys and his vape outside of the house on to the patio. The verbal argument continued at this point in the garden. At this point [he] has called one of the builders and was aggressively shouting at him. [The father] tried to go back through the house, and he eventually left the house and went to his work and had played his Dictaphone recording to his colleagues. I was made aware of this because my eldest daughter's father also works at the garage, and he informed me of this over the phone at the time. I was also told that [the father] was telling people that I had attacked him and had inflicted injuries to myself. The builder that [the father] had phoned had then turned up at my house with another builder and stood on the doorstep. He saw the state of my face and was shocked and informed me that he was going to ring [the Paternal Grandmother]. [The Paternal Grandmother] has then attended and said to me words to the effect of ‘The way you dress and the way you answer back made him angry. You know he’s a jealous man. His father was the same and he slapped me around. I learned to keep my mouth shut to make my marriage last. You should do the same.’*
51. The mother’s statement further records, *“I did not call the police at this point as I was in complete shock, and I was still at the point of accepting that [he] was just having a bad day. We had previously had arguments that had become very heated and nearly got to this point and I have always let previous incidents go. I couldn't accept that I had just been the victim of what I now know to be domestic violence or that I had been assaulted...[he] showed no remorse at the time towards me despite me crying hysterically in front of him and screaming in pain and anger. I honestly believe that had the children of not entered the room and intervened at that time that I*

would be left with much more serious injuries. I was fearful for my life at the time. I then noticed swelling around my eye and forehead within an hour and bruising around my left eye appeared not long after this, the lip was starting to swell as well...I am now fearful for my safety because although [he] was initially displaying what I would deem as violent behaviour during sexual intercourse, he has now assaulted me in a normal setting outside of sexual intercourse leaving me with visible injuries. I believe that if I was to still be living with [him] and had not ended the relationship, he would have assault me again and that it could cause me even more serious injuries. At no point has [he] showed any remorse for assaulting me and leaving me with visible injuries. [He] is aware that I suffer with diagnosed Multiple Sclerosis. I had an MRI the day before this incident, and he is aware that I have a very fragile skull and that one knock to the head can be very serious. He is also aware that I was going through an MS relapse at that time and I was very weakened by the steroid treatment that I was taking at the time.”

52. The mother further records in her police statement, “On 7th August I attended [hospital] A&E department due to concerns around my head and how much pain I was in around that area and my thumb and due to a significant decline in my mental health...I was hysterically crying all the time and felt extremely low in mood and on occasion suicidal. I have attended the GP surgery regarding my MS following on from this and during the appointment I have mentioned to the GP how I am now struggling with low mood and having occasional suicidal thoughts. I feel traumatised by the incident and know that I need to get help regarding this...I have had to leave my home for the last few days and booked a short escape with close friends as I have felt too upset to be in the same home that I was assaulted in and I am not sleeping properly and getting sometimes only 2 hours sleep a night.”
53. The mother continued in her police statement, “[The father] turned up at our home on the morning of my birthday...At around 0300hrs I was awoken to banging sounds outside of the house by the front door. I looked outside of the window however could not see anything. At around 0307hrs I then received a text message from [him] wishing me Happy Birthday and that he had posted me some balloons. I personally think this sound was him trying to get into the house, I had changed the locks as advised by police and [he] would have been unaware of this.”
54. The mother provided the same account in her oral evidence to this Court. She told the Court that the assault against her by the father in August 2022 was witnessed by the older non-subject children: “[‘U’] walked into the bedroom during the assault...she was standing in the doorway and froze...[‘T’] would have seen the end part of the assault when [the father] had me round the neck...[‘D’] came in and pushed him off me or I would have been far worse. I got between my son and [the father] in the doorway. He was going to hit him.” The mother told the Court that whilst assaulting her, the father referred to her in derogatory terms including “whore”, “slag” and “bitch”.
55. The mother asserts that in April 2020, she was sexually assaulted by the father. She records in her statement, “I suddenly had an episode of paralysis. I couldn’t feel from the chest down, stand without aid or falling, use of my left arm/hand. I was admitted to [hospital] for testing. I was diagnosed with Multiple Sclerosis. After steroid treatment and physiotherapy, I was discharged with a walking frame as some sensation had come back. It was agreed that [the father] would take care of me at home with home visits from medical professionals. Ideally, I would have gone to a rehabilitation but this was the height of Covid and the concern of me catching an infection after steroid treatment was too great. On my first night home, [the father] laid me on the sofa and went for a shower. I cried, I was devastated at the diagnosis of an incurable illness that can be so disabling. The uncertainty of the unknown future and what impact this might have on my family, my children and their care as well as my relationship. I didn’t know how much I could recover between relapses and was deeply scared. I really wanted a hug and reassurance, comfort and love from my partner which was the opposite of what I was experiencing which was cold and uncaring. [The father] pestered me for sex saying ‘I haven’t had it is ages’, I said ‘I don’t want to, it hurts when you touch my torso or arm. It feels like I am being burnt’. MS is a nerve condition and causes burning sensations. I added that I have numbness down below too. I thought he understood that. He seemed sympathetic. He helped me up to bed. I was naked in bed as clothing made my skin uncomfortable. Once in bed, he was pestering me again, trying to make me feel guilty. I

reminded him 'It's not that I don't want to. It's that I'm in pain and don't want to be hurt'. In bed, [he] went to put his arm around my torso area. I was laying on my left side. I asked him to move his arm as it felt like fire. He leaned over to kiss me, I kissed him back and said 'I don't want this to lead to sex and it always does.' He said 'he hadn't had it in ages and won't last long'. He wouldn't give up. I gave up explaining why. He put his penis inside me and had sex with me. I was crying in pain from my torso area where he was holding me. I couldn't feel much down below. There was no violence on this occasion. Our 10 month old son was sleeping in the cot beside our bed so I was aware of this and stayed quiet. He ejaculated and it was over quickly. I lay there silent after. He tried to talk to me but I ignored him. He gave up and went to sleep. This was rape. I thought that because I hadn't fought him off then it wasn't rape. I now understand that this was and he should've respected my wishes at the time and that I didn't want to on that particular occasion. I was shocked that he could do this to me when he could see how poorly I was. I thought he would take care of me. I felt vulnerable and reliant on him as I was now facing a life with an unpredictable disability. I thought I would never walk far without an aid again. I wished I was back in hospital but didn't want to be without my children."

56. Further, the mother told the Court in her oral evidence, "I had no privacy. He would follow me out of the home...If I'd have turned off the tracker I'd have got a punch...he would turn up where I was, leaving the children at home...He recorded me in my own home...he had a recording device in the bedroom and in the living room...he did not like me wearing certain things...he would not allow me to put fuel in my own car...he would say I spent too much in the supermarket...it was controlling and coercive behaviour...I have freedom now."

57. The mother asserts that the father physically abused the subject children. Specifically, she asserts that:

- a. When 'T' was two or three years old, he drew on a cushion with a pencil, the father hit him around the side of the head knocking him to the floor;
- b. In November 2020, the father slapped 'T' whilst 'T' was in the bath and made him scream and cry, causing purple lines on his neck;
- c. On 22 February 2022, the father hit 'T' around the head so hard that 'T' fell to the tiled floor;
- d. On 23 June 2022, the father picked 'C' up by the neck with both his hands out of his highchair and threw him to the ground;
- e. The father would shout and scream at the children during nappy changes, and slap the children on the leg as punishment if they did not sit still;
- f. The father would smack the children to punish them;
- g. The father would threaten the children that he would "beat 10 bales of shit" out of them if they did not behave.

58. The mother told the Court in her oral evidence regarding the incident where the father is alleged to have taken 'C' from the highchair by the neck and thrown him to the floor, that she was upstairs in the property and did not see the incident which took place downstairs. She told the Court, "I was preparing to see my aunt. I needed her to help me desperately...I heard a scream. I saw the child distressed on the floor...I know the difference between a cry and a scream. This was a distressed scream. ['C'] was traumatised. my daughter ['U'] said [the father] picked ['C'] up by the neck...sometimes he grabs me round the neck and it does not show injuries. I know, I've lived it."

59. Further, the mother told the Court her view that the children, "loved him but feared him." The mother told the Court, in her written evidence, "When they would cry or play loudly, he would shout and threaten them with phrases such as 'Fucking shut up' and 'I'll knock ten bales of shit out of you.' Describing the children in the father's presence, the mother told the Court, "[They] would duck, put their hands over their heads and curl up in a ball. They did not know if he would hit them...['C'] would flinch when his dad would come near him. ['T'] would flinch. He was terrified and would hide behind me, under my arm...he was awful to them. He was violent and would shout and swear. He said to ['Q'], 'You're always fucking crying'...he was angry all the time, insulting, humiliating, bullying...he never accepted the older children because they were not his. He said they were guests in his house and they would have to leave at 16. It was horrible

tiptoeing around him. None of us wanted to be there. I just wanted to run and take them all...even his own mother used to avoid him having the children on his own...I thought I could protect the children. This incident [in August 2022] showed me I could not protect them anymore because I could not even protect myself.”

60. In her written statement of 13 May 2024, the mother told the Court, *“If [he] was watching the television and the toddlers would get in his way or make too much noise, he would jump out of his chair and shout and swear at them to frighten them into being quiet. He would also often smack them on the bum. At first, they used to get quite shaken up, but then it was almost as if they became accustomed to his behaviour. [He] uses physical chastisement as his form of discipline with the younger children. If the children were misbehaving, [he] would often threaten to “beat ten bails of shit” out of them...At the time, I did not understand what [he] meant. [He] would often tell the older children when they tried to comfort the little ones that they ‘would be next.’ Nobody including myself would answer [him] back because we were all frightened of him.”*
61. Regarding the allegation that the father emotionally abused the older non-subject children, the mother told the Court in her written evidence, *“To my older children he would threaten ‘You wait until you’re 16 and I’ll get you out of here,’ and ‘You are not my problem.’ This continued for the duration of our relationship. My eldest daughter [‘U’] never saw eye to eye with [him]. [‘U’] has told family members that she did not like how [he] treated her. [He] would often remind [‘U’] that she was a guest in his home and she would have to leave at 16. On one occasion, during lockdown, when [‘U’] was 13, [he] made [‘U’] run laps of the garden as he told her that she was overweight. [He] would tell [‘U’] that she had ‘fat thighs’ and ‘a big fat bum.’ I am really concerned that [‘U’] has internalised what [he] has said to her and now struggles with her appearance. At one point, [‘U’] had a school crush that ‘dumped’ her, and [the father] said, ‘well there is no surprise, look at you.’ [He] would often call her lazy and criticised how much she ate saying things like ‘oh look she is stuffing her face again.’ [‘U’] often wore little shorts and tops around the house and [he] would criticise her saying she cannot walk around like that. [‘U’] was just made to feel awful about herself and I feel terrible for not sticking up for her more, but none of us would stand up to [him].”*
62. The mother’s evidence was clear and compelling in respect of each of the core issues. The mother gave her evidence in a direct manner. The mother was extensively challenged under cross-examination. She maintained a consistent account answering questions without evasion. Further, her oral evidence was supported by documentary evidence where available. The mother did not report each allegation to the police at the relevant time. The mother reported events to the police after receiving emotional support and encouragement from her aunt. The mother’s reports to the police were not made by way of a single disclosure. The allegations came out over a series of interviews. This is not a case, in this Court’s judgement, of faulty recollection or confusion at a time of stress. The mother was clear in her oral evidence that she made various reports over a period of time to different police officers from different investigation teams, whose focus was the investigation of different events, including the assault on the mother in August 2022 and subsequently the investigation into the father’s mistreatment of the children. In this Court’s judgement, the assertions made by the father that the mother has added to her account over time to bolster her claim against him lacks in merit. This is not a case, in this Court’s judgement, where the mother’s evidence has been undermined by any significant inaccuracy or mistake of recollection. Further, this is not a case, in this Court’s judgement, where the mother’s evidence has been impacted negatively by the effects of delay and repeated questioning upon memory. Further, this Court takes into consideration the traumatic and emotional nature of giving evidence before a Court. This was plainly a difficult experience for this mother who was at times tearful and visibly distressed both when giving her oral evidence to the Court and hearing the oral evidence of the father. In making that observation and in appraising the witnesses in the emotionally charged atmosphere of this contested family dispute, this Court warns itself to guard against an assessment solely by virtue of the parents’ behaviour in the witness box and the Court expressly indicates that it has done so.
63. The Court further has the benefit of considering evidence by way of video recorded Achieving Best Evidence police interviews of the older non-subject child, the detail of which is summarised

in the opening paragraphs of this judgment. Both children were the subject of a *Re W* consideration by the allocated Judge with the benefit of an analysis by Cafcass. The allocated Judge determined that neither child should give oral evidence at this Fact Finding Hearing. No application was made for permission to appeal the decision of the allocated Judge. This Court approaches the evidence of the non-subject children with caution, mindful of the fact that no party has had the opportunity to cross-examine the children. Further, the Court acknowledges that ‘U’ and ‘D’ are not children of this father. They are likely to have loyalty towards their mother. They have lived with her as their primary carer throughout their lives. This Court concludes, nevertheless, that the evidence of the non-subject children is reliable. Their evidence given in interviews with the police was detailed and convincing. The account given by each child is consistent with the account given by the other child and with the evidence of their mother on all material key issues. Whilst the father asserts that the non-subject children are lying and there has been collusion, there is no reliable evidence in support of that assertion. Indeed, there are incidents involving the younger children which the mother freely indicates she did not witness directly but those incidents were witnessed by one or both of the elder children. Whilst critical of the accounts given by the non-subject children, the father accepted in his oral evidence that he had not viewed the police ABE interviews of either child, despite having the time and opportunity to do so. In this Court’s judgment, the non-subject children have behaved courageously in intervening when witnessing their mother being physically attacked by the father. Furthermore, the non-subject children have each bravely endured the ordeal of being subjected to a police interview in the knowledge that they may be required to give evidence against the father.

64. On 23rd August 2022 the father was arrested on suspicion of common assault, two counts of actual bodily harm and non-fatal strangulation. The father was convicted of common assault by beating. He was sentenced by Magistrates to 120 hours of unpaid work. His appeal against conviction was dismissed. The sentence was increased on appeal to 170 hours of unpaid work. He continues to deny his guilt, telling this Court in his oral evidence, *“I am not guilty. I didn’t do it. I stand firm on that.”* He told the Court he does not accept he threw the mother to the floor. He does not accept he punched the mother causing her to suffer a black eye. He denied throwing the mother against a door frame causing her to hit her head. He told the Court, in respect of his conviction, *“My credibility wasn’t worthy...it doesn’t mean I did it.”* The father blames the mother for his conviction. He asserted that his suspicion of the mother’s infidelity was justification for him having attacked her. He maintained his position to this Court that he has, *“not done anything wrong.”*
65. In his interview by the police under caution, the father accepted tracking the mother and going to a location to find the mother, identifiable from the tracking device. He told the police, *“One night I actually tracked her.”* He told the police, *“This one particular day I actually see [from the tracking device] that she was standing in the same spot for almost ten minutes. When I went and confronted them she was there with the builder, down a lane.”* However, in respect of the same incident, in his formal statement to the Court, the father stated, *“I did not track her that day.”* In his oral evidence to this Court, the father accepted making covert recordings of the mother after placing recording devices in the home for the purposes of making such recordings, without the knowledge of the mother, telling the Court, *“I didn’t want to arouse anyone.”* He asserts he made four recordings, hiding the recording devices in the bedroom wardrobe and in the hallway behind a grandfather clock. Further, the father accepts editing the recordings. It is evident that the various statements given by the father to the Court are not consistent. When it was put to the father that he was invading the mother’s privacy by recording the mother covertly in the bedroom and living areas, the father told the Court, *“I wasn’t invading anything. It’s the same way someone could record me on a dashcam.”* The father thereafter accepted ‘tracking’ the mother, telling the Court in his oral evidence, *“I did track her because I was suspicious.”* He accepted going to the location where he had tracked the mother, without calling her to check upon her safety. When it was put to him that his behaviour was controlling, the father then told the Court, *“I didn’t track her.”* Once again, the father gave directly inconsistent and contradictory evidence. It was put to the father that he had been dishonest with the police. The father told the Court, *“I’ve not read all the way back. Yes, we did have a tracker.”* The father denied telling the mother what she could wear. He then proceeded to accept under cross-examination that he had told the mother, *“You need to put something appropriate on...I told her what she was wearing was inappropriate.”* Further, the

father accepted in oral evidence being outside the property at 3am, three days after assaulting the mother. He told the Court, *"It was our house...the intention was to collect my stuff."*

66. As technology has advanced, so has the ease by which tracking devices can be installed on mobile devices. The evidence of both parties in this case suggests that both parties consented to an app being downloaded to their respective devices so that they could monitor the movements of the other party. The evidence in this case leads the Court to the conclusion, however, that the father used the tracking app on the mother's mobile device as part of a pattern of behaviour designed to deprive the mother of the means needed for her independence. The Court rejects the father's assertion that he was monitoring the mother's movements through concern for her wellbeing. His assertion in this regard was entirely undermined by his oral evidence when he accepted that he made no attempt to contact the mother by telephone or message to check upon her welfare. Further, the father's use of the tracking app must be seen in the context of his admitted use of covert recording devices around the home, including the bedroom and living areas. The audio recordings were made as a form of surveillance of the mother by the father. The recordings were made without the express knowledge and permission of the people being recorded, namely the mother and the children. The audio recordings made in the privacy of the family home were not used by the father for a legitimate purpose. The recordings invaded the privacy of the mother and the children. In this Court's judgement, the nature and content of the covert recordings made by the father were not pertinent in assisting the Court to make informed welfare-based decisions for the children. On the contrary, the evidential value taken from the recording is to support the mother's assertion that she has been subjected by the father to a significant degree of invasion of her privacy. In this Court's judgement, the audio recordings and the monitoring the mother's movements formed a pattern of covert surveillance which was controlling and abusive.
67. Regarding the assault against the mother on 4 August 2022, in respect of which he was convicted, the father did not accept placing his hands around the mother's neck. When it was put to him that his elbow struck her in the mouth causing her lip to bleed, he told the Court, *"I couldn't see behind me."* He denied punching the mother in the eye, causing her to have black eye. He denied throwing her against the door frame causing her to suffer an injury to the head. He did not accept that any of the children were present. He denied that 'D' intervened, telling the Court, *"The kids were never upstairs."* In respect of his conviction relating to this assault, the father told the Court, *"I wasn't credible enough. It [the conviction] weren't on the evidence. They convicted me for not being credible."* When it was put to him that he has shown no remorse for the assault, the father told the Court, *"The same way she has broke up our home. She's not sorry about it."* He continued, *"I did not punch her. I may have elbowed her by mistake. I never intentionally hit that woman. I am not guilty. I didn't do it. I still stand firmly. All the allegations she made up, before I caught her out."*
68. Regarding the mother's assertion that she would cry and 'freeze' during intercourse with him, the father told the Court, *"It never happened."* It was put to him that their sexual relationship began playfully but that changed when he strangled her, he told the Court, *"No."* In respect of each of the allegations that he squeezed her neck during intercourse so hard that she could not breathe, that she would cry, that it was obvious as tears would run down her face and that he strangled her during intercourse when she was pregnant such that she was scared for herself and the unborn child, the father replied, *"It didn't happen."* Further, having regard to the allegation that he proceeded to have intercourse with her against her will, after she returned from hospital in April 2020 following paralysis and pain and receiving a diagnosis of MS, the father told the Court, *"I can't recall her saying she was in pain...it didn't happen."*
69. When it was put to him that he had previously accepted causing the mother to have bruising on 29 May 2022, the father told the Court, *"I may have. I don't know."* When put to him that he caused her to have bruises to her shoulders on 29 May 2022, he told the Court, *"I don't recall that."*
70. In answer to the specific allegation that in 2019 he hit 'T' around the head for drawing on a cushion, knocking him to the floor, the father told the Court, *"Not true."* He denied the allegations that in November 2020 he hurt 'T' in the bath causing bruising to the child's neck such that the mother kept him off school the following day, the father asserted that 'T', *"fell and hit his back."* The photographic evidence shows an injury to the child's neck, not to his back. Further, the mother

described the injury as thick purple lines resembling a hand mark. The father asserts that there is not time stamp on the photograph adduced in evidence by the mother. The timing of the photograph was not put to the mother in cross-examination.

71. In respect of the allegation that on 22 February 2022 he hit 'T' across the head so hard that he fell to the floor, he told the Court, *"It never happened."*
72. Having regard to the allegation that on 23 June 2022 he pulled 'C' out of a highchair by the neck and threw him to the floor, the father told the Court, *"He finished his dinner. I took him out of the highchair and plonked him on the sofa."* When put to him that he would often smack the children when they misbehaved, the father told the Court, *"Just the initial shock is all that is...a light smack. Not a 'smack, smack'."*
73. It was put to the father that in his statement, he had accused 'D' of conspiring to murder him and that 'D' and 'U' are liars and have conspired with their mother. The father told the Court, *"He's a bright boy. I always liked him. I like ['U']. I have no issue."*
74. In further illuminating evidence to this Court, the father was asked to describe his children. Whereas the mother, in answer to the same question, described the children in glowing terms, the father told the Court, *"['T'] was a sweet boy, from what I remember...['Q'] is very dominating in everything...['C'] was a little slow boy. He had his problems...he was special. A simple child. Slow."*
75. The father told the Court he had been required, following his criminal conviction for assaulting the mother, to attend a domestic abuse programme. He told the Court he has not complied with that requirement. Notwithstanding the criminal conviction and Non-Molestation Orders against him, he told the Court, *"I do not pose a risk...if I was a threat, they would have put a restraining Order in place."*
76. In this Court's judgement, the father's answers to questions under proper cross-examination were evasive. His oral evidence was internally inconsistent. Further, his oral evidence was not consistent with his written evidence on many of the key issues. In respect of each of the disputed allegations, in this Court's judgement, the mother's evidence was patently more reliable. As Ms Betsworth of Counsel, observed on behalf of the Guardian, the Court was hampered in its exercise by the father's lack of candour and an absence of explanation for events, save for bare denials. In this Court's judgement, the father's bare denials, denial of the established facts behind the relevant criminal conviction and requiring the mother to be subjected to cross-examination on such painful and sensitive issues was unreasonable.
77. This Court has set out the key pieces of evidence in this judgment, sequentially, considering the mother's evidence followed by the father's evidence. The judgment is structured in that way for convenience. The Court makes clear that in reaching its findings and drawing its conclusions, it has considered the totality of the evidence, looking at the wide canvass of evidence holistically rather than adopting a compartmentalised approach. The Court has come to a view about the totality of the evidence before deciding the facts in issue. Few fact-finding exercises can construct an entirely coherent narrative which can explain all the evidence before the Court. The mother deposes to serious domestic abuse and sexual abuse of herself and of serious physical and emotional abuse of the children. Her evidence generally is not without some inconsistency as to detail. In this Court's judgement, however, her evidence is nonetheless compelling and convincing as to the central core. In this Court's judgement, the mother's version of events struck the Court as being entirely the more plausible. Undertaking an impartial, objective consideration of all the relevant evidence, the Court is left with the powerful conviction that on the essential core issues, the mother is telling the truth.
78. In respect of each of the specific disputed allegations, the Court finds that the mother's allegations are proved. The mother's account includes evidence of sexual assault including repeated non-fatal strangulation, restricting her breathing and causing her to fear for her life. In this Court's judgement, there is a strong relationship between the incidents of sexual assaults, non-fatal

strangulation, physical abuse of the mother and the children, emotional abuse of the mother and children and coercive controlling behaviour as a pattern of abusive behaviour. It is plain from the mother's evidence that the repeated strangulation of her by the father was particularly traumatic. On the evidence, the Court concludes that the father's behaviour included spontaneous and angry assaults, together with determined threats aimed at exerting control. The events described by the mother and found by the Court to be true, were not one-off incidents but involved cumulative and interlinked physical, psychological, sexual and emotional abuse that have had a particularly damaging effect on the mother and the children who were directly assaulted and who witnessed the abuse of their mother.

79. The Court makes findings accordingly that the father has:
- (1) sexually abused the mother, including having intercourse without her consent and perpetrating repeated incidents of non-fatal strangulation and;
 - (2) physically abused the mother by assaulting her on 4 August 2022;
 - (3) physically abused the subject children 'T', 'Q' and 'C', specifically:
 - a. by hitting 'T', who was two or three years old, around the side of the head knocking him to the floor;
 - b. in November 2020, slapping 'T' whilst 'T' was in the bath, making him scream and cry and causing purple lines on his neck;
 - c. on 22 February 2022, hitting 'T' around the head so hard that 'T' fell to the tiled floor;
 - d. on 23 June 2022, picking 'C' up by the neck with both his hands out of his highchair and throwing him to the ground;
 - e. shouting and screaming at the children during nappy changes and slapping the children on the leg as punishment if they did not sit still;
 - f. smacking the children to punish them;
 - g. threatening the children that he would "beat 10 bales of shit" out of them if they did not behave.
 - (4) Emotionally abused the mother;
 - (5) Engaged in controlling behaviour against the mother; and
 - (6) Emotionally abused the older non-subject children, 'U' and 'D'.
80. Having made those findings, the parties and the Court have a proper factual matrix upon which to proceed to consider welfare determinations.
81. The action is listed for a Dispute Resolution Appointment when the Court will consider directions leading to final welfare determinations for the children. Additionally, the Court will consider at that hearing any application in respect of the costs of and incidental to the Fact Finding Hearing. The Court will expect any party seeking costs to have filed with the Court a statement of costs in CPR form N260, pursuant to Practice Direction 28A to the Family Procedure Rules 2010.

His Honour Judge Middleton-Roy
9 October 2024