

In the Family Court sitting at Horsham
Before DDJ Nahal-Macdonald
Sitting in private 11-13 March 2024

Neutral Citation Number: [2024] EWFC 60 (B)
Case No: SD23P20366

BETWEEN

DAL
(Applicant, Father)
-and-
DAD
(Respondent, Mother)

In the matter of applications under the Children Act 1989 re L, a boy born
November 2022
Fact Finding Hearing

I. Preliminary

1. This decision follows a fact-finding hearing ('FFH') listed before me between Monday 11 and Wednesday 13 March 2024 in the Family Court sitting at Horsham. The FFH arises from a child arrangements application issued by 'DAL' in relation to his child 'L' whose date of birth is XX November 2022. The respondent is L's mother, 'DAD'.
2. The applicant applied on 7 September 2023 for a child arrangements order ('CAO'); prohibited steps order ('PSO'); and specific issue order ('SIO') because contact had been stopped by the respondent. He was concerned the respondent would seek to relocate with L out of the jurisdiction. Further to the proceedings beginning, the respondent has recently made a formal application via form C2 for her application to relocate with L to Poland to be considered as part of the joined proceedings.
3. As is the usual custom I may refer to the applicant father as F and respondent mother as M, and of course no disrespect is intended by so doing.
4. This judgment relates to allegations advanced by M and F against the other which appear in hybrid schedules, which I sought to narrow at a prior directions hearing on 8 January 2024.

5. At that hearing, as well as setting this matter down for a FFH, I departed from the recommendation in the CAFCASS report and made an order for interim contact to be resumed between F and L, to try and build a platform for resolution, compromise, and better co-parenting in L's interest. I refused an oral application for leave to appeal that decision in the same hearing.
6. The allegations in issue, per Recital E) of my order of 8 January 2024 were as follows:
 - a. [M's] allegation that [F] perpetrated coercive and controlling behaviour towards her throughout the relationship.
 - b. [M's] allegation dating from January 2023 as referred to at Paragraph 31 of her first witness statement dated 7 December 2023.
 - c. [M's] allegation dating from February 2023 as referred to at Paragraphs 36-38 of her witness statement dated 7 December 2023.
 - d. [M's] allegation dated 17 July 2023 as referred to at Paragraphs 47-54 of her first witness statement dated 7 December 2023.
 - e. [F's] allegation that [M] perpetrated emotional abuse towards him throughout the relationship.
7. At the FFH, F was represented by Mr Miller and M by Ms Geser both of counsel. I commend both counsel for their erudite and balanced approach in adducing the evidence and for their assistance to the court.
8. I am mindful of the guidance outlined in the case of *Re B (A child) (Adequacy of Reasons)* [2022] EWCA Civ 407, where a helpful summary of the ingredients which might be present in a "good judgment" were outlined, including the reminder that "a judgement is not a summing up in which every possible relevant piece of evidence must be mentioned" [para 59].
9. Accordingly, I have attempted to adhere to a structure such that this judgment will first outline the background [**section II**]; then briefly the sources of evidence [**III**]; then an analysis of the allegations per the 'schedules' [**IV**]; an analysis of the relevant law [**V**]; my impression of the primary witnesses [**VI**]; the secondary witnesses [**VII**] a consideration of closing submissions [**VIII**]; then findings on the evidence in regards

each allegation [IX-XV] before coming to a conclusion as to the facts I found proven and next steps. For the avoidance of doubt, where I refer to a witness's 'evidence' that may include their written or oral evidence or supporting exhibits, unless specified.

II. Background

10. M and F met via a dating website around November 2020 and started a relationship. They moved in together around January 2022, and their son L was born in November 2022.
11. At the time of the hearing L was one year and four months old, and I discern from the progress reports that he appears to be an inquisitive, mobile and happy toddler. I take the view -whilst it might be axiomatic- that both parents love him dearly and genuinely want the best for him, as do his grandparents.
12. The parties both agree that the relationship deteriorated in early 2023 and ended that summer. Each made allegations about the others behaviour as above. Those allegations principally relate to early 2023 to July 2023.
13. Contact between L and F took place on an informal and unsupervised basis until September 2023 when M took the decision to unilaterally stop contact. F therefore applied to court for a CAO, PSO and SIO respectively to allow him to spend time with L; for M to agree not to take him out of the country, and for his passport to be held pending the conclusion of proceedings.
14. Since that point, M has sought the courts' permission to take L to Poland, I understand on two occasions, and has returned each time. In the last hearing, I granted permission for her to take him on a further holiday there over this coming Easter.

III. The Sources of Evidence

15. At the directions hearing in January 2023, I directed that the parties file and serve composite schedules and an updated bundle to assist the court. On Wednesday 6 March I received the audio evidence and transcripts which I had agreed would be allowed to be relied upon in the hearing. Over the weekend prior to the hearing, I spent several hours reading the 545pp hearing bundle; listening to the various audio evidence [Ex. DD2A-DD7] and the accompanying transcripts of the same; then

reading position statements from each party. On Monday morning I was sent an agreed supplemental bundle consisting of 92pp, which I read in part in the limited time remaining.

16. The court heard evidence over the first two days of the hearing. We heard M first, then on day two, from her mother, and then from F and his mother in turn. I also considered the audio evidence, transcripts, and screenshots of text messages among other evidence in the bundle. Counsel made submissions on the final morning, and I used the rest of the allotted time to consider the evidence and write this judgment.

IV. The Schedules

17. Within the bundle from page 9 onwards were hybrid schedules of allegations and responses by each party. In live evidence, F and M both gave evidence broadly consistent with their written submissions in those schedules, so it is worth repeating them here as a guide to the evidence the court heard.
18. From p9 of the bundle F sets out the basis of his allegation that M perpetrated emotional abuse towards him throughout the relationship. Examples relied on included:
 - a. That M accused him of having an affair with his friend 'CA' and forbade him from contact with her. M partially accepted this in her response, in that she said she had asked F not to see CA as she believed it would jeopardise their relationship. She maintained that F agreed to this and she later discovered that he was seeing CA in secret. She also accepted messaging one of F's friends and said that other friends got in touch with her directly.
 - b. That M went through F's phone without his knowledge and recorded him without consent, then forced him to change his number. M partially accepted this; she accepted checking his phone but maintained this was done with his consent, and accepted recording him without consent on the basis that otherwise no one would believe the extent of his behaviour towards her. It is self-evident that several of those audio recordings were in evidence before me.
 - c. That M sought to isolate F from his friends and would sulk or argue with him if he went out; or spoke to another woman.
 - d. That M denigrated F's parenting abilities.

- e. That M 'gaslit' F and initiated arguments making him change his responses to avoid conflict.
- f. That M threatened to separate L from F and take him to Poland permanently.
- g. That M belittled the F in front of his family.

For the avoidance of doubt, M denied allegations c)-g) but did not elaborate in her written responses.

19. In turn M set out her own allegations from p13 of the bundle, including as I have said one overarching allegation of coercive and controlling behaviour, and three specific allegations of physical abuse by F. In terms of the allegation of coercive and controlling behaviour, this was predicated on thirteen strands, including:

- a. That F did not want M to live in shared accommodation with men.
- b. That he used a degrading 'point scoring system' to reward or punish M
- c. That F tried to control what M would wear and forced her to remove a hat he did not like.
- d. That F drove recklessly and very fast during one argument forcing M to apologise to slow down.
- e. That F did not want M to join a gym because there would be men present.
- f. That F questioned M if she did not immediately answer her phone, he would accuse her of hiding things and would check her messages to see who she was communicating with and why.
- g. That M was forbidden from communicating with any males
- h. That she was forbidden from going to the pub in case she met men
- i. That she was not allowed to go on girls' trips causing her to feel isolated and lonely
- j. That F often followed M around the house and even into the bathroom with her.
- k. That F demanded M engage in sexual activity with him and she did not think she had a choice.
- l. That F controlled the spending via the joint account and accused M of overspending "his" money if they went over drawn. F had shouted at M owing to a perceived error or overspend by her involving the energy bill.
- m. [later withdrawn during the hearing by agreement]
- n. That F suggested M engage in oral sex by way of apology in an argument.

20. All of these examples were denied by F, and in some cases he used his opportunity to respond to the schedule by alleging that they were wholly fabricated to get back at him for issuing proceedings, or that they were behaviours attributable to M, i.e. that they were examples of projection or gaslighting.
21. It is of note that in regards the final allegation at n) above, F was recorded making a demand for oral sex, though he maintained that this was used out of context and that “*submit*” meant to apologise rather than removing M’s choice to consent.
22. In regards the specific allegations of domestic violence, these were said to have occurred in January, February and July 2023 and have been mentioned above:
- a. That in January 2023 during an argument F threw his phone at M and it hit the floor near where she stood. F accepted that there had been an argument, and advanced that M had accused him of having an affair, and in turn he dropped the phone at his feet for her to read it. He denied throwing it, either at or towards M.
 - b. That on 17 February 2023 F forcefully grabbed L from M’s arms, then picked M up and threw her to the floor. He then started to shake and shove her, and she tried to protect herself with her legs, F then grabbed her foot and dragged her across the floor toward the door to eject her. F completely denied this. He maintained that on the date in question, L was asleep and not present for the argument, which he tacitly accepts took place, but that M attempted to scratch his face and he was “*forced to defend himself*” – he did not go into specifics as to the mechanism of this purported self-defence. F also maintained he has “*never been physical*” which I took to mean other than the asserted lawful self-defence relied on. F asserted that he had never put M at any risk of harm, and that this was the reason for the absence of reports to the police.
 - c. That in July 2023 during a trip to Poland F grabbed M, picked her up and threw her onto the sofa, sat on top of her and pushed her head into the sofa, he then threatened to “*take her pathetic life away from her*” and threatened to throw her out of the window. F denied this, he maintained that Audio Recording DD7 which purported to be a recording of this incident taken by M was in fact recorded in December 2022. F maintained that the argument was

heated but that he did not use physical violence and that his anger and what he refers to as “*purely verbal*” threats were in result of M’s threat to keep L in Poland which he said would have constituted abduction. In oral evidence, he did not amplify the assertion that the recording was not from July, and I came to the conclusion from the surrounding evidence that I was tacitly agreed to be from July 2023.

23. Frustratingly M then sought to add in an apparently separate ground of dispute at page 23 of the bundle, entitled “*emotional abuse*” by F toward M. I made it clear in correspondence with the parties following the last hearing and indeed reflected by the final order I made, that the allegations would be confined to those outlined above i.e. the competing overarching allegations of coercive control; emotional abuse and three specific allegations of domestic violence. I did not allow for a further ground to be aired and I am surprised it was included but it has been responded to. I will therefore briefly address the same.

24. On the proposed basis of emotional abuse, M highlights three grounds:

- a. That F shouted at her.
- b. That F called her derogatory names.
- c. That F threatened to physically hurt or kill her.

25. F’ said in regards shouting that M baited him; that in regards derogatory names, she did this to him and in regards threats of violence he would “*never be physical*” with her, which is why he believes she did not go to the police.

26. Because I have specifically not asked for evidence on the theme of emotional abuse by F upon M, I will deal with those three themes as part of M’s overarching allegation of coercive and controlling behaviour. In my view it is self-evident that insulting, shouting at or making threats to a person, depending on the volume and context, could amount to a basis for controlling or coercive behaviour in and of themselves, but because these three themes are already dealt with elsewhere in the evidence and allegations, I do not need to deal with the specific point as to whether the behaviour, if found, constitutes emotional abuse per se. I explained this to the advocates at the start of the hearing and they accepted that approach.

V. The Law

27. The law has been set out in several cases and most helpfully in the case of *Re B-B* [2022] EWHC 108, a case where Cobb J heard a fact find on a cross-allegation basis in one of the cases remitted back for rehearing following the leading case of *Re H-N* [2021] EWCA Civ 448. *B-B* in short draws together the important principles enshrined in *H-N* specifically and from the guidance provided within Practice Direction 12J.

28. The most important principles therefore in such a case are as follows:

- a. When the court is considering any finding of fact the burden of proof is upon the party making those allegations, which must be proven on the balance of probabilities. There is no equivalent burden on the respondent to an allegation.
- b. Any finding of fact must be based on evidence. The court can draw reasonable inferences from the evidence before it but must not speculate.
- c. The court must consider all the evidence considering each piece of evidence in the case. The court must avoid compartmentalising. In relation to each of the allegations which are proved, that may be relevant to the other allegations, but does not prove those other allegations.
- d. The focus of the court is very different from that of a criminal court. That is clear from the case of *R (Children)* [2018] EWCA Civ 198. The focus of the court must be on making findings which are *relevant* to the welfare evaluation which the court must make for the child.
- e. The evidence of the principal parties is likely to be far more valuable than the evidence of supporting witnesses.
- f. In making the assessment of the evidence the court will reach a conclusion on the credibility of the witnesses. That will partly be based on the impression made upon the court by the witnesses' evidence, but also on all the other evidence in the case (*Re B-M (Children: Findings of Fact)* [2021] EWCA Civ 1371).
- g. At all times, the judge had to follow the principles and guidance at FPR 2010, PD 12J.

29. In assessing the evidence of the witnesses, I note the following points in particular:

- a. Both parties allege that the other is lying. I remind myself of the guidance given in *R v Lucas* [1981] 3 WLR 120, which enshrined the so-called Lucas test in law. The lesson is that the court should assess *why* a witness has lied and whether and how that was relevant to the findings that a court may make.
- b. Victims of abuse may react and present in very different ways. Some make complaints at the time, some do not. I must also remind myself that it would be unwise to assume a true complaint would always be consistent or that an inconsistent case is always untrue; much will depend upon the individual and the court must assess all the evidence before it.
- c. Attending court is traumatic. That is so not only for the person who alleges abuse but also for the person accused. That must be considered when assessing a witness.

30. The court must consider that each of the parents have their own agenda. I remind myself of the caution advised by Baroness Hale in the case of *Re B (Children)* [2008] UKHL 35. –

“There are specific risks to which the court must be alive. Allegations of abuse are not... 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 downright fabrication”.

31. I also remind myself that in *Re K and K* [2022] EWCA Civ 468 it was stated that:

“In Re H-N the court explained the importance of focusing on whether or not there had been coercive and controlling behaviour, as opposed to specific allegations of abuse. This case... provides a clear example of the need identified in that case for the court a) to focus on the overarching issue of coercive and controlling behaviour when it is raised and b) to do so in the context only that it is relevant and necessary to determine issues as to the child’s welfare”.

32. Where I do not mention it specifically, I have actively and throughout hearing the evidence and considering this decision, considered both the 'Welfare Checklist' within s1(3) of the Children Act 1989 apropos of L's needs and welfare, and Practice Direction 12J when considering the allegations and their definitions.

33. On the latter, PD12J borrows from the Domestic Abuse Act 2021, itself a piece of law codifying and consolidating the myriad of types of domestic abuse which have become commonplace throughout family (and concurrently criminal) law.

34. At paragraph 3 of the Practice Direction, it helpfully reiterates the definition of different types of 'abuse' as outlined in the Act, for instance:

- a. "coercive behaviour" means an **act or a pattern** of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim.
- b. "controlling behaviour" means **an act or pattern of acts** designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour; **[emphasis added]**

35. At para 2A of PD12J it outlines specific definitions for domestic abuse, namely:

(2) *Behaviour of a person ("A") towards another person ("B") is "domestic abuse" if—*

*(a) A and B are each aged 16 or over and are personally connected to each other,
and*

(b) the behaviour is abusive.

(3) *Behaviour is "abusive" if it consists of any of the following—*

(a) physical or sexual abuse;

(b) violent or threatening behaviour;

(c) controlling or coercive behaviour;

(d) economic abuse (see subsection (4));

(e) psychological, emotional or other abuse;

and it does not matter whether the behaviour consists of a single incident or a course of conduct.

(4) "Economic abuse" means any behaviour that has a substantial adverse effect on B's ability to—

- (a) acquire, use or maintain money or other property, or*
- (b) obtain goods or services.*

(5) For the purposes of this Act A's behaviour may be behaviour "towards" B despite the fact that it consists of conduct directed at another person (for example, B's child).

Thus, the guidance within the Practice Direction provides a helpful 'north star' for the advocates and the court as to how each party had to prove the allegations it brought.

36. I am conscious also that the Practice Direction states that: the court must [para 5]

"ensure that where domestic abuse is admitted or proven, any child arrangements order in place protects the safety and wellbeing of the child and the parent with whom the child is living, and does not expose either of them to the risk of further harm; and ensure that any interim child arrangements order (i.e. considered by the court before determination of the facts, and in the absence of admission) is only made having followed the guidance in paragraphs 25-27 below. In particular, the court must be satisfied that any contact ordered with a parent who has perpetrated domestic abuse does not expose the child and/or other parent to the risk of harm and is in the best interests of the child".

37. Finally, but by no means the least important legal authority to consider in this case, the 'Welfare Checklist' at s1(3) of the Children Act 1989 is operative. S.1 of the Act explains that the welfare of the child is the "paramount consideration" when the Court determines any "question with respect to [...] the upbringing of the child".

38. The Checklist itself (s1(3)) contains a list of considerations to which the court must have particular regard i.e.:

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);*
- (b) his physical, emotional and educational needs;*
- (c) the likely effect on him of any change in his circumstances;*

- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
- (g) the range of powers available to the court under this Act in the proceedings in question.

39. There is a bearing on L's welfare flowing from the allegations if proven, and throughout my assessment of the evidence and consideration of this decision, I have had his welfare at the forefront of my mind in respect of the above factors.

40. I take into account that L is prima facie vulnerable due to his age and not being able to speak yet, and he is entirely reliant on the adults in his life for comfort, food, warmth, shelter and emotional nourishment. He does not have any specific background characteristics which were brought to my attention other than the vulnerability by reason of his age. In this case it is self-evident that the capability of each parent (and grandparent in turn) to care for L per s1(3) f) is inexorably linked to the hurt that each parent feels toward the other.

41. It is quite clearly an invidious situation that the toxicity which both parents admit the relationship devolved into be allowed to continue to have a deleterious impact on L's welfare, and I was mindful throughout that my findings today would in turn necessitate a consideration of L in terms of the next and future steps and powers of the court (cf. s.1(3) g) Children Act 1989).

VI. Impression of the primary witnesses

42. I have already set out the law which I apply. I considered all those matters when assessing the evidence of the parents. I remind myself of the length of time that has expired since the alleged incidents occurred.

43. In respect of each parent, they clearly hold strong feelings about the other, and these have been intensified by these proceedings. Whilst it is obvious that this part of the litigation is going to increase that animosity, it is imperative that both parties remember that *this is L's case, not theirs*. They will need to move forward from this matter no matter what my findings are, and seek to find compromise and solutions with the assistance of CAFCASS to effectively co-parent their son.

44. M's views are so strong that she is determined that there should be no contact between L and F. That may affect how she views the incidents. I found her evidence overall to be measured, calm and at times reflective and concessionary when called for. Despite lengthy cross examination, she stayed steadfast as to the key issues in dispute. She appeared to me to be largely frank and attempted to be helpful. She made concessions when she could not remember specifics like a date, but overall, her evidence came across as open and detailed. In cross examination when she was pushed on the core elements of the key allegations, she maintained a coherent account. When Mr Miller chose to play the audio recording of the July incident, she became visibly upset. Despite this, her evidence remained clear in my view.
45. I am not satisfied that F's evidence has been frank in all respects, and he clearly has a dim view of M. Overall, my impression of the evidence from F was that he came across as ebullient, dissembling, and not reflective or empathetic. For instance, in measured cross examination from Ms Geser as to direct quotes attributable to F taken from the July incident and painting a picture of F as domineering, where it was suggested that his own quotes demanded subservience, F failed to take any responsibility for his behaviour.
46. At times, F tried to talk over and deflect from Ms Geser's questions, which was not attractive and lent weight to the allegations of M as it was similar to the behaviour of F on the recordings. I felt he failed to appreciate the gravity of his behaviour.
47. I bear in mind that M has the burden of proof in regards four of the allegations and F the burden in regards the other.

VII. Impression of the supporting witnesses

48. I attached limited weight to the evidence of the two supporting witnesses, primarily as it became clear they were not direct witnesses to violence or to the worst behaviour per se, but that it was relayed to them by the parties. Whilst I found they both did the best they could to assist the court, their evidence was naturally hampered by their bias toward each party and lack of first-hand experience.
49. It is probable that the relationship between a parent and child is such that the parent will often be clouded by love and wanting to support that child, even when the child is an adult. However, their evidence was sometimes tainted by a degree of hyperbole, opinion, conjecture and inuendo rendering much of it often unhelpful if not strictly inadmissible.

50. I raised with the advocates as a preliminary point that the written statement of F's mother, 'SL', was at times unhelpful in the way it was drafted – it was overly long, used a high degree of hearsay and at times appeared vindictive. Both advocates took this indication onboard and adjusted accordingly.
51. I found that SL would do anything for her son, including minimising some of his more egregious behaviour, even when she had clearly heard the audio recording from July, and it was clear to me also that she now disliked M, though she said she respected her, that did not concord with the “character assassination” as Ms Geser put it, within her statement.
52. Her observations around things like F's iPad being packed in a certain way to cause deliberate damage were hard to follow in terms of persuasive fact, and her own message to M within her exhibits where she indicated “*I don't want to hear your criticism of [F]*” was indicative of her bias. Because of those features, I attached relatively little weight, noting the bulk of the evidence was as to attitude and feeling about M rather than anything concrete about her behaviour.
53. My overall impression of SL was that she is a doting and loving mother and grandmother. The text messages and history between M and SL create an impression of deep love for L and that SL wanted the relationship between her son and M to work out.
54. However, her love for F clouded her ability to remain objective and her direct evidence as to the allegations was limited. She was unable to countenance that F might have ever assaulted M; and despite her earlier good relationship with M, she painted M as “*vindictive, manipulative*” and maintained that she had staged the incidents she relies on, without sufficient evidence to support that belief.
55. I find it is likely that owing to M wanting to take L to Poland and having recorded F that SL's trust has completely gone and that she is very angry at M, albeit she said she still respected her. In evidence she admitted that she had “*turned against*” M owing to those factors. She said that she had seen a completely different side to M that she had not seen before. I asked her in turn as to her views on the evidence of her son's behaviour. She used words that he himself had used such as “*condone, shell, broken*” but did not wholeheartedly condemn his behaviour and said that listening to the recording had not changed her view of him.

56. I find that it is likely that SL was coached by her son because of the similarities in their evidence and the use of similar language including the term “*entrapment*”. I find her evidence attaches little weight due to the bias.
57. The witness statement of ‘IK’, mother of M, was easier to follow in terms of chronology as it related to the allegations under scrutiny. It was helpful mainly as to this witness attending with M after the incidents in February in July 2023, and her account aligned with both the audio recording of the latter and accounts given by M.
58. In regards the February incident, IK believed she had seen marks or bruising to her daughter, though when she asked her about it, her daughter brushed it off and told her not to worry. She maintained her account in cross examination.
59. In regards the July incident, IK was cross examined in detail. She remained sure of her account. She heard raised voices on returning to the flat and noted a red mark to her daughter’s neck. She maintained under cross examination that she was telling the truth and seemed very offended when it was suggested otherwise. She asserted that she was a Catholic and had sworn on the bible, and that she would adhere to the Oath.
60. In live evidence, IK came across as genuine, she did her best to remember things but made concessions when she could not. She explained that she was not aware her daughter wanted to relocate to Poland, as she believed that she was happy in England. She recounted her limited interactions with F prior to the July 2023 holiday to Poland, and in my view she confined her own evidence to that which she was directly aware of and experienced.
61. She did not display any obvious hostility for F despite the general acrimony of the proceedings. She maintained that she had seen bruises to her daughter but not taken photos of them, and that her daughter had not told her how they had occurred, and that she did not want to interfere.
62. My overall impression of IK was that she was concerned for her daughter over time but experienced the toxicity in the relationship vicariously and at a distance. She appeared to have been initially kept in the dark about the allegations her daughter made, but she became very emotional when giving evidence about what she later learned.

63. Her evidence on the July incident was consistent on the key points and importantly on the fact that M contemporaneously reported the assault to her just after it occurred. She maintained her position despite strong cross examination.

VIII. Submissions from counsel

M's counsel's submissions

64. I heard first from Ms Geser on behalf of M. She addressed me briefly on the standard of proof (as above in Section V) and the burden upon M as to proving the allegations.

65. Ms Geser addressed me on *Re H-N* and PD12J, emphasising that “coercive and controlling behaving” usually involves a pattern of behaviour and the court needs to “*stand back and take a look at the whole picture*” when dealing with an overarching allegation of this type.

66. She emphasised that children can be put at risk vicariously from domestic abuse, even when they are too young to be consciously aware of the behaviour, per PD12J.

67. Ms Geser submitted that there is a crossover between “coercive” and “controlling” types of behaviour and one act may fit either definition, which I accept. She submitted that the behaviour of F represented, over time, a distinct pattern of escalation, culminating in the most unpleasant behaviour in July 2023.

68. Ms Geser addressed me on each of her lay client's strands of allegations per the schedules – she reminded me that I had heard direct evidence from both parties, and that in her submission M's evidence was clearest and most honest.

- a. She submitted that each of the discrete allegations such as driving too fast during an argument, or controlling M from going on trips with her friends, in isolation would not be that concerning, but that the pattern taken in totality was troubling and showed escalation.
- b. In regard the evidence of F walking in on M in the bathroom, Ms Geser said this was clear from DD2A, and the response of F was rude, dismissive and ridiculing of M, and was clear evidence of how M would try to handle things politely and F was unable to take criticism, and it was evidence of his coercive behaviour escalating. Ms Geser pointed to the quote that when M raised this with F he said “*it doesn't matter, any other day you would pull your knickers up!*” and that he then stormed out.

- c. In regards the demand for sexual favours, this was demonstrated within DD7 and was clear from the evidence as to the impact on M. M had repeatedly said that the behaviour of F was disrespectful, and F did not show any regard for this. Ms Geser said this was an example of “humiliation” per the definition and also “intimidating” and “punishing” M which are all elements of a pattern of acts designed by F to make her submit. This was a clear example of controlling behaviour per allegation K.
- d. Regarding allegation L. there was evidence from M that her wages went to the joint account whereas F had his own sole account which he was paid to. The argument over the energy bill and the existence of the joint account was evidence of F exerting control over M financially.
- e. Ms Geser accepted there was crossover between allegations k) and n) within M’s overarching allegation, but submitted that F’s explanation of his understanding of the words “submit” and “apologise” did not make sense and was highly significant. She pointed out that F seemed obsessed with the word “submit” and used it several times during the dispute evidenced in DD7. Ms Geser said that F could not stand when M would not submit to him, and that was the driving force behind his coercive and controlling behaviour
- f. Ms Geser mentioned that F’s philosophy seemed to be similar to the “poster boy for masculine toxicity” Andrew Tate, and that F had accepted he was familiar with that person’s views, but that he had denied ascribing to them. She pointed to his use of the terms that M should “*know her role*” and F’s dating profile included the term that a potential partner should avoid “*giving [him] rules*”. Mr Miller pointed out that the dating profile and YouTube evidence had not been put to his client, which I accepted, and therefore attach limited weigh to that submission, though it is similar to a point that was put to F in cross examination, that he did not respect women, and which he denied.
- g. Ms Geser pointed to the text message at p155 where M threatens to “*kick [M] to the streets, you ungrateful bitch*” as further evidence of coercive and controlling behaviour, as M had raised a legitimate concern and F was stopping her from doing so. She maintained that M presented as reasonable whereas F was completely unreasonable and unable to take any criticism or questioning.

69. In terms of the discrete allegations in January, February and July 2023, Ms Geser submitted, when I asked for clarification, that any of the behaviours in these

incidents could arguably also form part of a pattern of behaviour to support a finding of coercive and controlling behaviour. Mr Miller later agreed with this view.

70. In the January incident, Ms Geser asked me to prefer M's evidence to F, in that it was unbelievable for anyone to simply drop a phone on the floor if they intended to let someone else read the contents of it. She submitted that M came across as cogent and compelling on this incident.
71. In the February incident, it was submitted the evidence from M should again be preferred, pointing to the fact that neighbour had to intervene and that M had to seek help from F's parents.
72. In the July incident, this was the most serious, and though F accepted his behaviour was "vile" he was still blaming M in that he claims she drove him to it through her abuse, for which there was not a "*shred of evidence*".
73. That July incident encompassed assault, threats and abusive and insulting language which all fit the criteria of the overarching allegation as well as proving the discrete allegation. Ms Geser pointed to M's reaction to F on the audio, including shouting "*stop it!*" several times during what she submitted was a terrifying physical assault as well as having her life threatened. It was supported by the translation of what M told her mother shortly afterwards, noting F accepted he passed IK on the stairs. Ms Geser pointed to that contemporaneous report to her mother was strong evidence of the assault having occurred.
74. On F's allegation of emotional abuse, Ms Geser said that this was totally unfounded. She noted that M partially admitted some things, in that she was jealous and insecure in the relationship, perhaps with justification, as F was active on dating sites, which is enough to make any partner upset and jealous. It was not indicative of a pattern of behaviour, but indicative of genuine worry on the part of M.
75. M did accept that she went through F's phone and did encourage him to download a tracking app, by agreement, but that this was part of her need for reassurance during the relationship. Ms Geser noted that even in the July incident, M was attempting to convince F to engage in relationship counselling, which was indicative that even at that point she was attempting to save the relationship.

76. M denied that she was the sort of person who sulked, and Ms Geser said that the transcripts bear this out, that M was the sort of person who would confront and try to fix things, whereas F would fly off the handle and refuse to engage.
77. Ms Geser submitted that any criticism by M of F's parenting was from a place of genuine concern and was not unfair and denigrating as he had asserted. She said that in terms of allegations that M started arguments, there was no evidence for this, and the supporting evidence from F's mum was a plain character assassination. The audio bore out that actually it was F who was far more aggressive and argumentative.
78. In terms of the purported threat to take L out of the jurisdiction, Ms Geser said this was not made out. There was a text message at page 160 where M was trying to reasonably discuss going to Poland for an extended period and F indicated this was reasonable. Ms Geser noted that in the July incident, M simply reacted to F's barrage of abuse, and her reaction was not a threat to abduct, and that her behaviour in coming back from Poland and then going back twice with the permission of the court was evidence that undermined F's assertion.
79. Ms Geser indicated there was nothing specific from F or his mother as to M "belittling" F in front of his family. I was asked to attach limited weight to SL's evidence as it was tainted by bias to her son, and vague in its aspersions.
80. In summary, Ms Geser submitted that M was the one trying to make the relationship work, that she loved F, and did her best. F's obsession with making M submit was the genesis of these proceedings and this was extremely sad as it had split up the family when L needed his parents the most. It appears that L was agreed as being present in the home when all the shouting, threats and violence were going on, which was probably the worst element of the behaviour of F as it might be said to have impacted L already.

F's counsel's submissions

81. Mr Miller in his own submissions said that it was not appropriate to pin the whole of the blame on F. He pointed out that M's own mother supports the assertion that her daughter used raised voices in the argument she heard, and that both acted poorly at different times.

82. In relation to the Law, Mr Miller accepted Ms Geser's overview. He agreed that the court can look at all the evidence and behaviour alleged and come to conclusions from the evidence relied on in the discrete allegations or overarching allegations.
83. Mr Miller submitted that M sought to underplay her jealousy, and that this was the underlying factor in the problems in the relationship.
84. Mr Miller said that M was trying to bolster her case by allegations of violence or placing L at the scene and this was manufactured.
85. He pointed to M's mother being fair and that she accepted her daughter had used raised voices in the July dispute. He said however that her evidence was not believable in terms of red marks she said her daughter had in February or July.
86. Mr Miller noted that his client had accepted that his behaviour in July was "vile" and showed contrition, and that he should be given credit for this.
87. Mr Miller said that SL was genuine, earnest and showed respect toward M but was deeply hurt by being covertly recorded and having lost her trust with M.
88. He pointed out that SL said that the baby was sleeping upstairs in the February incident, which was different from M's account.
89. Mr Miller submitted that in regards M's overarching allegation of Coercive/Controlling Behaviour:
- a. Regarding "living with males" – a male Polish builder moved into the house and this was evidence which contradicted M.
 - b. In terms of the "point scoring system" this was light hearted and M had her own "scale" – both of which were not coercive or controlling and both parties were doing the same thing.
 - c. In terms of the "hat" incident where M alleged F told her to take her hat off, there was limited evidence in support of M, and in fact there was evidence in the bundle that M did wear hats and this contradicted her.
 - d. There was no solid evidence over the date of the purported bad driving.
 - e. There was no evidence to support proposition that M could not join a gym and the evidence surrounding M and F running together was simply indicative of a supporting relationship.

- f. M was “*projecting*” or “*gaslighting*” F with her allegations that he controlled who he could communicate with- in fact it was her who tried to stymie his contact with CA.
- g. The fact that a male builder named ‘S’ lived with M undermined that she could not have contact with any males.
- h. F was happy for M to go to the pub and indeed they went together, which undermines her credibility on this point.
- i. There was no documentary or third-party evidence of any “girls trips” which M could not go on.
- j. The suggestion that F followed M around and walked in on her in the toilet was fabricated, and the audio recording of the dispute where F can be heard to say “*any other time you would pull your knickers up!*” was indicative that the two were relaxed about their privacy in such instances.
- k. The allegation of sexual duress this was included to up the ante and this was wholly denied by F.
- l. The asserted financial control was baseless, as M had access to the joint account.
- m. The allegation of sexual favours being demanded was explained by F in context, and not indicative of a philosophy. F believed in “*gender neutral equality*” and did not ascribe to a misogynist belief system.

90. In respect of the January allegation, Mr Miller accepted his client had dropped his phone and that this was “*not the right thing to do*” but that there was no intent to harm M or hit her with the phone.

91. In respect of the February allegation, Mr Miller pointed out an apparent inconsistency in the account of M, in that she said after being assaulted she ran upstairs to the bathroom, and if L had just been on the sofa watching an assault, he would not be in bed asleep upstairs seven minutes later, and that there was no evidence as to who put him to bed. Mr Miller submitted it was far more credible that L had been upstairs asleep the whole time.

92. In regards the substantive assault said to have occurred, Mr Miller said this was untrue, and asked me to prefer his clients evidence, i.e. that there had been an argument about perceived affairs, M had attacked F, he had “*restrained her*”. Mr Miller pointed to the absence of a police report or contemporaneous evidence of bruising.

93. Turning to the July allegation, Mr Miller did an admirable job of painting his client as contrite and ashamed of his behaviour. In my view this contrasted with the evidence from F himself, which I found to be lacking genuine empathy or an understanding as to the impact of his actions. I asked Mr Miller to clarify why, for instance, F had sought to engage in a technical argument about whether his “threats to kill” would have amounted to a criminal offence under domestic law, because he did not genuinely intend to carry the threats out and he did not believe that M believed he would carry them out. Mr Miller indicated that there was a nuance between the shame F felt for the “threats to kill” and the point he was anxious to demonstrate, that they were “empty threats”.
94. Mr Miller asked the court to consider whether the recording would be more damaging to L in the future if he ever heard it, and I indicated for the benefit of the parents that I agreed L’s welfare needed to come first, and it was a matter for M as to whether she would destroy the recording, but also clearly a matter for F as to evaluating his own behaviour as a parent going forward.
95. Mr Miller asked me to listen to and consider the audio recording of the July incident a number of times, which I have done. He asked me to anxiously consider at the point where M is shouting “stop” as to whether it sounds like a physical assault, as his client would deny, or just shouting and threats by F.
96. Mr Miller said that the text message at p160 was from June and that at that point, F did not appreciate that M would seek to stay until October, and thus when M indicated she would stay he did not know the end point and was filled with a legitimate fear which explained his response.
97. Mr Miller said that the evidence from M’s mother that she saw red marks was not supported by the evidence from the transcript. He said it was inconceivable that M would not have been pushed to take photographs of such injuries, especially as M’s rationale for recording the incident was to gather evidence of F’s behaviour.
98. Mr Miller noted that the Polish police report does not refer to any physical abuse, only to threats, and the absence of this indicates that M did not report any physical assault to the police. I indicated when hearing that evidence that this requires knowledge and an inquiry into Polish criminal law, which we are not in a position to do. It was asserted by M’s mother, for instance, that perhaps the charge the Polish police are investigating includes violence. It could also be the case, as in the UK, that there may be some equivalent to the statutory time limit on summary offences – a

point raised by M in her evidence as to the UK police telling her she was too late to report one of the earlier allegations from February.

99. Mr Miller addressed me then on F's overarching allegation in turn:

- a. M admitted that she had accused him of having an affair and asked him not to see CA
- b. M admitted going through F's phone, and he did not accept she had done this with his agreement, Mr Miller said this could amount to controlling behaviour
- c. There was evidence that M wanted F to change his number and use a tracking app, which was further evidence of control.
- d. Mr Miller said there would have been sulking by M because of the jealousy issues she admitted to.
- e. Regarding denigrating behaviour, Mr Miller seemed to concede when I asked for clarification that the evidence F relies on for this (a comment in M's witness statement to the effect that "*F cannot parent L and never could*") that the statement in and of itself might not be the strongest evidence of denigration, and that I had probed F for further evidence on this but he was unable to point to any. It was also self-evident that the witness statement was not made until December, which was three months after the period where F alleges that denigration ceased.
- f. Mr Miller pointed to a text message at p222 of the bundle where M suggests that F will lose everything if he does not treat her and L with respect, as evidence of the genuine fear that M would abduct L.

100. In all the circumstances, Mr Miller asked me to prefer the evidence of his client.

IX. Findings on the evidence

I will deal with the discrete incidents in January February and July first and then with the two overarching allegations in turn.

X. The January allegation

101. The evidence I heard about the incident in January firstly showed that both parties accept an argument occurred. Where they differ is as to the cause of it and whether M (as F alleges) walked in on him using the toilet and attempted to film him, to which he reacted angrily as it was an invasion of his privacy; whereas M says

that F was acting suspiciously and when she asked him about it he lost his temper and threw the phone toward her in an act of violence.

102. I found the evidence of M to be coherent in this matter. Under cross examination on the incident, M maintained that she had not been shouting -that she had felt jealous and self-conscious but that she did not demand to see F's phone. She said that F did not drop the phone at her feet as but *threw* it and it broke into several pieces.

103. In response, F maintained that he had dropped the phone at his own feet, the back of it came off and the battery came out, but he was able to fix it and use it for another five months. It was put to him that he was angry about being accused of being secretive. He said he dropped it on the floor due to frustration at being accused of being unfaithful. It was put to him that this response was not reasonable, in response he said this was a repeated point of contention and he accepted he had lost his temper. I find it was not the last time he would do so.

104. I found F's evidence on this issue to be an attempt to minimise his actions. I found it illogical that a person would ever drop their mobile phone onto a hard floor for whatever purpose, and indicative of someone who has lost control of their temper. In conclusion, it tended to support M's allegation and was an example of the common result of F losing his temper because of frustration during the relationship. I conclude on balance that the incident in January 2023 occurred as alleged by M.

XI. The February Allegation

105. In regards the allegation dating to February 2023, M said that during an argument, F forcefully grabbed L from F's arms, then when she tried to take L back to feed him, F threw M and then started shaking and shoving her, she ended up on the floor and alleged F attempted to drag her out of the flat. F denied this and seemed incredulous when it was put to him.

106. In cross examination it was put to M that she did not record this, which she accepted, and that L was asleep upstairs. M denied this, maintaining that F was holding the baby with one hand and pushing her with the other as she was trying to reach L. She also said in live evidence that F was using his leg to push her away. It was put to her that she did not mention "*kicking*" in her statement and she accepted this. She said that F put L on the sofa and then continued to roughly handle her including dragging her towards the door as alleged in the written statement. She

denied that she was manufacturing the allegation to provide a basis to relocate with L. It was put to her that she did not go to the police or take photos of the bruising she said took place. She said that on reflection she did not go to the police or a GP because she wanted the family to work out.

107. After the incident, M confirmed that she messaged F's mother, to outline that F had "*lost it*" and that his parents soon came round. She maintained under repeated cross examination that L had been present on the sofa at the time of the assault and not upstairs as put to her. She denied that she was making the incident up to cover for her own bad behaviour. When it was put to her that she had attempted to scratch F, she noted that she was a new mother at that point and kept her nails short. She denied any scratch or attempt to scratch.

108. Page 69 of the supplementary bundle was put to M where she accepted she had not raised the February allegation at the hearing before DJ Owen. She explained this had not specifically been asked and she did not know she needed to mention it then.

109. In response on this allegation, F maintained that the incident did not happen as alleged. He completely denied assaulting M and in fact maintained that M had attacked him and he had to defend himself.

110. F asserted that on the date in question, M had been recording him and had gone through his phone, and they had an argument about the cross-suspicions. He said that M said she wanted to go and would take L with her, at which point he blocked her from leaving and she "*went for his face*". He then said a neighbour came round owing to the sound of commotion and F told the neighbour they were a "*white knight*" – it was put to him in cross examination that he in fact told the neighbour to "*fuck off*" as he did not want anyone else involved. F pointed to the fact that M then went on holiday with him to Poland a few days after as evidence that the assault had not happened.

111. I am reminded that the burden of proving the allegation lies with the person who raises it. I am concerned that there were material differences between M's initial account and the live evidence, including:

- a. That she had not mention being kicked before and this undermined her account

b. That two other witnesses (i.e. F and his mother) both maintained that L was asleep upstairs at the time of the incident. I note that it would be difficult if not wholly reckless for two adults to attempt to fight whilst holding a baby, and that SL attended very soon afterwards where she was adamant that M was in the bathroom and L was asleep upstairs. I draw the inference that it would be almost impossible for a baby to be soothed in that period.

112. F's evidence was not entirely coherent either. He did not provide much detail as to the mechanism of the alleged assault upon him when M "*went for his face*" and though he relies on the fact M did not report this or other incidents to the police, he is silent as to why he did not do so himself if he was assaulted.

113. I conclude that the evidence is confusing on this allegation and far from clear cut. There was undoubtedly an argument, and a heated one at that for the neighbour to come and intercede and for M to text SL. What I cannot be satisfied is as to the mechanism of any assault, i.e. did M attack F first or did F take the baby from her resulting in her trying to get him back and then F assaulting her. I note that the burden is upon M making this allegation, but on balance I cannot be satisfied she has discharged that burden. There is no burden upon F. I therefore conclude that the incident in February 2023 is not proven.

XII. The July Allegation

114. In regards the incident which was said to have occurred in Poland in July, I had the benefit of live evidence on this from both F and M and from M's mother and an audio recording [DD7] with a transcript including of the conversation in Polish which occurred after the incident itself. That incident, to borrow from the criminal law, could be characterised at its height as an allegation of assault and battery by F upon M coupled with repeated threats to end her life, i.e. threats to kill.

115. M gave evidence on this and was cross examined. She maintained that F was sat on top of her at times during the incident. It was put to her that she threatened to keep L in Poland during the argument (which, for the avoidance of doubt, is a nuanced point but incorrect on my reading of the transcript at p258 of the bundle approximately 12 lines from the bottom). M maintained that in fact this was a misunderstanding by F and that it related to a prior conversation in text messages where F had seemingly agreed in principle to allow M to stay in Poland for the rest of her maternity leave.

116. M reiterated that she had been thrown on the sofa with threats to end her life and throw her out of the window being made. She maintained she could still breathe but was struggling under the weight of someone much bigger than her. She was visibly distressed on the prospect of the audio recording being played back to her, which was clearly a triggering and onerous prospect. M maintained that she had not listened to the recording more than once and did not wish to do so again. I viewed with interest her reaction to this part of the evidence and found her reaction to be visceral, and genuine. I also took care to consider F's reaction. He did not make eye contact with me and instead looked down.

117. Under cross examination as to the mechanism of the assault vis a vis the parts of the audio, M maintained that when the volume of F's voice gets louder this is because he rushed towards her and that is when he threw her and sat on her. Her account was plausible. I do not accept that for instance M's voice would necessarily change whilst being assaulted, or that the noise of her being thrown onto the sofa would necessarily be discernible in the way Mr Miller looked to frame it. M maintained that F sat mainly on her legs and she could not move, F was pushing her head into the sofa. She maintained it happened very quickly and this concords with the audio recording in my view. It was put to her that on the recording M did not say "get off" or words to that effect; but it is noticeable that one can clearly hear her shouting "stop" several times in begging F to calm down. She sounded very scared.

118. For the avoidance of doubt, whilst M has only had to endure the playing of the audio once in court, I take the view that playing it to her was not necessarily a good idea on behalf of F but it crystalised in my mind how I considered her evidence. I appreciate Mr Miller can only do as instructed, but it is plain in my view that the playing of the audio (and indeed F's repeated requests in cross examination to hear it again) amounted to a form of re-victimisation of M.

119. I can confirm for completeness, per F's request in cross examination, that I have listened to that recording several times. I strived to listen to the changes in cadence, volume, and the reactions of each party. Around 05:15 on the recording F clearly gets much louder, indicative that he has rushed toward the microphone and thus toward M. This is the point at which he shouts, "*So I'm actually now just going to end your miserable fucking life!*" I conclude there is the sound of a momentary scuffle and M's voice becomes audibly more terrified. On my view it was indicative of threatening and abusive behaviour sufficient to satisfy the definition of coercive behaviour per PD12J, separately from the alleged physical assault.

120. It was put to M that she did not immediately call the police, she maintained that if she did call the police she did not know what else might happen as it would trigger F. She said she called the police the following day when she had calmed down. This was confirmed by her mother, and evidence within the bundle that the matter is now with the Polish *Regional Prosecutors Office* [*Prokuratura Rejonowa*].
121. I concluded that the live evidence from M was highly compelling. Whilst I attach relatively less weight to her mother's evidence, as she was not directly present when the alleged assault and threats to kill were made, and would in any event naturally tend to supporting her daughter, I do find it supportive of M's account that she immediately told her mother what happened in Polish and that the account was very close in nature to her own evidence of the event. I also note that the incident was reported to the Police in Poland a few days after the allegation.
122. F's evidence was at times minimising of his own actions here. He maintained that what he said were "*empty threats*" and that he was "*not condoning*" his behaviour but had not realised until the evidence was played to court that M was made to feel very upset by it, which I found astonishing. He seemed upset when talking about his actions, but in comparison to the degree of hurt caused, his eventual apology was thin at best, and I did not find it to be completely contrite.
123. He maintained he had not assaulted M in July and absolutely did not put his hands on her but pointed his finger at her aggressively which he said he knew was "*very rude*" in Polish culture. I found this answer to be unsatisfactory, and that it was absent from his evidence. F described himself as a "*broken man*" who was being "*gaslighted*" and that he "*stood up for himself admittedly in the worst way*".
124. F admitted when I asked him to clarify that he was an "*aggressor*" during the July incident but denied he had been prior. F maintained that his threats were empty but M's perceived "*threat*" to keep L in Poland was real and was the motivation behind his anger. This does not come close to excusing his behaviour.
125. F is contradicted by the audio recording of his behaviour during the argument. It culminated in what I find amounted to an assault by him upon M where he pinned her down, pushed her head into the sofa, and made threats to end her life and throw her out of the window. Such behaviour would clearly warrant arrest and perhaps prosecution had it happened here, though I do not wish to indulge in a

forensic inquiry as to the intent behind his threats per s16 of the Offences Against the Person Act 1861, which F indicated he had read in seeking to minimise his behaviour in evidence.

126. Clearly, the trigger for this rage was the thought that L would be kept away from F but that simply does not excuse his behaviour. I find that his behaviour within the audio recording was reprehensible and unacceptable.

127. Other low points recorded in the July audio, and which may now cause a significant degree of embarrassment, were when F humiliated M by demanding oral sex and an apology for a prior argument; where F repeatedly demanded that M “submit” and when he dismissed the idea of counselling because he felt he was “exceptional”. For the avoidance of doubt, I do not see any evidence in support of that claim -it appears the sort of self-reflection indicative of someone with a misjudged sense of accomplishment in relation to themselves versus others. I conclude that the incident in July 2023 happened as alleged by M and I also find that this behaviour is strongly supportive of M’s overarching allegation in turn.

XIII. The overarching allegations

128. Turning to the two overarching allegations. Firstly, M alleges that the behaviour of F towards her throughout the relationship amounted to coercive and controlling behaviour. I note the definition of such per the *Practice Direction* and the wide variety of behaviours which can provide a basis for such findings. I note that there does not need to be a pattern of incidents and that a single incident may suffice, but that the whole of the behaviour taken in conjunction may provide a basis for the finding. I note the need to step back and consider the whole of the evidence, and that the evidence from the discrete allegations may form part of such conduct.

XIV. Coercive and Controlling Behaviour

129. As to Coercive/Controlling behaviour in this case, M was cross examined on the following features of her allegations on this matter per the Schedule:

- a. The allegation that F did not want her to live in accommodation with other men. She maintained under cross examination that F did not trust her and was overbearing as to suspicions with other housemates.
- b. That F used a “*point scoring system*” to reward or punish M, which she maintained was perhaps playful at the time but that in the wider context was overbearing by F. She denied in turn that she regularly used the phrase

"drama queen" to mock F and said this was not akin to a scale or points system.

- c. That F told her whether she could wear a hat early in their relationship. She said in hindsight this was a method of F testing her boundaries. She wanted F to like the way she dressed, and she made comments such as he did not want her to wear a jacket or to wear pink. M maintained that F was extremely serious about her wearing the hat and upset her with his approach. He said it was rude of her to wear a hat in the car. F denied the incident occurred and it was put to M that she could not remember the date, though F later admitted he did ask her to remove a hat in the car, he said because it was obscuring his view.
- d. M maintained that F did not want her to go to the gym or pub to limit her social interactions. She maintained that F was not physically active compared to her and she was a keen runner. She explained that F did not train properly for a 10km run that she had signed up to. As a result, she believes F planned to feign injury to force her to walk with him so that M would not get a good time, despite having trained. She identified this as an example of the controlling behaviour, that F had made it all about him.
- e. M maintained in evidence that F had messaged a female parent asking to have sex with her. It was put to M that she had not specifically made this allegation. She maintained that she had only checked F's phone on one occasion but that this bore out her suspicions. She maintained that F checked her phone on a regular basis, which he denied.
- f. It was put to M that she made F change his phone number, she denied this, but said that it was a suggestion they both came to bearing in mind F had been using dating apps and she told him she did not trust him. She also maintained that F offered to put a tracking app on his phone, but this was not her idea. It was put to her that the allegations she made against F were in fact things she was doing to him. She maintained she did not force F to change his number or get the tracking app.
- g. In regards being not allowed to communicate with any males, M maintained this position and that she reached out to F's friends after the breakup.
- h. Likewise, M gave evidence that on one occasion she went for a coffee with her friend and that F became angry as it was adjacent to a pub. It was put to her that the fact she was with a friend for a coffee was indicative that F did not stop her from socialising.
- i. M maintained that F did not allow her to go on trips with her female friends and family either and she became introverted due to this. It was put to her

that she took L to Poland, and this undermines her account, she explained that this was an exception because her family was there, and she felt manipulated into thinking she needed the authority of F to go anywhere. M maintained that F tried to make her regret going to Poland on her own.

- j. M maintained that F walked in on her in the bathroom regularly, and she made it clear that she did not want her privacy to be invaded like that. She maintained that he would follow her into other rooms when she wanted her own space during arguments, and it made her feel vulnerable. M maintained that F was controlling her reaction and did things like follow her and shouting in her face nearly every time there was an argument. She maintained in cross examination that she did not shout but F did. She said that shouting made her feel anxious, and she had told F about this and believes that he used it against her.
- k. M explained that she was never forced to physically have sex but that she was manipulated into having sex at least three times a week by F against her will by reference to F talking about other women he had slept with and setting an expectation in turn. It was put to her that she was not under duress.
- l. In terms of finances, M admitted under cross examination that she did have access to the joint account for essentials such as groceries and things for the baby but that she did not want to have a joint account and F refused to allow her to remove her name. M said that F shouted at her and went crazy when an issue occurred with the energy provider and shouted in her face that she had wasted his money. M claimed that F's mother was present and tried to intervene and calm F.
- m. [withdrawn by agreement]
- n. M was cross examined about her claim that he demanded oral sex as an apology during an argument. She maintained this and said that F was unable to apologise or say sorry. She did not accept when put to her that she used sex as a way of apologising, and was adamant that the recording bore out how offended she was when she heard this from F.

130. In response to M's evidence on her allegation of coercive and controlling behaviour, F responded by denials to everything put to him on M's behalf by counsel. His evidence tended to not answering the question put but offering a completely different narrative or being at pains to construe the context in a way which excused or minimised his behaviour.

131. F told the court that the relationship was “*toxic and unpleasant*” but seemed tone deaf as to the fact that he was one of the two people in the relationship and ignorant as to any degree of accountability on his own part whatsoever.
132. When questioned about the text message from June where F threatened to “*kick [M] to the streets, you ungrateful bitch...*” and it being put to him that this was evidence of coercive and bullying behaviour, F again failed to take any responsibility, citing that he had been baited and lost his temper, but offering no apology. It was illustrative that the crux of his allegations are that M never apologises and is controlling, but he refused to apologise or even offer any recognition that his comments would have hurt M.
133. The tenor of Ms Geser’s questioning was probing at times but by no means rude, yet F seemed at times to take offence to the lines of questioning and completely incredulous as to her point of view. It would have been to his benefit to make concessions where necessary, considering the other evidence against him, primarily the recordings of himself. I accept that being recorded was unpleasant and captured him in a poor light, but at times in live evidence he merely doubled down on that behaviour by not offering any contrition, empathy or understanding.
134. In respect of saying that he was “*exceptional*” and that couples therapy was of no benefit because of this, F then explained that he has been undertaking therapy since the breakup. I asked him about this, specifically as to the nature of the therapy and whether he thinks he has an anger management problem considering the “*vile*” behaviour (in his words) exhibited in the July incident.
135. F sought to try to dissemble on this point and get into technicalities as to the (domestic offence) of ‘*Threats to Kill*’ contrary to the Offences Against the Person Act 1861 which were emblematic of his lack of empathy for M. When pressed, he said he did not have an anger management problem and that his behaviour in July was out of character. I do not agree, I find it to be the culmination of increasingly negative and poor behaviour towards M.
136. I asked him after conclusion of cross examination as to whether F felt women are lesser than men, and he denied this mindset, saying that they were equal but had different roles which would evolve via communication in a relationship. When I asked him if he felt any responsibility for the “*toxic and unpleasant*” relationship on his part he accepted that he did, and that this in part is subject of the therapy he is

seeking now. I was heartened by this realisation, but I found largely that F minimised his role. To put it prosaically, the evidence I have heard paints a picture of a significantly higher degree of blame for the toxicity and unpleasantness being attributable to F than to M, and he did not come close to countenancing this.

137. F did not accept that the quotes, text messages, evidence of M and audio attributed to him amounted to evidence of a coercive or controlling behaviour, but his presentation in live evidence undermined the content of his responses.

138. He accused M of playing the victim; of being an abuser; of being toxic and vile, and stood by his behaviour throughout the relationship. He repeatedly said he was “*baited*” and “*aggravated*” and seemed to place blame for his own poor behaviour on her entirely. He took great offence at being recorded and did not accept that he had shouted at, abused, or physically hurt M.

139. F took little accountability of his behaviour and suggested that M only remained measured and “*mild mannered*” in the recordings because she was recording. That seemed to indicate that if he knew he was being recorded he would have acted in a different manner, but his approach to being cross examined bore similarities to his behaviour and tone in the recordings in my view. I found F was argumentative even when clearly defending a losing argument and when being cross examined by someone with a superior grasp of didactic reasoning, logic and rhetoric than him. He seemed at times irked by the line of questioning, which he cannot have found unexpected or been unprepared for. As I have indicated, Ms Geser approached the task with earnest and methodical vigour but was entirely polite, whereas F at times seemed deeply offended and looked to argue instead of simply answering or conceding a point.

140. The specific allegations in the schedule were put to F in turn. He did not accept any of them and blamed M wholly for each.

141. Mr Miller attempted to assist F in bolstering his case on re-examination in regards the wearing of the hat by M; and in regards the text message sent in June between the two where F maintained it was conditional that he thought M was only going to stay in Poland for a short time and not until October, and she later extended her maternity leave. Whether or not there was a misunderstanding about M saying “*in that case I won't come back to England with you*” being a threat to abduct L (and

in language and law I do not consider it can amount to such, I find it more a reaction to a barrage of abuse and belittling by F) it simply does not excuse the reaction.

142. I find from the evidence of the parties that the following features were present in the behaviour of F toward M:

- a. That in isolation things like telling M to take off her hat, or employing a point scoring system for her behaviour were perhaps not troubling but in the wider context were indicative of F's attempts to exert control over M.
- b. That F tended to talk over and shout at M, as shown by the audio recordings and coherent evidence of M on this matter.
- c. That during arguments F would follow M around and shout at her despite it being clear she wanted her own space, as evidenced by the recordings.
- d. That M felt that because he made more money than F, or because of what I fear are entrenched and antiquated gender views, M owed him in terms of being subservient and including indulging in sexual favours on demand. Such conduct robbed M of her ability to freely consent and placed her under duress.
- e. That in the incident in July F extolled to M that a "*happy husband [and] stable home*" were desirable, and she could "*obviously [not get that through her] thick skull*" which is indicative of misogynist, dated and bullying thinking and strongly tends toward being controlling and coercive per se.
- f. That F felt that M lacked any virtues and that he himself was variously "*honest, exceptional*" and had "*pride, ambition and wisdom*" and that such contrasts amounted to bullying and belittling behaviour in the wider context.
- g. That F would continually walk away from arguments when challenged about his behaviour rather than face criticism in a joined-up manner.
- h. That F would often swear at M including telling her to "*fuck off*" and that he did not "*give two fucks about her*"; and calling her a "*moody old bitch*".
- i. That F felt paying for the household bills entitled him to "*authority*" which I find to be indicative of his mindset that M should be subservient.
- j. That F's repeated and aggressive threats to "*end [her] fucking life*" in July 2023 combined with the assault upon her then amounted to a pattern of abusive, violent, and intolerable behaviour which would have been oppressive and in conjunction would have robbed M of her agency and joy for life.
- k. I do not find that F's position on those allegations was coherent or compelling. I found that in large part his evidence was evasive when

confronted with evidence of his behaviour and I find this indicative of a pattern of bullying, obfuscation, and denial as to taking responsibility for his own actions during the relationship.

143. The above is a non-exhaustive list of the factors I find tend strongly in favour of M's overarching allegations. I have made those determinations on the evidence before me, and some differ from the sixteen total grounds relied upon by M. In my view, it is sufficient to find the allegation that F used coercive or controlling behaviour against M is proven.

XV. The allegation of emotional abuse

144. Turning finally to F's allegation that throughout the relationship, M emotionally abused him, it was variously put to M that:

- a. She had contacted F's friend 'S' after the breakup – to get his help to write the court statement. It was put to her it was inappropriate. She maintained that she had been contacted by several other people, including the ex-partner of F who was said to fear F. She maintained that potential witnesses were put off coming to court due to fear but accepted that she did not have evidence on this point.
- b. That M had tried to alienate F from his friends. She did not accept this. She maintained that he had a small group of friends including people he played '*Dungeons & Dragons*' with him, and that she did not stop him from carrying on his hobbies and seeing people, even after he became a father.
- c. That she sulked during arguments, which she did not accept. She maintained that she was the sort of person who wanted to fix things and deal with issues.
- d. That she was indeed suspicious about F having an affair, which she had explained previously in evidence. She advanced as evidence for her suspicion the fact that F was using dating apps whilst apparently deeply in love with her and only three months from L being born.
- e. That M denigrated F's parenting ability. M instead maintained that any instance where she was critical of F was borne of legitimate concerns with his ability to care for L alone. She pointed to an example where F ran out of milk after only one hour with the baby. In my view she presented as measured in outlining these concerns, which appeared reasonable rather than evidence of abuse.
- f. That M made threats to take L to Poland, which was dealt with extensively in evidence about the incident in July. I took the view that there was nuance in

her response to F during the argument, that she would like to stay in Poland owing to his behaviour, and not specifically a threat to abduct or alienate L. M maintained that this was context specific and related to earlier messages which are part of the bundle and seem to indicate that F was in agreement that M might be able to stay longer in Poland due to her Maternity Leave.

145. In turn, F in evidence said that he was “*confronting his abuser*” during the breakdown of the relationship in July 2023. It was put to him that he has failed to put forward any evidence of abuse by M, including shouting, swearing or anything of that nature.

146. F did admit that he had been on a dating app when M was six months pregnant, and accepted this would be a basis for suspicion. He accepted that he lied about not seeing CA and felt that he could not be open and honest with M.

147. It was put to F that the only evidence which he could point to as to his overarching allegation were in fact points conceded by M and based on her mistrust and anxiety in the relationship. He did not accept that even in a relationship with such suspicion, parties would ever allow one another to access their phones.

148. I have concluded the following from the evidence of this allegation:

- a. The admission by M that she did not trust F’s relationship with CA and asked him not to see her, and that he continued to do so, which in context would have caused division and further mistrust in the relationship.
- b. The admission by F that he was on dating apps when M was six months pregnant and the acceptance that F gave that this would lead to reasonable suspicion.
- c. Evidence that M alienated F from his friends is not compelling. He continued to partake in *Dungeons and Dragons* games on a fortnightly basis, even after the baby was born.
- d. The absence of any notes which F said he took during the relationship as to purported “*gaslighting*”. When pressed F said that he did have notes but that he did not realise he needed to file them for the FFH. I find this unbelievable bearing in mind he is represented and supplied a witness statement in December and knew he was under an obligation to provide evidence.
- e. The purported allegation that M “*initiated arguments*” draws the conclusion that one person cannot argue with themselves – the audio recordings show

that F was the *aggressor* (to use his own word) in arguments, and was the one who swore and raised his voice and made threats. It is not enough for F to say that he was baited and constantly blame M for his own outbursts.

- f. That the evidence of purported degeneration is weak. In evidence F said that M believed he had not prioritised L and could not look after him for more than an hour. He was vague and unable to point to any sufficient example of anything other than typical motherly concern for a baby. When pressed, F was unable to adduce any positive evidence of denigration in his evidence. He alleged that M called him a “*bad father*” but could not provide any evidence for this. I do not believe that F truly understood the word ‘denigrate’ and I attempted to explain this to him, but he was unable to satisfy me as to any clear example.
- g. The evidence that M recorded F on several occasions can be explained by the fear that she felt toward him and his coercive behaviour. It is reasonable to infer that she was recording him because of her fears, and she wanted evidence of his behaviour. It was no doubt invasive to be recorded, but the evidence is damning. It might be considered that the ends justify the means.
- h. That the criticisms of F by M in terms of his parenting ability were rather mild in context and borne of legitimate motherly concerns, although it might have been hurtful to think that the other parent does not think highly of you, and it would be better for M to encourage rather than criticise, but criticism is not the same as denigrating (which connotes unfairness rather than an objective basis for the criticism).
- i. The allegation that M “*threatened to separate*” F from L by taking him to Poland does not accord with the evidence- specifically: a) text messages between the two where M discussed going to Poland during her Mat Leave were amicable, open and in good nature; b) the fact that F’s outburst and attack in July was predicated by M saying that she “*would not go back*” with him. This is materially different from someone making a threat to take L away from the jurisdiction, as the parties were already in Poland and the prior discussion underpins the contention that they had discussed M staying longer with L if needed. It was put to F that he did not make an application until September to stop her taking L to Poland, and this undermines any genuine credence to his allegation. I found that conclusive.

149. In considering the totality of the evidence I have read and heard, I conclude that there was *some* evidence of jealousy by M toward F, but this was explained by the power imbalance and her vulnerability and mistrust of F using dating apps. In

regards the other strands of F's allegation I do not find persuasive evidence. I am mindful that the burden is upon F making the allegation against M. I find the burden is not discharged and the allegation is not proven in turn.

XVI. Summary

150. Therefore, the findings I make are as follows:

- a. That in January 2023, that F became angry and threw his phone in the direction of M and it broke into several parts on the floor.
- b. That in February 2023, there was an argument, but I cannot be satisfied there was an assault, and I cannot be sure the baby was present with M during any assault, because the evidence does not meet the burden of proof.
- c. That on 17 July 2023, during a trip to Poland, the parties argued, and upon the F believing that M may seek to remain in Poland with L, he became enraged, made threats to end her life, attacked M by pinning her on the sofa and pushing her head down, and he also threatened to throw her out of a window.
- d. That having considered all the evidence, including but not limited to: F's frequent use of slurs; F's threats of violence; F's use of physical violence; F shouting at M and talking over her; F storming out when he did not get his way; F refusing to consider counselling as he considered himself "exceptional"; F insisting that he have "authority" in the relationship and that M "know her role"; F demanding that M perform oral sex upon him and "submit" after an argument; and F generally creating an environment where M was subservient, frightened and had little control; that F's behaviour amounted to coercive and controlling behaviour toward M.
- e. That the behaviour of M towards F did not amount to emotional abuse as alleged because the evidence in totality does not meet the burden of proof.

XVII. Interim Contact Arrangement

151. On the last occasion I heard this case I made an order for interim contact in a supervised environment. I did so notwithstanding the advice from CAFCASS that

pending FFH, contact should not be resumed. In doing so I considered paragraph 25 of PD12J, namely that:

*“Where the court gives directions for a fact-finding hearing, or where disputed allegations of domestic abuse are otherwise undetermined, the court should not make an interim child arrangements order unless it is satisfied that it is in the interests of the child to do so and that the order would not expose the child or the other parent to an **unmanageable** risk of harm” [emphasis added].*

152. In coming to that decision to allow interim contact between F and L I took into account the following features:

- a. That F had had unsupervised contact with L between the allegations in July when the parties separated and September when M unilaterally ended that contact; and
- b. There was no allegation of direct harm to L from F; and
- c. That delay in contact would be invidious to the welfare of L at such a crucial time of his development; and
- d. That the risks of indirect harm, in considering the outline of the evidence and the Welfare Checklist, could be balanced and managed in my view within the confines of supervised contact.

153. Having now come to the conclusion that there are findings of domestic abuse against M by F, I must in turn consider paragraph 38 of PD12J. I consider that although I have made findings against F, on balance it is of greater harm to L to now stop contact until the case is resolved, which may be several more months. In coming to this conclusion, I have anxiously assessed whether the findings put L at greater or unmanageable risk, and I have considered the ongoing progress reports of the first ten sessions of supervised contact, in which the conduct of F was said to be “*exemplary*”.

154. However, I noted with concern during the hearing that on one occasion F appeared to be discussing the case with a member of staff with L sleeping on his chest. I warned him then and will repeat it now that these are closed proceedings and moreover he must cease any denigration of M to L or others.

155. I have in summary found that there was abuse by F toward M but thankfully the ending of the relationship has provided much needed distance and respite to M

and direct harm is mitigated. If it continues indirectly, i.e. by aggression or manipulation going forward by F, that may well impact the orders the court makes.

XVIII. Consequent directions

156. I will order Cafcass to prepare a s.7 report. The court will provide the findings above, inviting CAFCASS to consider to what extent the facts found have a bearing upon the *Welfare Checklist* and each parents' ability to co-parent L going forward, and what support might be needed.
157. M to provide a statement in support of her application to relocate by 3 April and F to respond by 24 April. This to go to CAFCASS.
158. I will also ask that CAFCASS report on the welfare of L apropos of M's application to remove him to Poland.
159. I direct that the progress reports as to supervised contact between F and L be made available to CAFCASS to consider as part of their report, and that CAFCASS be asked to consider the status of contact and whether referral for an ICFA would be appropriate.
160. Once the S.7 report is available it will be promptly disclosed to the parties, and they are directed to respond within 14 days thereafter with a concise statement dealing with the matters raised per the '*Welfare Checklist*'.
161. The case will be listed before me for a Dispute Resolution Appointment with a time estimate of 1 hour.
162. Carriage of an agreed order with counsel.

DDJ Nahal-Macdonald

13 March 2024