



Neutral Citation Number: [2022] EWHC 140 (Fam)

Case No: RG21P00555

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/07/2022

Before :

Mr Justice Williams

Between :

LKM

Applicant

- and -

NPM

Respondent

(Fact Finding: Domestic Abuse: Evidence - Non-compliance with Guidance)

Ms Chaudry (instructed by Payne Hicks Beach) for the Father
Mr Verdan QC and F Shama (instructed by Penningtons Manches Cooper) for the Mother

Hearing dates: 11th-15th July 2022

JUDGMENT

If this Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

WILLIAMS J

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court .has been emailed to you it is to be treated as 'read-only'. You should send any suggested amendments as a separate Word document.

Williams J:

Introduction

1. I am concerned with twins LL and LLA who were born on the 23rd of October 2014 and who are thus now seven years old. The father is LKM who is represented by Ms Chaudhry and Payne Hicks Beach. Their mother is NPM who is represented by Mr Verdan QC, Mr Shama and Penningtons Manches Cooper. The principal application before me is the father's C100 for a child arrangements order dated 21 October 2021.
2. That application was case managed by justices and DJ Hammond to a fact-finding hearing which is what I have been undertaking over the last 4 days.

The Allegations of Domestic Abuse

3. The mother's original C1A contained 71 allegations. During case management hearings the court had addressed the issue with the parties so that the allegations could be managed. This resulted in a further C1A containing 57 odd allegations. At the hearing on 3 May District Judge Hammond recorded that guidance required only those allegations to be determined which were necessary and proportionate and in particular which were capable of being determined within the four-day fact finding hearing which had already been listed. He identified 19 allegations under four heads; namely physical/verbal abuse against the children; physical/verbal abuse against the mother; financial abuse; and the father's obsessional behaviour. By the time the matter came before me a document in the nature of a Scott schedule entitled 'comparison document of mother's allegations and father's responses' had been prepared which contained 24 allegations divided into the following categories (broadly similar to those identified by DJ Hammond [225]):
 - i) Physical and verbal aggression towards the boys (15 allegations).
 - ii) Physical and verbal abuse towards the mother (3 allegations).
 - iii) Sexual abuse toward the mother (1 allegation albeit encompassing a number of occasions).
 - iv) Father's controlling behaviour (1 allegation albeit drawing in other aspects of the father's behaviour in a more general allegation of controlling behaviour).
 - v) Financial abuse towards the mother (1 allegation).
 - vi) Father's obsessive behaviour (in respect of the household, cleanliness and hygiene) (3 allegations).
4. Although in his C100 the father did not identify any category in the 'Concerns about risk of harm' section (including the general other safety or welfare concerns) following the mother filing her C1A the father filed his own. The father's allegations set out in his C1A fall into the following categories:

- i) The mother and her family have behaved in a way that is compatible with parental alienation and implacable hostility towards the father and his family which is causing emotional and psychological harm to the boys, contrary to their best interests. (11 allegations)
 - ii) The mother is failing to promote, prioritise and progress the children's relationship with the father by imposing overbearing restrictions on the manner in the way the boys spend time with him and insisting on supervision and a general regime that is contrary to their best interests. (Allegations in i) relied on and a further 6 items)
 - iii) The mother has made a number of false and exaggerated allegations to the boys, to professionals, and to the police about the father's conduct towards the boys. (7 allegations)
 - iv) [An allegation in the C1A that the boys may be at risk of physical harm or inappropriate discipline techniques at the hands of NPM and / or her mother / the wider maternal family. "LLA was smacked across the face by his maternal grandmother on or about 21 January 2022" was not specifically identified as for determination but it was not abandoned as cross-examination of the mother on it occurred.].
5. At the commencement of the hearing the issue of how the allegations were to be explored and determined was considered. I had been provided with a reading list of some 700 odd pages which included a 47-page narrative statement of the mother (the exhibits were a further 150 odd pages) and a 62-page narrative statement by the father (his exhibits were a further 100 odd pages). I was also provided with lengthy Position Statements, Chronologies and Case Summary, a Comparison (Scott Schedule) document which amounted to a further 100 odd pages of material. The Core Bundle amounted to 920 pages and the Supplementary Bundle amounted to 1050 pages. Later the ABE interviews of the boys and the report of Dr X were added so the total documentation in the case well exceeded 2000 pages. I had the benefit of e-Bundles, but the witness bundle comprised 5 lever arch files. PD27A provides a limit to the length of witness statements of 25 pages and to Bundles of 350 pages. The President's memorandum relating to witness statements issued on 10 November 2021 specifies 15 pages as best practice with the PD27A limit of 25 pages being a maximum. Paragraph 7 of the Memorandum provides that:
- A witness statement must not:*
- a. quote at any length from any document;
 - b. seek to argue the case;
 - c. take the court through the documents in the case;
 - d. set out a narrative derived from the documents;
 - e. express the opinions of the witness; or
 - f. use rhetoric.
6. In addition to vastly exceeding the permitted maximum length of statements the parties' statements breach the memorandum in almost every other way including quoting at length from other documents, arguing the case and use of rhetoric.

7. The recent Guidance of Macur LJ *Fact-finding hearings on domestic abuse and private law children proceedings guidance for Judges and Magistrates dated 5 May 2022*, is self-evidently of relevance, in particular paragraphs 13-15. These paragraphs highlight the principles of relevance, purpose and proportionality and in particular guidance that the court “*only needs to determine allegations of such behaviour to the extent that it is relevant and necessary to determine issues as to a child’s future welfare. Even then, the court is only required to assess the overarching issue, rather than every single subsidiary factual allegation which may be raised.*”
8. I made clear to the parties that the 2 ½ hours reading time provided for within the time estimate had not been in any way sufficient to enable me to complete what the parties had identified as essential reading. I had not even been able to read the parties’ primary statements in full they amounting to a minimum of 2 hours reading alone still less all of the other documents identified as essential reading which together with the other documents filed were double the permitted maximum number of pages in a bundle. Given that I’m not in possession of Hermione Granger’s ‘Time Turner’ and with a full trial template with no further time allocated to judicial reading this inevitably meant that the hearing would take place and the adjudication be given in circumstances where I had not been able to read in full even the parties’ statements, let alone the other material they considered essential reading. As I made clear at the point of submissions, I had still not been able to read those statements in full and was unlikely to before I gave judgment. I have not been able to do so but I am satisfied from the evidence I heard that it was not necessary to adjourn the case to another hearing sometime in the autumn to do so.
9. As a High Court judge with a full-time clerk with a great degree of control over my diary and with a four-day time estimate the non-compliance with the Practice Directions, Guidance and Memorandum have not presented me with a significant difficulty in hearing and determining this case although it is counterintuitive and frustrating to any judge to proceed to determine a case feeling that they have been unable to undertake the preparation and reading that they would wish to have done. However, the vast majority of these cases are determined by justices, district judges, deputy district judges, Records or Circuit Judges who do not have the advantages of time, support and control that I do. It is deeply unhelpful in the vast majority of cases to have cases prepared in the way this has been and it risks delaying the determination of the proceedings and injustice to parties and most importantly the children because the court is overwhelmed with paper and is hampered in identifying and grappling with the essential issues. The FPR, Practice Directions, Guidance and Memorandum are there to be complied with because compliance promotes the better delivery of justice. Whilst it may satisfy the parties’ individual needs to speak at length in a statement, to vent their feelings and to argue their cases, in doing so they risk undermining the delivery of justice in their own case, simply because the court’s evaluation of the issues and evidence is obscured or potentially overwhelmed by the sheer volume of issues and material they are confronted with. As it happens in this case, as in many others (but certainly not in all) as the parties gave their oral evidence a relatively clear picture emerged which dispelled the fog of obscurity by volume.
10. Given the volume of allegations, the volume of evidence and the time estimate I also explored with the parties how best the court and the parties might direct their focus to ensure that the core of the allegations were addressed without going into the details of

every particular incident which would have been impossible in the time available. As a result of that process, and bearing in mind the Court of Appeal's recent guidance in *Re H-N and K-v-K* on the benefits of focusing on the nature of the relationship between the adults, I indicated that focussing on the following was likely to achieve that goal:

- i) The nature of the relationship between the mother and the father which would encompass much of the issues relating to the father's alleged compulsive or obsessive behaviour which would inform and be informed by;
 - ii) The issues of physical and verbal abuse of the mother;
 - iii) The allegations of the father's verbal and physical abuse of the children; and
 - iv) The mother's attitude to the father after separation and whether she and her family were hostile to the boys' relationship with the father.
11. Within each of these categories there appeared to be incidents which were more prominent and although I did not seek to identify specific incidents prior to the commencement of the evidence on which the parties must focus in the event a number of incidents emerged which shed light on the whole and which are adequate examples which enable me to draw general conclusions. The boys had been interviewed by the police and following the commencement of the hearing, transcripts of their ABE interviews were filed. No party suggested they should give evidence.

The Legal Framework

12. PD12J applies to any family proceedings in the Family Court or the High Court under the relevant parts of the Children Act 1989 or the relevant parts of the Adoption and Children Act 2002 in which an application is made for a child arrangements order, or in which any question arises about where a child should live, or about contact between a child and a parent or other family member, where the court considers that an order should be made.
13. The function of the Family Court in resolving disputes of fact is fundamentally different from the criminal court. The Court of Appeal made clear in *Re R* [\[2018\] EWCA Civ 198](#):

"The primary purpose of the family process is to determine, as best that may be done, what has gone on in the past, so that that knowledge may inform the ultimate welfare evaluation where the court will choose which option is best for a child with the court's eyes open to such risks as the factual determination may have established" ([62] *Re R*).

14. The 'General principles' set out in PD12J include:

'Domestic abuse is harmful to children, and/or puts children at risk of harm, whether they are subjected to domestic abuse, or witness one of their parents being violent or abusive to the other parent or live in a home in which domestic abuse is perpetrated (even if the child is too young to be conscious of the behaviour). Children may suffer

direct physical, psychological and/or emotional harm from living with domestic abuse and may also suffer harm indirectly where the domestic abuse impairs the parenting capacity of either or both of their parents. ‘

15. The main allegations in this case fall within the category of 'domestic abuse' which is defined in §3 of *PD12J FPR 2010*, namely:

'domestic abuse' includes 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.

'coercive behaviour' means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim;

'controlling behaviour' means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

'abandonment' refers to the practice whereby a husband, in England and Wales, deliberately abandons or "strands" his foreign national wife abroad, usually without financial resources, in order to prevent her from asserting matrimonial and/or residence rights in England and Wales. It may involve children who are either abandoned with, or separated from, their mother'.

The Domestic Abuse Act 2021 now includes a child as a victim of domestic abuse if they see, hear or experience the effects of the abuse or they are related to the perpetrator or victim.

16. The Court of Appeal's judgment in *Re H-N* [2021] EWCA Civ 448 contains much important guidance on various aspects of domestic abuse including 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 and this is reflected by (PD12J)" (§25).

17. In *Re JK (A child)* [2021] EWHC 1367 (Fam), Mr Justice Poole said the following:

Patterns of behaviour are formed from many individual incidents of conduct. It is difficult therefore to separate the pattern from the specific events said to establish the pattern. In this case every one of the mother's allegations is denied by the father. The court cannot make findings about a pattern of behaviour without evaluating the evidence in relation to specific incidents that allegedly contributed to that pattern. The difficulty is in identifying a limited number of incidents that would, if proved,

establish a pattern of behaviour. Some specific instances of behaviour will not constitute abuse themselves and may appear to be relatively trivial if looked at in isolation but are in fact important evidence of a pattern of abuse, or the effects of abuse, when set alongside other findings. For example, there is evidence in this case of the mother texting the father to ask if she can use the toilet in his bedroom. Arguably, she did so because she was conditioned by him to ask his permission to perform many of her activities of daily living. How does the court keep a finding of fact hearing within proportionate and manageable limits without filtering out what might be highly relevant evidence of coercion or control?

18. In K-v-K [2022] EWCA Civ 468 the Court of Appeal gave further guidance on how to manage domestic abuse allegations in particular focussing on how to case manage them but also emphasising the need to (a) focus on the over-arching issue of coercive and controlling behaviour [§63 & 68] and (b) the need for a broad panoramic evaluation of the evidence [§61].
19. I also note Peter Jackson LJ's comments in Re L (Relocation: Second Appeal) [2017] EWCA Civ 2121 (§61), cited with approval in Re H-N at §32 to the general effect that:

"... not all directive, assertive, stubborn, or selfish behaviour, will be 'abuse' in the context of proceedings concerning the welfare of a child; much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour."

I observe that whilst findings may not amount to coercive behaviour either because they do not constitute assault, threat, humiliation or intimidation or that they were not intended to harm, punish or frighten the victim, they may still be emotionally abusive and relevant to future decision making. Patterns of behaviour or acts of behaviour may not primarily be designed to make the victim subordinate or dependent and may thus not amount to controlling behaviour but may still amount to abuse and, even if not abuse, may amount to self-centred, dictatorial or unsupportive behaviour (not an exhaustive list) which may be relevant to answering the ultimate question of what is in the child's welfare. One particular reason for avoiding criminal concepts in the family court is that it may tend to promote a focusing on the label attached to the behaviour and whether the criminal act has been proved, which self-evidently is inappropriate for a family court determining matters on the balance of probabilities but also may promote a binary approach to behaviour as being relevant if proved but irrelevant if not proved. Much behaviour may still be relevant in welfare terms even if it is not 'criminal' or does not fall within the definition of 'domestic abuse' because the family court is always looking at the substance of the behaviour and its impact on the child or other parent and what effect that has on the formulation of what order will best promote the child's welfare. It is also important to note that in evaluating patterns of behaviour and their motivation one should seek to place any pattern identified within the overall context of the multitude of facets of behaviour which a relationship will consist of as this may assist in identifying the intention of the perpetrator, if any, in conducting that pattern. This may inform the determination of whether it might amount to coercive or controlling behaviour as being intended to have the effects required by the definition, whether it is unintentional but still amounts to abusive behaviour or whether seen in a holistic context it is perhaps simply a manifestation of, for instance, selfishness which does not amount to abuse.

20. The burden of proof, of course, lies on the party making the allegation. The allegation must be proved by them on the balance of probabilities. The mother must prove her allegations. The court is not bound to find the mother's case proved or the father's case proved but may determine that allegations have not been proved to the requisite standard; see *The Popi M* [1985] 1 WLR 948. The inherent probability or improbability of an event remains a matter to be taken into account when weighing probabilities and deciding whether, on balance, the event occurred: *Re B (Care Proceedings: Standard of Proof)* [2008] UKHL 35 at paragraph [15]. The father has to prove nothing in relation to the mother's allegations.
21. Findings of fact must be based on evidence, and the inferences that can properly be drawn from the evidence, and not on speculation or suspicion. The decision about whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence. The court must take into account all the evidence and furthermore consider each piece of evidence in the context of all the other evidence. The court invariably surveys a wide canvas. 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 including bringing into account the credibility of the parties, in order to come to a conclusion.
22. Self-evidently, the credibility of the parties plays a central role in matters of fact. I bear in mind the principles in relation to *Lucas* and remind myself that the fact that one party may have lied about one matter does not indicate that they have lied about all matters, still less that they have lied about the allegations made against them. A lie is capable of amounting to corroboration if it is (a) deliberate, (b) relates to a material issue, and (c) is motivated by a realisation of guilt and a fear of the truth: *Re H-C (Children)* [2016] EWCA Civ 136 at paragraphs [97-100].
23. However, the honesty or dishonesty of a party does not sound only in *Lucas* terms, where it may positively corroborate an allegation but is of course of more general relevance in determining what weight should be given to a party's evidence. A witness who has been found to be unreliable or dishonest is likely to find their evidence is given less weight than that of a witness who has been found to be generally reliable and honest. In cases where the court finds itself largely reliant on evidence emanating from only two individuals – as is often the reality in domestic abuse cases – the outcome may be heavily influenced by the fact that the court finds one party to be generally honest and/or reliable and the other dishonest and/or unreliable. Of course, in reaching that conclusion as to credibility the court will be considering a wide canvas including the consistency of the accounts over time, the internal consistency or coherence of the evidence, consistency with other evidence documentary or otherwise, inherent probability as well as demeanour.
24. I remind myself that in relation to historic matters the memory is a potentially fallible source of evidence. Leggatt J (as he then was in the *Gestmin* case [2013] EWHC 3560 (Comm)) said,

Evidence Based On Recollection

[15] An obvious difficulty which affects allegations and oral evidence based on recollection of events which occurred several years ago is the unreliability of human memory.

[16] While everyone knows that memory is fallible, I do not believe that the legal system has sufficiently absorbed the lessons of a century of psychological research into the nature of memory and the unreliability of eyewitness testimony. One of the most important lessons of such research is that in everyday life we are not aware of the extent to which our own and other people's memories are unreliable and believe our memories to be more faithful than they are. Two common (and related) errors are to suppose: (1) that the stronger and more vivid is our feeling or experience of recollection, the more likely the recollection is to be accurate; and (2) that the more confident another person is in their recollection, the more likely their recollection is to be accurate.

[17] Underlying both these errors is a faulty model of memory as a mental record which is fixed at the time of experience of an event and then fades (more or less slowly) over time. In fact, psychological research has demonstrated that memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is true even of so-called "flashbulb" memories, that is memories of experiencing or learning of a particularly shocking or traumatic event. (The very description "flashbulb" memory is in fact misleading, reflecting as it does the misconception that memory operates like a camera or other device that makes a fixed record of an experience.) External information can intrude into a witness's memory, as can his or her own thoughts and beliefs, and both can cause dramatic changes in recollection. Events can come to be recalled as memories which did not happen at all or which happened to someone else (referred to in the literature as a failure of source memory).

[18] Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs. Studies have also shown that memory is particularly vulnerable to interference and alteration when a person is presented with new information or suggestions about an event in circumstances where his or her memory of it is already weak due to the passage of time.

[19] The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty (such as an employment relationship) to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces.

[20] Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. A witness is asked to make a statement, often (as in the present case) when a long time has already elapsed since the relevant events. The statement is usually drafted for the witness by a lawyer who is inevitably conscious of the significance for the issues in the case of what the witness does nor does not say. The statement is made after the witness's memory has been "refreshed" by reading documents. The documents considered often include statements of case and other argumentative material as well as documents which the witness did not see at the time or which came into existence after the events which he or she is being asked to recall. The statement may go through several iterations before it is finalised. Then, usually months later, the witness will be asked to re-read his or her statement and review documents again before giving evidence in court. The effect of this process is to establish in the mind of the witness the matters recorded in his or her own statement and other written material, whether they be true or false, and to cause the witness's memory of events to be based increasingly on this material and later interpretations of it rather than on the original experience of the events.

[21] It is not uncommon (and the present case was no exception) for witnesses to be asked in cross-examination if they understand the difference between recollection and reconstruction or whether their evidence is a genuine recollection or a reconstruction of events. Such questions are misguided in at least two ways. First, they erroneously presuppose that there is a clear distinction between recollection and reconstruction, when all remembering of distant events involves reconstructive processes. Second, such questions disregard the fact that such processes are largely unconscious and that the strength, vividness and apparent authenticity of memories is not a reliable measure of their truth.

[22] In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.

25. Evidence may be honestly and sincerely given but be false or mistaken. The passage of time and the repeating of allegations in court and discussion outside court can undoubtedly result in memory creep. Inconsistency in accounts separated in time does not necessarily mean the accounts are not honestly given or that the core of the allegation is not true. It is all a question of fact and degree in the individual case.
26. Reliance on demeanour also requires some care; some witnesses are confident liars; others are hesitant truth tellers. However, demeanour in a broader sense can still be of great assistance to a judge; the evidence of a witness who appears reflective, objective, self-critical, who confines themselves to the facts is likely to be given more weight than that of the witness who is argumentative, subjective, partial, dogmatic. That is not because the former may be easier on the ear to the tribunal and the latter more challenging or frustrating but because those qualities or flaws are relevant to the substantive issue of the likely reliability of the evidence. Applying general assumptions as to how a victim of domestic abuse could be expected to present are inappropriate. I also note what Judd J said in her judgment in *M (A Child)* [\[2021\] EWHC 3225 \(Fam\)](#)

"The reason it was so important for the judge to give very careful consideration to the question of vulnerability in this case is because a vulnerable person may not act in the same way as someone more independent or confident if they are exploited or abused in a relationship. Such an individual may be so anxious for the relationship to succeed that they accept treatment that others would not. They may be easy to exploit. They may not even realise what is happening to them and will cling to the dream of a happy family and relationship. ...

Here it is quite clear from reading the transcript of the hearing and judgment that in rejecting a number (although not all) of the mother's allegations against the father the judge relied very much on the fact she wanted to be in a relationship with the father, she tried to get him back when he rejected her, and that she engaged in sex with him after occasions when she said he had raped or abused her. These reasons

may well hold good in many cases, but most definitely not all. In some cases, it is a very unsafe premise upon which to base findings of fact, especially if the alleged victim is vulnerable or dependent as the mother said she was here. Further, it seems to me that the judge's disbelief that the mother would have remained in an abusive relationship led her to conclude the mother was lying about it. This tainted the whole of her evidence and was a thread which ran throughout the case."

27. An approach which takes account of the content of oral and written evidence, its consistency internally and with other evidence and, in particular, with any contemporary documentary material or other supporting evidence is essential in putting into effect the non-compartmentalised, broad panoramic view which the authorities mandate.
28. Although the general approach is that any fact which needs to be proved by the evidence of witnesses is generally to be proved by their oral evidence r22.2(1)(a) FPR 2010, facts may also be proved by hearsay evidence. The effect of Children Act 1989 s.96(3), Children (Admissibility of Hearsay Evidence) Order 1993 is to make all evidence given in connection with the welfare of a child admissible notwithstanding its hearsay nature. This would commonly include Local Authority or police records which are very often hearsay, often second- or third-hand hearsay, but also extends to witness statements. The court should give it the weight it considers appropriate: *Re W (Fact Finding: Hearsay Evidence) [2014] 2 FLR 703* and where hearsay goes to a central issue, the court may well require the maker of the hearsay statement to attend to give oral evidence.
29. The evidence of Mr RF the ISW was put before the court. In his statement he identified three questions that he had been asked to address. They were:
 - i) the context of the allegations that the children have made in contact and your view as to whether they are genuine expressions of the children's lived experience, have been the product of adult influence or coaching (and if so by whom) or something else;
 - ii) your perception about the maternal family and any impact that their views of LKM may be having on the children;
 - iii) your observations of the children's time with LKM and whether they are fearful of him.
30. Mr RF was not instructed as a part 25 expert but as a contact supervisor. Insofar as his evidence is relevant or indeed admissible to this fact-finding it is in relation to what he saw and heard during sessions he supervised. His opinions on the likely provenance/truth of the children's allegations, the impact of the maternal family's views on the children (in general terms) and whether the children are fearful of the father (in general terms) which in relation to provenance or truth are probably inadmissible in any context and are inadmissible expressions of opinion for this hearing. In so far as he may have observed behaviour by the maternal family which he observed to have an impact and insofar as he observed fear or no fear in the children at particular times, although they may be opinion, they have a more direct observational element which is I think admissible although the weight is a different matter.

The Evidence

31. The parties' evidence is contained within the 1900 odd page bundle that was lodged. In particular, the mother's evidence is contained within her first statement and in her 3rd statement. The father's evidence is contained within his first statement. Parts of their evidence are incorporated within the chronology attached to this judgment which forms an integral part of this judgment in terms of the evidence and my evaluation and findings. It is drawn from, the Applicant's Comparison document, the Respondent's detailed chronology and the oral and documentary evidence. The fact that I have not recited a piece of evidence does not mean I have not read it (although in this case that is certainly a real possibility) or taken it into account but after hearing the oral evidence of the parties which has been central to my evaluation of the case I do not consider any longer or more complete recitation of the documentary and oral evidence to be of assistance in setting the context for my reasoning and conclusions. I have sought to consider the parties submissions on the evidence in my consideration of the evidence and my evaluation; I do not consider it proportionate to set them out separately.

32. I am of course acutely aware of the fact that for all these parties the issues in play bring with them high-stakes. Neither are familiar with the court environment or processes. However, they have representation by counsel and solicitors of the best that money can buy and insofar as one can prepare for court and insofar as preparing for court can reduce anxiety and promote good evidence-giving this seems to have occurred. Both of the parties were very familiar with the detail of each other's cases and the documents. However, notwithstanding any preparation, giving evidence with such important issues at stake is likely to have an impact on how an individual presents their evidence and I bear this in mind. For the mother who is focused on protecting the children from the risk that she perceives the father poses, the outcome were it adverse to her would potentially result in the father having extensive unsupervised time with the boys which would inevitably make the mother highly anxious. It might, were the court to conclude that the allegations were deliberately fabricated and that she was inherently hostile to the father have potential consequences for her future care of the children. It would have consequences socially as to her reputation to some degree. For the father, were the court to conclude that the allegations are true it would have significant consequences in terms of his future relationship with his boys, the need for ongoing supervision, the curtailment of the time he could spend with them as a result of that need, consideration of 'treatment' as well as significant social or reputational damage. The fact that these proceedings are in private and this judgment when published will be anonymized will only go so far in limiting the consequences socially or reputationally for the mother and father. Both the mother and father's evidence went part heard overnight; their presentation the following day was broadly speaking consistent with their presentation initially.

33. The mother gave evidence first. She was composed save for one passage when she recalled speaking to the father's therapist and her being told that he was never going to change which caused her to break down in tears. She is clearly an intelligent woman. Her recollection of detail is not as reliable as she believes it to be. She referred on a number of occasions to being able to visualise events as if they were a video running in her head. Of course, she has had the benefit of being able to reread near contemporary diary notes as a memory refresher and this may have contributed to her belief that her current recollection is entirely accurate. We know that memory does not work as reliably as the mother believes it to and in fact there are instances in her evidence which Miss Chaudhry was able to identify where her current recollection is clearly inconsistent with even what she recorded in the diary let alone anything else. The mother's firm conviction that there was a red skin mark following the bath smacking incident is inconsistent with the relevant diary entry. However, although there were other inconsistencies, they were not very significant. Overall, the level of inconsistency was more in line with the unreliability of memory rather than indicative of fabrication or indeed significant exaggeration. However, the mother does have a tendency to hyperbole and to the overdramatic. The use of expressions such as horrific, bawled at, pretty terrifying (being with a SW) describing the paternal grandmother's face as scary to the children were some examples of this but they were present throughout her evidence. I do not know sufficient about the mother's life prior to this case to know whether it is a facet having faced little adversity in life prior to her relationship with the father or something else. Her language in the diaries is similarly florid in some of the descriptions and so it is not just a product of this litigation. It does suggest that some discount needs to be applied to the mother's subjective description of events in order to reach a more objective evaluation but overall, it is not such as to make a very significant difference to the overall picture which she painted. When she happened to be called upon to give details of events she seemed to do so spontaneously, coherently and consistently with written records which suggested that when she did so her account probably was sincere and as accurate as she could make it. The narration of the grass seed event, innocuous on its own, was one example of this, the hallway push of LL and the driving in Javea another. Her account of the father's attitude to her leaving the post on the side and his feeling compelled to open it being an invasion of her autonomy was also I considered sincerely given.
34. The mother appeared on occasions to see things in rather absolute terms (the children could not have seen she and her father talking or writing) but a more dominant theme was her ability to reflect and to apply some degree of objectivity to her own actions. She acknowledged that she might be in error in relation to some records and that her behavior at times could be criticized.
35. Although she said much that was negative about the father, she was also positive about the father in various respects and in particular the time the boys spend with him. She did not come across as unremittingly hostile but rather as critical of certain aspects of the father's behavior. When asked about the way ahead she did not seek to suggest that the father's contact should terminate rather that there would have to be an assessment of what steps could be taken to ensure the children were safe. Because the nature of the allegations that the mother makes against the father in respect of his behaviour to her are relatively minor in the scheme of things, had she wished to truly blacken the father by fabrication or exaggeration she has done a relatively modest job

of it. The only aspect of the mother's evidence where I thought she was truly being disingenuous if not actively dishonest was in relation to her having identified herself as the sole holder of parental responsibility on the new school registration form. She did not appear particularly bitter about any aspect of the marriage but t, rather sad. This seems to reflect a relatively generous nature in relation to others (the police, social services and others) and an empathetic approach generally. I would assess her as being emotionally intelligent.

36. She largely appeared to be child-centred in her life. She knows the children well and much of her action was under-pinned by insulating the children from the effects of the father's behaviour. When she spoke of the children, I thought she was sincere and was genuinely seeking to understand them and their needs.
37. Thus, the mother emerges from the process of evaluating the reliability, honesty and sincerity of her evidence in a broadly positive way. She appears to be reliable in terms of the consistency of her recollection and how it matches other evidence; I considered that she was broadly doing her best to give an honest account of events over the course of the marriage and after the separation, and she was sincere and child-centred in her thinking and her actions. The picture she painted was one where life for significant tracts of time were dominated by catering for the father's needs around order, tidiness and cleanliness, and obedience of the children and that a state of wariness prevailed around the father as to whether a seemingly innocuous event would result in him behaving anxiously, or frantically or whether it would lead to raised voices, shouting or physical man-handling.
38. JP, the maternal grandmother also gave evidence. She was clearly anxious but did her best I thought to give straight answers to the questions that she was asked. I considered her evidence to be sincere. She did not hold an animus against the father and was not vindictive in her evidence, but I thought described events as objectively as is possible for a woman in her position. She did not make snide digs of the father. To the contrary when she spoke about the extensive time, she spent with him supporting contact she did not identify any occasion on which she could criticise his behaviour although she did say that he was rude to the maternal grandfather. When she was asked in cross-examination what the case was about, she appeared perplexed. I got the clear impression that there had not been extensive discussions between her and the mother to prime her for her evidence to give the right answers. I thought her loyalty overall was to her grandchildren first, then to her daughter but her loyalty to her grandchildren also brought with it some commitment to the father. Her evidence of things the children said such as LLA asking her to "speak to dad as he is killing our house", or her description of the hosepipe incident and the father's rising anger were sincere and genuinely given. When describing the incident which Mr RF criticises her for she was clearly somewhat irritated but if she is right (and I think she is) that one of the twins arrived some distance and time ahead of the father, Mr RF and the other I'm not surprised she was somewhat cross with Mr RF and the father. It may well have been better for any concerns to have been expressed away from the children, but I do not think that this in any way undermines her general credibility or the fact that she can be trusted to promote the children's welfare and indeed their relationship with their father. But overall, I accept that Mrs P was essentially an honest witness doing her best to help the court in the interests of her grandchildren.

39. The father gave evidence last. Almost from the outset when he described LLA and LL his evidence proceeded at a pace and intensity that exceeded that of any other witness I have encountered. As the afternoon progressed a sense of forensic shellshock appeared to pervade the room. The only individual present who seemed relatively unaffected by it was the mother who perhaps has developed a degree of acclimatisation. It was impossible to keep up with the father in his pace but the intensity with which he expressed himself was overpowering. He appeared anxious or agitated throughout most of his evidence and was hard to contain despite the concerted efforts of leading Counsel. He did not become angry although when his father was criticised, he appeared to be on the edge. He appeared simply not to hear what was being said, so focused was he on delivering his answer. His answers though were rarely to the question that had been posed. He gave lengthy narrative answers of unconnected facts, delivered critiques of the flaws in the mothers evidence, made submissions in support of his and regularly failed to answer the question asked at all by the time he had run out of steam. If asked to reflect on some aspect of his behaviour, he almost inevitably reflected on the mother either as well or instead of the question. He declined in the main to engage with hypothetical questions about the impact on the children if what the mother said was true. At times it felt like trying to pick up mercury to get him to engage with the substance of the question; getting him to confirm what was recorded in a message that he had promised not to raise his voice was a very protracted process; similarly with a smack converted to a tap.

40. Despite a number of interventions by myself to inform him that he was there to give evidence about the facts and despite numerous attempts by leading counsel to focus on the question asked and to give a factual answer the father was unable in any meaningful way to take on board what he was being asked to do but remained firmly in the tramlines of answering exactly how he wanted to answer which for a very significant part, probably the majority of his evidence, was to air his arguments, point out flaws in the mother's case, to justify his actions, to turn the question into an opportunity to explain how it was the mother's behaviour which was the issue not his. This seemed to me to be an aspect of his need to do things his way rather than to listen, to reflect and adjust. I had wondered whether in the overnight break in his evidence he might have realised that his evidence was not being given well and have presented differently on the Wednesday morning but it was clear he had not reflected or read the room and he continued in largely the same vein although if anything at times he was even more intent on giving evidence as he wanted and on a significant number of occasions he could not be interrupted by counsel (and occasionally by me) in delivering the torrent of his evidence.

41. Allowing all the leeway that I can to reflect the fact that he was giving evidence in a high-stakes case it seems highly likely that this level of intensity, anxiety, f would also be present in his communications at home. Of course, one might have expected them to be moderated in a court environment in front of a judge compared to how he might express himself at home. One can well imagine the mother feeling overwhelmed by the father and needing to write things down in order to gain some perspective on them

42. He clearly feels incredibly powerfully about the situation he finds himself in. I have no doubt that he loves his boys and that that is a part of the intensity of his feeling, but

he also clearly feels bitter towards the mother and feels driven to seek to secure his position as their father and to equalise his position alongside the mother as a joint parent. On many occasions he would promote his qualities as a father when unconnected with the question he had been asked. His evidence was littered by snide criticisms of the mother (i.e they bounced off the sofa when under her watch-although he was present; as usual she didn't get round to doing it). As his evidence progressed, he became more critical of the mother to the extent that he appeared to be suggesting that they were being harmed in her care and being neglected by her actions. He said she was responsible for his anxiety. He said the children were disturbed, traumatised by the current situation and I couldn't help but feel that he was talking more about his own feelings than the children's; there is little evidence to support his assertion that they are disturbed and traumatised.

43. Throughout his evidence he demonstrated an almost entire avoidance of responsibility for any significant event. Mostly problems were NPM's fault, Dr Oppedijk had misquoted him, the boys, the accountant. Rarely was he able to accept responsibility for anything himself. Although he claimed to be insightful and to have been able to reflect on himself and what had happened, this was almost entirely missing from his evidence. He found it almost impossible to engage with how the mother might have felt, going so far at one stage as to say he couldn't take account of her feelings. His limited concessions of poor behaviour in writing were subject to moderation in oral evidence. A smack became a tap. He had never hurt the children.
44. There were examples in his evidence where he appeared to be making things up as he went along; the pathetic little man incident being one of them. He was prepared to contemplate being entirely dishonest with Dr Oppedijk and I have concluded that he has been dishonest to me in his current version of why he said what he said to that psychiatrist. Much of his evidence demonstrated a sense of self-pity and much of it was self-centred rather than child-centred. When he did engage with the subject matter of the fact-finding his accounts inadvertently confirmed how obsessed he was with things like the dog leaving bald patches on the grass.
45. Ultimately the father emerged from the process of giving evidence as a poor witness. He was wholly subjective, evasive, dogmatic, inconsistent and dishonest at times. I'm afraid I find it very hard to rely on his evidence unless it is corroborated by other material. In any head-to-head with the mother, I would, subject to some discount to reflect her subjectivity, prefer her evidence unless there was evidence to corroborate the father in a way which outweighed the mother's account.
46. Kevin RF was ultimately not called to give evidence: F says what the children said about events was consistent with mother coaching them and that Mr RF's opinion on them not being scared of him and their demeanour when speaking of incidents was not congruent with it being the narration of a lived experience. It is now trite that care must be taken in evaluating whether demeanour is consistent with lived experience for victims of abuse. Mr RF of course did not have the full picture, was not instructed to evaluate the consistency of their behaviour with their experiences and permission was never sought or granted for him to give opinion evidence. Given that the children had had a period of several months of positive contact with the father in the presence of the maternal grandmother it is not surprising that they did not demonstrate any obvious signs of fear. Many children of that age may be capable of accommodating the fear or wariness when it is balanced by subsequent positive experience. Aside

from the fact that I do not consider his opinion evidence admissible, I do not consider that his observation evidence is of much if any help when it comes to determining what the children's experiences of the father were when they lived with him. His observations are of assistance in evaluating the father's current relationship with the boys and the mother's attitude to contact and the attitude of the maternal family. Although Mr RF does make some criticism of the mother interpreting events or suggestions in a negative way and appearing to have a degree of hostility to the father and that the maternal grandmother also behaved in a hostile way in front of the children, I do not think Mr RF is able to contextualise that as I can. On any view the relationship was a bad one before the parties separated, on the father's own admissions (in contemporaneous messages) he had got things wrong and behaved in ways that needed to improve. On the mother's case he had behaved dreadfully at times over a period of years and so the mother would have some objective basis for being critical, suspicious, cautious. She had been told in 2018/19 that the father had accepted his problems and addressed them, and the reality was he had not so it is understandable that she would be sceptical about whether he had changed and his interactions with the children had improved. In fact, the mother says and I accept, that she is pleased the contact has gone well and the boys enjoy it. They go consistently, they have a good time, they interact well with the father. Whilst he must take credit for this the mother can also say the success of contact shows she also has been supportive of it. Her family bent over backwards to promote it, she has not cancelled it or been obstructive. The court has experience of many cases where a parent undermines the other parent to the extent that children refuse to go, they cancel contact on spurious reasons, they are so negative about the other parent that the child demonstrates overt hostility to the other parent or constantly makes reference to their flaws. This is not the picture that emerges from the father's contact with the boys and more than anything the success of the contact demonstrates that the mother is not alienating the father or the children but rather is broadly promoting what she sees as safe contact; a regime which has been endorsed by the social worker, Cafcass and the court.

47. The children's interviews with the police have been transcribed. I have also been provided with the videos. I've not been able to watch them in full as the format of some was not accessible and time ran out. Given the children were only six at the time they seemed to cope with the process reasonably well.
- i) LLA spoke about the negative and the positive things of his father which does not suggest that he was primed to go in with a negative agenda but was speaking his truth. Although LL was less spontaneous in saying anything positive about his dad, he did identify something that made him happy with dad. His description of feeling more sad than happy around dad, because he was more angry than calm seems sincerely said.
 - ii) LLA said he played golf with his dad (was made to every single time) – in evidence the father said he was banned from playing golf with the boys by the mother as that was LKM's sport.
 - iii) LLA's descriptions of wrestling and his mum not being keen on it seem to be entirely heartfelt.

- iv) LL and LLA's accounts of the car roof incidents are sufficiently consistent with each other (and indeed with the parents') to show it was likely their true recollection rather than one coloured by the mother. The components of it match the parents (and I have concluded the father's account is less coherent and probable anyway) so the fact their accounts align with each other, and the mother's makes this being the truth more probable.
 - v) LLA does speak about how the mother has been speaking over and over about the car incident; if actively coached it is unlikely, he would have been so frank. This does suggest the incident had become a significant talking point in the family and for the mother but given he goes on to say that what he is saying is what happened not what mummy told him and given we know that an incident of this type occurred I am satisfied this is his recollection of it. His account of his mummy smacking his dad's hand I don't think appears in their accounts and it may be that LLA had a perception of his mummy smacking his dad's hand to get him off LLA.
 - vi) LLA's description of the fight between himself and LL after the rug straightening incident sounds somewhat glamorised but does appear to confirm some sort of incident. "Rolled their father up in a blanket and rolled him down the stairs" I think is likely to be fantasy which does tend to detract from other aspects of his account.
 - vii) LLA says he can't remember anything to do with Lego. His observation that his nana has long nails and would stab his dad if he tried to hurt LLA demonstrates the reality that LLA is only 6.
 - viii) Of the two boys LLs seems to be coherent overall and more mature. LLA's is more that of a 6-year-old whereas LL's has an older ring to it which would appear to be consistent with their personalities
 - ix) Overall whilst they are not of themselves compelling, they do contribute pieces of the jigsaw that I think are safe to rely on. The content is sufficiently consistent with each other, with known events, the mother's accounts and what we can glean of the father from Dr Oppedijk and his own evidence to persuade me that the children's interviews are a true reflection of their recollections of these events and are not to any significant degree the product of any influence. Inevitably at the time they were interviewed they were living with their mum alone, they were seeing their father only for limited periods and it is likely that they would have been affected to some degree by the involvement of social services and police but I do not detect anything significantly incongruent in their presentation or their accounts which would support the father's submission that their accounts are wholly unreliable being the product of maternal influence and alignment.
48. The documents called "the diaries" are potentially of significance. If they are contemporaneous (or broadly so) and a broadly accurate record of what the mother observed and felt, they would potentially be powerful corroboration of much of her account. On the other hand, if they are not contemporaneous and were created after the event to support possible future litigation, they would have the potential to significantly undermine the mother's case. She said that she started to make entries

following a conversation with her sister because she was unable to make sense of some of her experiences and could not see the wood for the trees. She said she created them in random order to make them less accessible to the father if he were to find them, that they were hidden, that they were made sometimes on the day sometimes a while afterwards but broadly speaking within a short period of time. She said that she transposed some of the handwritten entries into an Apple notes document but stopped because it became too taxing, and she became concerned that the father would be able to access them through IT. Of course, the father cannot know how they came into being. Overall, his final resting position seems to be that for the diaries which predate 2019 they may be contemporaneous, but they are inaccurate and represent fabrication, elaboration or exaggeration arising from the mother's distorted and highly critical perception of him. Those which postdate about 2019 he believes to be the product of creation after the event perhaps building on some recollection of events but largely the creation of the mother's and the grandfather's imaginations. In support of the submission that they do not present an accurate picture, Miss Chaudhry suggests that they were created at around the same time the mother got legal advice, that they were ramped up in 2018 at the time of the separation, that they are very formal and contain references to going back to add to them, the mother's purpose in creating them was not adequately explained, they show only criticism of the father, had no empathy or reflection, they were delayed in being provided to the police and so might have been embellished or altered and they are clearly entirely subjective criticising the father for apparently mundane events such as over seeding the lawn. Ms Chaudhry also observed that they illustrate an entirely hostile attitude to the father, that the mother must have been affected by their keeping (she herself described it as gruelling and depressing making them) this is how she was feeling and inevitably her hostility to the father must have been passed on to the children.

49. It does not seem to me that there is a symmetry in the timing of their creation. She appears to have sought legal advice in late 2017 and the early entries in the diaries are early in 2017 and in any event, I accept that they were commenced as she said after a conversation with her sister. I also accept her evidence as to the reason for their creation. At times in the torrent of the father's evidence it became very difficult to maintain focus on the issue at hand and my interpretation of the mother's evidence was that she needed to keep a note so that she could go back to them to know what had happened put it in a context. The phrasing, language and content as between the handwritten and typed notes does not appear to me to be materially different which would support a conclusion of part of them being an after the event fabrication. The level of detail contained within all of the notes is such that it is more probable that they were created broadly around the time of the events they describe. To have created that level of detail long after the event would have required a very considerable effort in time and creativity which seems far less probable. The explanation provided by the mother for delivering the documents to the police seems to me to stack up and I do not think that one comment by the boys that "mummy and grampa have been spending a lot of time writing" is sufficient to displace all of the other material that suggests that these are broadly speaking contemporaneously created. It is true that they only record negative matters relating to the father and make fairly grim reading. I have not undertaken an exercise of how frequently events occurred which appear in the diaries, but it is not daily and so although they may have taken a certain amount of time to write up I do not think that this process would have been sufficient to impact on the mother's daily functioning or indeed her attitudes to

the father. They do not profess to be a journal which might expectedly balance with the good and the bad but were created for the purpose of enabling the mother to contextualise what she regarded as concerning behaviour by the father towards the boys. That in itself suggests that they were not created for litigation advantage; if that were her intention it probably would have focused as much on her as on the boys and if they were a work of fabrication would likely have included some more serious allegations. The reality is that the documents record events in the main which individually might cause a judicial raised eyebrow, with some more significant incidents of concern but it is the overall pattern which emerges from the diaries which creates the real concern about the father's behaviour. I do not believe it is probable that this could be created by fabrication. Inevitably they are the mother's subjective record of how she saw things and how she was feeling and to that extent they are imbalanced and to the extent that I consider she has a tendency to hyperbole or to see things as more dramatic than they might appear to a entirely objective outsider, they are not an entirely reliable record. When relationships deteriorate of course otherwise innocuous events can spiral into something more significant, tolerance and compassion wane. Thus, allowing for a degree of discount to reflect the subjectivity of the diaries might reduce some of the more florid descriptions to some degree but ultimately a core truth is recorded within them. They are not discounted to a record of the mundane which are recorded as they are because they are wholly distorted through the mother's subjective prism of hostility to the father. As it happens of course they have a degree of consistency with another important piece of evidence.

50. In 2018 following the separation the father sought help. In particular he saw a consultant psychiatrist, Dr Paul Oppedijk. The report is based on what the father reported to him. It clearly contains a section in which the father relates the mother's perception of him. That amounts to 4 lines of the report. The rest is what the father told Dr Oppedijk. The mother had no interaction with him. The material parts of his report are contained within the chronology. It is manifestly obvious from what the father told him that his account of the relationship was profoundly different to that which he gave Dr X and that which he gives now to this court; that he did not enjoy the role of being a parent while the boys were (are) at a young age and delegated most of the parenting to NPM contrasted with in his evidence being a very hands-on parent sharing the care of the children and being very engaged developing a strong bond. He said he felt resentful at coming home to an untidy house and would frantically clean, he told me in effect he was unconcerned, and his priority was to spend time with the boys, and he might do some Hoovering later. He described NPM leaving him as a wake-up call; he now denies that there was anything that he needed to change. He said he was feeling anxious and stressed which exacerbated his obsessive traits. He now denies feeling anxious (although himself says he suffers from long-standing anxiety in a letter to solicitors). Dr Oppedijk found him to be candid, showing insight into the dynamics, he was subjectively anxious with nervous effect, and he was motivated to accept accountability for having to change his personality. The diagnosis was obsessional character traits, demonstrating anal retentive character traits manifested by obsession with time management and efficiency. He lacks emotional intelligence. He was advised to undertake individual psychotherapy and marital counselling.
51. The contents of the report self-evidently provide powerful corroboration for the mother's narrative of the relationship and the father's behaviour up to 2018. In his evidence the father's explanation for the report was relatively unclear. At times he

seemed to deny saying what was recorded in the report, at times he said he had never used the words reported but he might have said something similar which had been translated by the doctor into expressions in the report. In the latter part of his cross examination in respect of the contents and when I sought clarification, he said in effect that he had told Dr Oppedijk what he thought NPM would want to hear because he was desperate to get back to his boys and to the marriage and that when the report came through he immediately printed it out and took it to NPM to demonstrate to her that he acknowledged the problems and was going to take steps to change. Thus, he did not accept that what he told Dr Oppedijk was a true account but rather what he thought the mother wanted to hear. It seemed entirely lost on him that was a gross deception of the fellow medical professional (who would work on the basis that what they are told by a patient will be true particularly if self-critical) but more importantly was a gross deception of the mother who would receive the report assuming that it indeed had been a wake-up call for the father who was now acknowledging his problems and prepared to tackle them when in fact the father's true position was that he did not acknowledge any underlying problem and thus any attempt to address it would be likely to founder from the start. To do this to your wife seems to me to be the most gross breach of trust, wholly manipulative, selfish indeed perhaps narcissistic. To seek to win back your wife by such a gross deception would be unforgivable. As I say the father seemed not to recognise this. Of course, the alternative explanation is that the father at that point in time indeed was being candid, had woken up and was genuinely seeking to seek help and to win his wife back by addressing the fundamental problems which under-pinned the separation. I asked Ms Chaudhry in submissions whether there was any alternative possibility, but none was identified. She urged me not to judge the father's actions too harshly given he was desperate to resume the marriage and to resume family life with the wife and children. I entirely accept that the father was desperate to resume the marriage and to resume family life. However, his desperation could never be a justification for undertaking such a gross deception of a psychiatrist and the mother. My initial inclination was towards a conclusion that the father was at that time being sincere and that he had genuinely attempted to confront his problems and that he had genuinely intended to do so in order to create a better life for the family and that he has resiled from that openness because the reconciliation ultimately ended in failure and has led to the imposition of restrictions on his life in the form of supervision of his contact with the children. What weighs against this though is that following the reconciliation in 2019 the father did not pursue CBT and that the problems which the mother had identified and complained about, and which led to the separation emerged very rapidly. In October 2019 the mother sent the father a message stating that his demons are reappearing and expressing a fear that things would fall back to how they used to be. The pattern thereafter until separation in 2021 appears to have been of the mother raising concerns on a regular basis about the father's behaviour and the father occasionally acknowledging them but taking no steps to address them until the mother left again. On fairly fine balance I conclude that the father was genuine in what he said to Dr Oppedijk in 2018 and that for a period of time the shock of the separation did result in him identifying and accepting his psychological problems and taking some initial steps to address them. However, once the reconciliation seemed to be on track he relaxed, perhaps the psychological sessions were too challenging and he was unable to see them through, or perhaps his motivation diminished once he had mother's agreement to reconciliation. In any event the net result was that the underlying personality traits which had proved so damaging until 2018 remained

substantially unaddressed and inevitably re-emerged creating further and deeper problems. That finding of course provides powerful corroboration to the mother's pre-2018 account of family life which is largely mirrored in her post-2018 account of family life.

52. Dr X is an experienced psychiatrist who was instructed to provide a report on the father's mental health. It was not obtained pursuant to the court having granted permission pursuant to FPR part 25 and nor have I granted permission for it to be relied on as an expert report. The parties agreed that it should be before me on the basis, it seems, that it amounted to a clinical record of Dr X's evaluation of the father's mental health at that point. I have not delved further into the status that a medical report has when obtained purportedly as an expert report but admitted not as an expert report. It is based on consideration of the documents including the father's GP notes, contact notes, court documents and 'Psychiatric Assessment of the father from 2018' which I assume refers to Dr Oppedijk's report. The contrast between the account given by the father to Dr Oppedijk and to Dr X about the domestic situation and the marriage is strikingly different. The absence of any reference by Dr X to what Dr Oppedijk was told by the father, to Dr Oppedijk's evaluation and his conclusions represent a gaping hole in the reliability of Dr X's conclusion. In effect he has ignored evidence/a report of fundamental importance in evaluating the account given by the father and this of itself renders his opinion almost valueless. The fact that the father gave such an account also of course has consequences for the father's credibility generally.

Evaluation

53. Given that this is a case where the evidence is to a large extent reliant on the accounts of the mother and the father the outcome to a considerable degree depends upon my evaluation of their evidence and of them as witnesses. However, their evidence is not all the pieces of the jigsaw; there are some contemporaneous documents, there are other witnesses and there are the reports of Dr Oppedijk and the children's interviews. Not only is there other evidence from the documents and the children but there is inherent probability or improbability and inferences that one can draw from other facts.
54. Included within the Chronology are aspects of my reasoning and findings and that should be read together with this. Ultimately the court is not undertaking a compartmentalised assessment of individual facts, but the court is standing back and undertaking a broad panoramic survey of the totality of the landscape before it. Some of that landscape may be in shadow, some may be clearly and abundantly lit, some may be obscured by the mist of forensic uncertainty, but can the court discern a clear picture on the balance of probabilities of the relationship between the parties informing and informed by individual incidents? In this case the answer is unhesitatingly yes.
55. My evaluation of their evidence and of them as witnesses of course, brings into account the content of their evidence and how that marries up with other aspects of the evidence that is available to the court.
56. Ultimately the court must undertake a panoramic survey of all of the evidence in a non-compartmentalised way putting the pieces of the jigsaw together to see what

picture emerges on a balance of probabilities. In this case the decision has ultimately not been a difficult one. The combination of:

- i) the mother's credible evidence, supported by the diary;
- ii) the report of Dr Oppedijk;
- iii) the limited evidence of Mrs P; and
- iv) what the children have said in interview and to social services

creates a fairly detailed and comprehensive picture demonstrating that it is far more probable than not that the essential limbs of the mother's allegations (save sexual abuse) are established.

57. Ms Chaudhry placed much reliance on the absence of any corroboration of the mother's case in health visitor, social services, GP, police or school records. It is a legitimate point to make but it does not have much weight in the context of this case. Each of the incidents spoken about alone would be unlikely to generate sufficient impetus to make a report to social services or anyone else. Some of the incidents where the children have banged their heads or otherwise might for some people have led to it being mentioned but far from all. We know that victims of abuse are very reluctant to make reports and in this case the mother's reluctance to air problems outside the family together with the relatively modest nature of the individual incidents adequately explain why no complaint was made. The fact that the children by and large are reported of positively at school does not in any meaningful way undermine the weight of the other evidence. A red mark may well not be noticed at school and in any event if noticed might not generate enquiry. The father's behaviour when viewed in the context of the spotlight that a court enquiry generates makes it seem as if domestic life was unremittingly bad but that was not the 24/7 52 weeks a year life that the children led. The overall picture that emerges is of periodic outbursts interspersed with periods of relative calm and some happy times.
58. The evidence of Mr RF is of only limited assistance in this fact-finding exercise; it is all after the event and can only ever have limited impact in terms of back-calculating. The report of Dr X is of minimal weight, likewise that of the father's colleague (see below).
59. On the other side of the coin, I am not satisfied that the father has established his case. To the contrary, given that I accept the mother's case, the mother has acted entirely properly in relation to the management of contact and the father fails to establish that the mother has alienated the children or allowed hostility to undermine their view of their father.
60. There are many aspects of the case which support the conclusion that the father is at times driven primarily by his own needs to the exclusion of others and where he is largely unaware of any competing need. Whether that is a deliberate choice to prioritise his needs over others or whether it is driven by an underlying psychological factor is of potentially considerable significance. On balance it seems to me more likely that it is not a deliberate choice but rather the opposite. It is something which is beyond his control without the most positive act of will on his behalf. In the court

room he was unable to exercise a degree of self-control so as to give his evidence in a measured, focused or useful manner. It seems though that in the context of time spent with his children and with a spotlight on him, with his mother-in-law or with a professional contact supervisor he has been able to manage his behaviour.

61. The statement from Mr Eynon-Lewis, the father's friend and work colleague, is that his experience of the father is that he is calm, reflective, insightful. That regrettably is so far from his appearance in evidence that it suggests either that the father's presentation in court was entirely out of character in many material ways or that he can present very differently depending on the context. Mr Eynon-Lewis says his impression is that the father appears to put the boys' needs above his own; my impression was whilst he spoke in forceful terms about the distress, he considered the children had experienced as a result of the separation and the harm they were experiencing (as a result of the care being given by the mother) this was more driven by the harm he felt he was suffering. Mr Eynon-Lewis's experience leads him to conclude that the father is not manipulative and yet the father's evidence about Dr Oppedijk's examination and report (if the father's final evidence is the truth) would be an act of extreme manipulation of a fellow medical professional and most importantly his wife. That the father appeared to have no realisation that this version represented an extreme form of manipulation seemed neither to have occurred to him or to trouble him. Mr Eynon-Lewis' view was that the father is incredibly insightful and sensitive (in relation to the boys it is true) whereas in his evidence both written and oral that he is reflective and insightful the content of his evidence suggests quite the opposite with almost a complete absence of reflection on any flaws in his character, a denial of recorded statements and a refusal to contemplate that he might be at fault. It is clear that during the contact sessions between April and September which were supervised by the mother-in-law that they were able to maintain cordial relations and the father dealt with the boys well. Equally over the 400 odd hours that the father has been supervised by Mr RF he has for the significant majority of the time not demonstrated any behaviour that has caused Mr RF concern but has rather focused on the boys and provided a positive parenting experience. But the evidence of the mother including the diary, the father's own words to Dr Oppedijk, the evidence of Mrs P and that of the boys together with the father's oral evidence paint a very different picture indeed and if the combination of that evidence is a true depiction of the father, then he clearly has two very different ways in which he can behave and present. What underlies that very different presentation is something which will need exploring. My instinct is that there is some aspect of his psychological functioning that is in play. Perhaps in the domestic environment the anxiety he experiences, his need for things to be done his way or rather more broadly his need for his own needs to be met come to the surface in a way that they do not at work or in the presence of friends or some third parties. Perhaps a component in this is the dynamic between the father and the mother; for some reason the nature of their relationship or the differences between them in the context of an intimate family relationship play a role in bringing to the surface, negative characteristics in the father which in other contexts lie beneath the surface either controlled by the father or not activated by the situation.
62. Whatever the reasons, which will need exploration by a psychiatrist or psychologist, I am satisfied that the father can behave and present very differently depending on the situation he is in.

Conclusion

63. Thus overall, the conclusions I reach on the balance of probabilities are that:
- i) The nature of the relationship between the mother and the father was permeated by emotional abuse of the mother and children arising from the father's obsessive, anxious and rigid behaviour where his needs dominated the household. This extended into other areas of the father's behaviour towards the mother which included lack of respect for her personal autonomy, misleading her over what he would do to remedy his personal failings at the time of the reconciliation, selfishness and insensitivity in their personal relations at times, and has continued with his unjustified denigration of her after the relationship ended. Financial control was not a significant feature of this; the examples are more demonstrations of the father's lack of respect for the mother's feelings.
 - ii) The father behaved at times in a physically and emotionally abusive way towards the boys by his dictatorial behaviour, his shouting at them and his occasional use of excessive physical force as a result of him losing his temper with them.
 - iii) At least one incident (the mock kiss) where the father used physical force on the mother.
64. The father has much to reflect on. He is clearly capable of providing good parenting to the boys and loves them dearly. However, in my assessment he has a flaw in his character which until it is addressed means he poses a risk of losing his temper with them, of imposing unreasonable rules on them and poses a risk of emotional and physical harm (limited at present) outside the confines of supervised or supported contact. Until he addresses that flaw that risk seems likely to remain. Given he has said he would address it in the past and has not seen it through either because he never really accepted the full nature of the issues, or because he found it too hard or became demotivated, presents a challenge going forwards. How will a psychotherapist truly know if he is engaging or is paying lip-service?
65. That is my judgment.