



OUTER HOUSE, COURT OF SESSION

[2024] CSOH 38

F20/23

OPINION OF LADY CARMICHAEL

In the cause

M

Pursuer

against

A

Defender

**Pursuer: Bradbury; Brodies LLP
Defender: Smeaton; Anderson Strathern LLP**

28 March 2024

Introduction

[1] The pursuer, M, seeks a residence order in respect of his daughters, to whom I will refer as Hanna and Yara, and a specific issue order permitting him to return to Qatar with them, so that they can live with him there. Alternatively he seeks orders for residential contact, and a specific issue order permitting him to take the children outside the United Kingdom for residential contact.

[2] The defender, A, is the mother of the children. She also seeks a residence order. She seeks a specific issue order permitting her to travel to Spain with the children for four weeks each year for holidays there. It common ground that in mid-August 2022 A travelled to the

United Kingdom with them and retained them without M's consent. She also asks for interdict prohibiting M from molesting her.

[3] A says that M abused her physically, sexually, emotionally, financially and verbally between January 2016 and July 2022, and that he continued to abuse her verbally after July 2022. She says the children witnessed some of that abuse. It is against the background of those allegations of abuse that A contends that it would not be in the best interests of the children to live with M. M disputes the allegations.

[4] Hanna is nine years old, and Yara is seven years old. They were both born in England.

Agreed facts

[5] Parties agreed the following matters in an extensive joint minute.

[6] M has dual Syrian and British nationality. He was born in Syria. He moved to the United Kingdom in 2007 and obtained citizenship in 2017. A has dual Spanish and British nationality. She was born in Spain. She moved to the United Kingdom in 2013 and obtained citizenship in 2020.

[7] Hanna has dual British and Spanish nationality, and Yara has British nationality.

[8] M and A were married in 2013. After the marriage, A moved from Spain to be with M in Newcastle where he was completing his post-doctoral research in Medicine at Newcastle University. In March 2014 the parties moved to Liverpool, where M worked as a Postdoctoral Research Associate at Liverpool University.

[9] M was employed between 1 April 2014 and 31 March 2017 as a Research Associate at the Department of Molecular and Clinical Cancer Medicine at the University of Liverpool. He received a salary of £31,644 - £38,200 per annum.

[10] The parties have a joint account with Lloyds Bank account number xxxx1360. A had access to this account and used it for personal and family expenses.

[11] Until August 2019 A and the children lived in Liverpool. Between 2016 and 2019 and in 2022, the family spent holidays with her family in Spain and M's family in Saudi Arabia. They also took holidays elsewhere, and the parties took holidays both together and alone. M moved to Qatar in August 2018. The children and A remained in Liverpool so that the defender could complete her master's degree. A and the children moved to Qatar in August 2019. The parties and the children resided in an apartment in Doha where M still lives.

[12] In November 2020, with M's consent, A and children returned to Liverpool to attend her British citizenship ceremony which was held on 22 November 2020. There was a delay in the defender receiving her British passport due to the COVID-19 pandemic. It was agreed by the parties that the A and the children would remain in Liverpool until her passport arrived, that Yara would attend nursery and Hanna would attend school in Liverpool and that they would finish the school year in June before returning to Qatar.

[13] In December 2020 M travelled to Liverpool to see A and the children for the Christmas holiday. In April 2021 he travelled to Liverpool to spend time with A and the children. From June 2021 he remained in Liverpool until the family returned to Qatar in August 2021.

[14] From August 2021, the parties did not own or rent any heritable property or have any other address in the UK, either jointly or personally.

[15] Between August 2021 and 29 July 2022, the children and A remained in Qatar. The children attended school and nursery in Qatar. Between August 2021 and 31 July 2022, both children attended Al Wataniya International School, Doha.

[16] Between November 2021 and 27 July 2022, the defender was employed at a dental surgery. She worked six full time shifts a week.

[17] Whilst the parties lived in Qatar, A had full access to M's bank account with QNB by using her own debit card and the defender had her own credit card from the pursuer's credit card account. In January 2022, A applied for Khula (Islamic divorce), and requested custody, financial orders relating to divorce and monthly expenses. The parties reconciled shortly thereafter, and the proceedings were dismissed.

[18] A's father came to Qatar on or around 11 January 2022. He stayed with the parties from 14 January 2022 for around one week. Her mother came to Qatar on 1 April 2022 and stayed for 20 days.

[19] M travelled with the children to visit his family in Jeddah, Saudi Arabia from 15 June 2022 to 15 July 2022 with the consent of the defender.

[20] A's mother and her sister, RRA came to Qatar in July 2022 and stayed for two weeks.

[21] On 29 July 2022, A and the children travelled to Spain with the consent of the pursuer. During the trip to Spain and until the 3 August 2022, M spoke daily to her and the children. In mid-August 2022, A travelled to UK and retained the children in the UK without the consent of the pursuer.

[22] On 30 August 2022, A applied to the Family Court in England for an ex-parte non-molestation order against the pursuer. She did not tell the court she had been living until July 2022 in Qatar with the children and the pursuer. She did not tell the court she had removed the children from Qatar without the consent of pursuer. She told the court that she lived in Liverpool and had left the family home when the defender was outside of the United Kingdom on 5 August 2022.

[23] On 31 August 2022 A obtained an ex-parte non-molestation order against the pursuer in the Family Court of England and Wales sitting at Liverpool. On 27 September 2022 A's English solicitors told the court that M was in Qatar but would be returning to the United Kingdom in November. He had not been served with the papers, although A knew his address and telephone number. The court continued the order made on 31 August 2022 and adjourned the hearing until 13 December 2022. This was later fixed for 23 December 2022.

[24] On 22 December 2022 the court adjourned the hearing fixed for 23 December 2022 to the 13 January 2023 so that M could obtain legal representation. A had moved to Scotland by that time, but did not tell the court that. On 13 January 2023 the Lay Justices sitting at the Family Court in Liverpool continued the order made on 31 August 2022 and adjourned the hearing to give the pursuer more time to obtain legal representation. The defender did not tell the court that she had moved to Scotland.

[25] On 6 and 7 February 2023 M's English solicitor, Sulema Jahangir of Dawson Cornwell emailed A's English solicitor, asking for the children's passports. There was no response to these emails. Morgan J, sitting in the High Court Family Division in London made the children wards of court on 9 February 2023. She was satisfied on a provisional basis that A had retained the children wrongfully outside the jurisdiction of Qatar on 16 August 2022 and that the High Court had jurisdiction as the children were thought to be present in England and Wales at that time. She made a Passport Order, authorising the Tipstaff to take steps to seize any passport or other travel document held by the defender.

[26] On 21 February 2023, the Tipstaff received intelligence that the defender and the children were attempting to leave the jurisdiction of the UK in breach of the High Court Wardship Order on a flight from Edinburgh to Madrid at 4.00pm on 21 February 2023.

The Tipstaff did not have jurisdiction to intervene in Scotland and therefore an urgent application was made to the High Court of England and Wales for an “All Ports Warning” order to prevent the defender from leaving the jurisdiction. Newton J made an ex-parte All Ports Warning Order on 21 February 2023.

[27] Police officers stopped A and the children from boarding a flight at Edinburgh airport and confiscated their passports. The children were wearing their school clothes. A and the children had no hold luggage.

[28] A remote hearing took place before Ms Davey, Deputy High Court Judge sitting in London on 23 February 2023. Both parties attended. A told the court that she had been living in Scotland since October 2022. Ms Davey, Deputy High Court Judge, extended the Port Alert orders for six months until 23 August 2023, made a child arrangements order for daily video contact between the children and the pursuer, and adjourned the English proceedings generally so that the pursuer could raise proceedings in Scotland.

[29] The Home Office confirmed by letter to the High Court of England and Wales dated 23 March 2023 that they acceded to the request of the High Court not to issue further travel documents to the children and further confirmed that the Spanish Consulate had also acceded to this request. The children’s passports are now in the possession of this court.

[30] The non-molestation proceedings in Liverpool under case number LV22F02570 were discharged with no findings or orders being made on 9 March 2023.

[31] The joint minute included agreed evidence about medical conditions relating to M and to Yara. I have not treated that evidence as raising any significant issue so do not record it here.

[32] In accordance with orders for interim contact made by this court, following agreement between the parties, the pursuer had residential contact with the children in the UK as follows:

- (a) On Friday 21 April 2023
- (b) From Saturday 22 April 2023 until Sunday 23 April 2023
- (c) From Wednesday 26 April 2023 until 11.00am on Saturday 29 April 2023
- (d) From Monday 10 July 2023 until Wednesday 2 August 2023

[33] The children attend B Primary School in Edinburgh.

[34] The children are staying with the defender at the home of the defender's sister. The children share a bedroom with the defender. Living in the home is the defender's sister, her husband and four children. They attend a Mosque in Edinburgh.

[35] The pursuer has no criminal convictions in Qatar (Authenticated Copy of the Certificate of Clearance in Qatar is at 6/46 PDF p151).

[36] The defender reported a concern to the police during the pursuer's contact with the children on 27 April 2023. This resulted in a welfare check being carried out on the girls whilst they were at the offices of the pursuer's solicitor, Brodies LLP. There were no welfare concerns.

[37] The defender reported a concern to the police during the pursuer's contact with the children on 11 July 2023. This resulted in a welfare check being carried out on the children outside a hotel where the pursuer was staying with the children. There were no welfare concerns.

Involvement of curator ad litem

[38] I appointed a curator ad litem on 30 March 2023. When the curator first met the children in early April, she did so in their home, with the two girls together and A present. Hanna said that she did not want to have daily calls with her father. She told the curator that he had once hit her on the arm, and that he shouted at her when she got a word wrong in reading. She thought she had been seven or eight years old at the time. The curator noted that when Hanna said these things, she kept looking at her mother. When looking at photographs with the curator, both girls were animated and happy to talk about their father.

[39] The curator was concerned that A was not supporting and encouraging indirect contact. She suggested supervised face-to-face contact during the Eid holiday, on the basis that she would observe contact. A at that stage did not oppose face-to-face contact, providing that it was supervised. The curator in a subsequent report noted that indirect contact had improved after she explained to A that the court would expect her to promote the contact that had been ordered.

[40] On 20 April the curator met the children separately from each other at their school and made inquiries of some of their teachers. By that time A was reporting to the curator that indirect contact was going well and that the children were enjoying speaking to M. The first session of face-to-face contact with M was about to start. The curator reported that Yara was excited about seeing her father in person. She was happy and animated and there was no indication of apprehension in her demeanour. Hanna presented in a similar way. The curator met M before he met the children. She observed contact. Yara went immediately to her father and seemed happy and at ease. Hanna ran to her father and gave him a hug. The curator described it as a very positive reunion. Although M invited the curator to join him and the children for dinner she felt that there was no need for her to do so.

[41] The curator provided a further report dated 28 May. It included an account from both parties that contact during the Eid holiday had gone well and that the children had enjoyed it. One point of note, however, was that A contacted the police during the contact because she had been unable to speak to the children at 6.00pm. They called her 20 minutes later. She contacted the police again the following day after M had phoned the school to say that Hanna had a headache. Police officers carried out a welfare check which took place at the office of M's solicitor.

[42] On 19 May the curator had met with the children at their school. Hanna reported that when she was in bed and her sister was asleep she heard her father speaking to his parents by phone, and saying that A was really mean. She otherwise spoke positively about contact with her father. She was unhappy about going to Qatar. She described an incident in which she saw her father slapping her mother. The curator noted inconsistencies in what she said, and that Hanna appeared uncomfortable when talking about this. Hanna told the curator that her father lied a lot and that her mother would tell her that he hit her. She volunteered that her father had told her that she was to lie to the curator and say that he had never hit her or shouted at her. She also told the curator that her mother had told her that the curator would ask her if she wanted to return to Qatar. Hanna wanted her father to visit her and her sister in Scotland. The curator described Yara as being less at ease than she had been at previous meetings. She was positive about spending time with her father and volunteered that she would love to see him in Scotland. Yara said that her father had left her in the house in Qatar alone. She was concerned that if she and Hanna were in Qatar their father might leave them with a stranger like a babysitter. I quote in full the following passage from the curator's report.

“After a short pause, Yara volunteered some information as if she had just remembered things to tell me. She told me that Hanna had heard her dad shouting on the telephone when she had been asleep. She said that her mum told her that Hanna has a mark on her arm from the sun. Yara said that she gets the sun on her arm and she does not like the sun. Yara told me that she would like to see her dad in Scotland. I tried to explore with her how she would feel if he offered to take them on holiday say to Disneyland or Legoland. Yara thought for a moment before replying that it might be a trick to get them to Qatar. Yara could not explain why she thought that might be the case. Yara fidgeted with her dress fastening and her watch throughout the meeting. She then quickly volunteered that her dad lies to the court and says that he never hits her or Hanna. She said he would not hit her in Scotland because he is scared of the police here. Yara said that her dad hit her mum. She told me about the occasion in Qatar that she had spilt tea and she and Hanna were told to help her brush her teeth. Yara said that her dad would not hit her in Scotland and that he wants her to be happy. At that point Yara terminated the interview and asked to go back to her class.”

[43] In her report of 28 May the curator reported her view that A influenced the children both directly and indirectly as to what to tell the curator. I will not narrate in full her reasons for reaching that view.

[44] The curator reported again on 8 August 2023 having been appointed to report the up to date views of the children. The report contains an account of difficulties that had arisen during direct contact with M between 10 July and 2 August (and which had been the subject of an interlocutor dated 16 June). The curator reported a particular concern that M had not supported and promoted the indirect contact that had been ordered between the children and A during his direct contact with them. The accounts of the parties and two of the witnesses about those matters formed part of the evidence at proof.

[45] The curator reported that she was confident that the court could rely on the views that the children expressed to her on 4 August as their genuine views. They see their home as being with A in Edinburgh but enjoy their direct contact with M. The curator did not enter the process.

The proof

[46] A proof was due to proceed on 15 August 2023 but was discharged because counsel became unwell during the preceding week, and no alternative counsel could be identified. A further diet was appointed to start on 5 September. A became ill and was admitted to hospital in Qatar shortly before the diet, and it did not proceed. The proof eventually proceeded at a third diet.

[47] Counsel for M moved that A be ordained to lead at proof. Counsel submitted that the case would turn substantially on whether A could prove that M abused her in the manner she averred, and that M would be prejudiced by requiring to give evidence before A had given evidence in her own case. I refused the motion first because the considerations relevant to the orders sought for residence and contact were not confined to A's allegations. I took into account that evidence in chief was to be by way of affidavit subject to such other examination as the court might permit, and that one function of A's affidavit was to provide notice to M of her evidence in chief. In that context, I observed that the paragraph of A's affidavit dealing with her allegation of rape was poorly drafted. It did not make it clear whether the allegation related to a single occasion or more than one occasion. Counsel for A submitted on instructions that the paragraph was intended to relate to two allegations. I permitted her to seek to elicit oral evidence from A to clarify that matter. I noted that M denied all the allegations of physical and financial abuse. I took into account, and said, that it would be open to counsel for M to seek to recall him in the event that she considered that any part of A's oral evidence made that necessary in order to secure a fair hearing. In the event there was no motion to recall M.

[48] There was an inconsistency between A's affidavit and her averments on record as to the year in which an alleged assault on her in Liverpool at Eid took place. Before oral

evidence started counsel indicated that the allegations related to Eid 2017. Both counsel confirmed at the bar that the date of Eid in 2017 in both Manchester and Liverpool was agreed as Sunday 25 June. Counsel for A indicated that she was prepared to deal with the allegation relating to Eid 2017, but would require to lodge additional photographs taken at that time. She was permitted to do so.

[49] I was also asked to resolve certain matters as to the admissibility of portions of affidavits tendered in the defender's case before the proof began. These had been highlighted and had been the subject of discussion between parties for some time before the proof. The defender had not sought to amend her pleadings. Counsel for A conceded that she had no record for any allegation that M had physically abused Yara, and the portion of A's affidavit that contained such an allegation was inadmissible.

[50] I otherwise determined that the objections made at the start of proof should be dealt with by allowing the evidence subject to competency and relevancy. One of those was an objection to the relevancy of evidence of lay witnesses as to the status of women in Qatar, particularly after divorce; what women could or could not do without the permission of a man; and Qatari immigration law. I have not relied on any of that evidence in reaching my conclusions, and do not require to rule on the objection.

[51] The pursuer objected to portions of the defender's affidavit in paragraphs 6, 8, 9, 10, 12 and 15. He did not renew those objections at the close of the proof. I am in any event satisfied that the pursuer had fair notice of the allegations made in those passages.

The pursuer's case

[52] M provided two affidavits and gave oral evidence. He led evidence from Dr AM, Mrs HAM, Mr OM, Mohammed Alkahtani, Ayman Mustafa and Detective Sergeant

Andrina Hunter. Other than Mr Alkahtani, who was not required for cross-examination, all gave evidence both by affidavit and orally.

M

[53] M's first affidavit was provided at an early stage of the proceedings. Much of it deals with the chronology which is now agreed in a joint minute. In it he denies the allegations of which he was then aware regarding domestic abuse. He describes an ambivalence on the part of A towards life in Qatar, saying that she hated the sun and the heat, but that she enjoyed the expatriate lifestyle.

[54] M's evidence is that his contract with the University of Qatar is renewed on a rolling basis. It is due for renewal in 2024. Renewal is automatic if the Dean approves. His immigration status in Qatar and that of his family depends on his employment.

[55] Once he raised proceedings in Scotland, it took him some time to speak to his daughters. A phone was eventually delivered to A's Scottish solicitors on 29 March 2023. Hanna answered his call that day, but said in Arabic that she did not want to speak to him and ended the call. She looked uncomfortable and was looking to the side. He called every day, unsuccessfully. Indirect contact took place on 10 April which was the first occasion on which he had spoken to the girls since December 2022. He attributed that to the involvement of the curator. The children were happy to speak to him.

[56] Direct contact took place in April, which allowed him to celebrate Eid with Hanna and Yara. It went well and they engaged in a variety of trips and activities. The handover at the end of contact was difficult. Handovers had previously been at the Mosque and supervised by Dr Ali Altabel. On this occasion Dr Altabel and A were at the Gyle tram stop. When M dropped the children off, Dr Altabel started filming. M explained in oral evidence

that he was late in dropping the children off because the taxi driver had initially misheard the intended destination. According to M the children referred to Dr Altabel (in Arabic) as, “the man we cannot tolerate”.

[57] During that period of contact there was an occasion when Hanna was unwell, on 27 April. He telephoned her school and explained the position. He produced a mobile telephone bill indicating that he had telephoned at 0819 hours UK time and on two other occasions that morning. He had spoken to someone on the third attempt. The person had asked him to bring Yara to school if he were able. He had not felt able to leave Hanna in the hotel and take Yara to school, and there was no one he could ask for assistance. He felt that A had contacted the police to try to sabotage his career in Qatar. The police had attended at the office of M’s solicitor, in the presence of the children. The children had not been unduly disturbed by the attendance of the police.

[58] A agreed that he should have direct contact for three weeks during the summer holiday. When he picked up the girls he found that they had not been provided with any clothing or toiletries for use during contact and he had to buy a number of items for them. His evidence about that was not challenged, although it was suggested to him that he might expect to have to buy items for use during contact. Again M, Hanna and Yara engaged in a number of trips and activities. According to M the children were unwilling to say goodbye and asked him to stay longer.

[59] He had discovered that Hanna’s phone had been set so as to track her movements. He was unhappy about that. A had not requested that he disclose the children’s movements or locations during contact, and the court had not required that. On 11 July, in Edinburgh, he had asked Hanna to speak her mother, and Hanna had said she did not have the phone. He said that he eventually found Hanna’s phone in Newcastle. He let her use his phone, but

there was no response. Once back at the hotel where they were staying, he asked Hanna to use his iPad to contact A. He started to say his regular prayers, but became aware that A was asking Hanna to speak English, and that A's sister and the police were involved in the call. The police were asking Hanna to provide information as to where she was. Both children became upset. M said that he was leaving to go to dinner. He took the children to a nearby restaurant for dinner, then to Sainsbury's to buy a toothbrush. The police approached them. He asked the police why they were following him, and they explained that they wanted to make sure the children were safe. M claimed in evidence that the police threatened to arrest him. They told him that it was "part of the court order" that A should be able to contact the children at any time. He had switched Hanna's phone off to avoid being tracked.

[60] If the children returned to Qatar they would benefit from a comfortable lifestyle. M's job brought considerable benefits including a spacious apartment with a lot of outdoor space and a swimming pool. They would have access to education at the private Al Wataniya International School. Hanna was very academic, but Yara needed more support and had been affected adversely by the COVID-19 lockdowns. They would have opportunities to engage in extracurricular activities. When they lived in Qatar Hanna engaged in arts and crafts while Yara received additional support with maths and English.

[61] M had been an active and involved parent. His work was sufficiently flexible to allow parents to pick up and drop off children, and the university year aligned well with school holidays. He was the main carer for the children during the academic year 2021-22 because A worked either early or late shifts during that period. He was used to cooking for the children, and there were numerous venues nearby for eating out.

[62] He was particularly concerned that A had not promoted contact between the children and their paternal grandparents, with whom they had had a good relationship. His parents, who live in Saudi Arabia, had tried to obtain visas to visit the UK but had thus far had their applications rejected. He had taken the children to Saudi Arabia without their mother in the past. The children had enjoyed video contact with their grandparents during their direct contact with him in summer 2023.

[63] M was adamant that there was no substance in A's suspicion that he might try to obtain Syrian passports for the children. He was opposed to the regime in Syria and would be jailed, tortured and killed if he went there. He benefitted from a declaration of refugee status.

[64] M denied financial abuse. He referred to various bank statements as supporting his position. I refer to these in more detail elsewhere in this opinion. He denied assaulting A physically and sexually. In his affidavit he detailed a series of matters that he suggested were incompatible with her allegations. In oral evidence he maintained those denials and also denied A's allegations that his father and mother were complicit in his domestic abuse of her during a trip to Saudi Arabia.

[65] He denied the allegation that he assaulted A at Eid in 2017. The allegation was that he had lost his temper when it was difficult to park at the mosque, and had driven home and thereafter assaulted A. M said that he had had no difficulty in parking near the Al-Rahma Mosque in Liverpool at Eid 2017. He referred to photographs the metadata for which confirmed that they were taken on Sunday 25 and Monday 26 June 2017. One of the photos from 25 June, taken at 11.34am, showed A interacting with the children at the parties' home in Liverpool.

[66] There was a period in 2018 when he was between jobs and finances were difficult. Both he and A met family expenses. He borrowed from his brothers. He was of the view that as the man in the relationship it was his responsibility to provide for the household, and that was why he had paid money back to A.

[67] On Friday 14 January 2022 he got a notification by email that Hanna had Covid. Hanna, Yara, A and A's father were staying together in a hotel at that point. M went to the hotel and brought them all to the apartment. All ended up infected with Covid. At that time A had no bruising on her face, and A's father did not mention having seen any. M referred to photographs taken in late January and early February 2022. They show the parties together and apparently happy. No bruising is visible on A's face. He denied having given an undertaking to the police to refrain from assaulting her.

[68] M did recall a specific incident in late 2021 or early 2022 when there was an argument that arose after he took Hanna to a dental appointment at A's place of work. He had understood that he and the children should wait for A to finish work and give her a lift home. After waiting for an hour he discovered that A had taken a taxi home. He was unhappy and an argument ensued, initially by telephone while the parties were travelling, and then in person at home.

[69] M recognised that A was concerned that Hanna had headaches caused by exposure to the sun in Qatar. He attached little weight to that concern, and pointed out that Hanna had experienced headaches on certain occasions in the UK without sun exposure. He expressed a degree of scepticism about a letter that A had obtained from a paediatrician in Qatar (6/47) dated 10 February 2022 which indicated that Yara must avoid exposure to the sun because she suffered headaches and eye sensitivity. It indicated that her school breaks must be in completely shaded areas and that she must have PE lessons indoors. He said

there was a similar letter relating to Hanna. He thought the doctor had essentially recorded an account provided by A, and that the letters were not based on any investigation or examination.

[70] M was asked about two translations of transcripts of a video recording of an argument between him and A, said to date from June 2022. M disputed that he had used pejorative language attributed to him in the translations. He claimed that much of the exchange had not been translated at all.

[71] In relation to a number of recent texts bearing to have come from Hanna to M, he believed that Hanna was not the author of the texts, and that A was. One example was a series of messages about Hanna's new haircut. She wrote that M had "hurted" her feelings by saying that he did not like her haircut. He believed that A was manipulating the children. He simply did not believe that Hanna, as a 9-year old, would write to him in those terms.

[72] If the children were to reside with him in Qatar, he would bring them to Scotland for contact with their mother. He would wish to take them to visit their grandparents in Jeddah.

[73] In cross-examination he accepted that the school reports from the children's Scottish school were positive, and that it was also helpful for them to receive extracurricular tutoring. He maintained that other than at the times when A resided in England with the children while he was in Qatar, the parties had shared childcare and household responsibilities. Counsel suggested that the family-sized accommodation provided for him in Qatar depended on his having a family. He said that although A and the children were no longer there he remained in the same accommodation. Counsel suggested that he had in fact been moved to smaller accommodation and sought to hide that from the children

by switching off his camera when exercising indirect contact with them. He denied that. It was surprising that counsel advanced that line of questioning, given that it was a matter of agreement that M continued to reside in the same apartment in Qatar that the family had occupied together.

[74] He denied that A had moved to Qatar only because he had threatened to take the children without her.

[75] M's immigration status in Qatar depended entirely on his work. He would have no right to reside there otherwise. He did not know whether A would be able to move to Qatar other than as his spouse. He did not know whether A or the children would be able to leave Qatar without his permission. They would not be able to leave without his knowledge. He received text messages from passport control whenever they entered or left the country.

[76] The children had had a number of changes of school. When they returned to Qatar in 2021 Hanna had not been able to return to her previous school there. They had moved from England to Scotland since leaving Qatar in 2022. M thought that another change back to Qatar would not make much difference so far as disruption to their education was concerned.

[77] M was evasive when asked whether he had ever verbally abused A. He said he did not know whether he called her names, then said that he usually did not do so. He had not called her a bitch, but had told her to stop acting like a bitch. When asked if he had implied that A was a bad mother, he asked counsel what she meant by the question. He had never raped her.

[78] He had never removed A's bank card or used money to control her. He was not violent. Both he and A could on occasion be angry with one another. He denied hitting A. M had received a message from the court in Qatar saying that A had applied for a divorce.

He had not signed an undertaking in Qatar not to abuse her. He said he had no idea what was being referred into in 7/8 of process, which bore to be an emergency department record dated 11 January 2022 relating to A. It recorded a hematoma and sensitivity to pain around her left eye and neck, and her account that he had caused those injuries. He had been unaware that A had been in contact with the Spanish embassy in Qatar. He was shown 7/43/1 which bore to be a letter from the Spanish embassy relating to an attendance by A on 13 February 2022 and in the course of which she reported domestic violence by M. It was correct that A's father had flown to Qatar at about that time and that A had stayed with him and the children in a hotel for several days. Counsel suggested that the only reason that A had returned was because M had promised to abstain from violence. M's response was that he had spoken to A's father, then to A, and that both he (M) and she had decided to change their lives.

Dr AM

[79] The witness is M's father. He lives in Jeddah, Saudi Arabia. He said that M was a loving father. M had come close to depression because of being separated from the children. M and the children had visited Dr AM without A in summer 2022. The girls spoke to their mother on calls during the visit. He had not noticed anything amiss about the parties' relationship. Dr AM saw the children only if they visited Jeddah. He and his wife had tried to get visas to visit Qatar, but had been unsuccessful, until more recent times when it had become easier to obtain visits in the context of, and after, Qatar's hosting the World Cup. A had assisted with the applications and been keen for them to visit. It was difficult to obtain visas to visit the United Kingdom. He and his wife had a good relationship with the children. Since August 2022 they had only had indirect contact with them at times

when M had direct contact. A had blocked his number. He had tried to call them but his call had gone unanswered.

[80] He had not heard crying or shouting from A during a visit when she was pregnant with Yara. There had been no disputes, arguments or anything of the sort. He had treated her like his own daughter. It was untrue that he or his wife had attempted to stop A from leaving Saudi Arabia.

Mrs HAM

[81] Mrs HAM is M's mother. She last saw the children at Eid 2022 when they visited Saudi Arabia with M. M had a close relationship with his daughters. She was not aware of any problems between M and A at that time. A contacted her, and also Dr AM, M's brothers, and Mrs HAM's sister from Spain in summer 2022 saying that she did not wish to be with M any longer. Dr AM and Mrs HAM tried to contact A's parents to find out what was going on, but their numbers were blocked. She and Dr AM had previously applied for a visa to visit the UK, but had been unsuccessful.

[82] Attempts to have calls or video calls with the children had been unsuccessful other than when they were in the care of M during direct contact with him. It appeared that A had rejected Mrs HAM's number.

[83] Mrs HAM had some knowledge of the incident in January 2022. She was on the phone to A "day and night, saying it is your home and your children". When asked what she had meant by that evidence, which was in her affidavit, she said that she meant it as a reference to her own home being welcoming to A. She said that any home could have issues, but that M and A had solved the matter, and everything was fine.

[84] She denied that M hit A in her presence in about 2016 in Saudi Arabia. She would not have permitted M to do that. She had not attempted to stop A from using the internet at her home. She had never attempted to stop A from leaving Saudi Arabia, or threatened to keep Hanna there if A left. Mrs HAM said that she would not have been in a position to make such a threat, as Hanna had no residency permit that would have allowed her to stay.

[85] Mrs HAM was very fond of the children, and said that although she had not given birth to any girls, God had sent her the girls, and they were her daughters.

Mr OM

[86] OM is M's older brother. He is a university lecturer and resides in Bisha, Saudi Arabia. He described a close and loving relationship between M and the children. In the months before M's 2022 visit to Saudi Arabia with them, A had been communicating with OM by Facebook messages. She discussed problems between her and M. She wrote that she loved M and could not live without him.

[87] The first message was on 15 January 2022, and sent to OM and his father. It included an account that M hit A in Jeddah in front of M's parents. They had done nothing, told M it was "OK" and asked A to say sorry to M. OM called to offer advice. In the call he expressed disbelief in relation to that account. He alleged that A had apologised to him and said that the incident had not happened. She tried to take the conversation in another direction. Asked about this in the course of his oral evidence, he said he had asked her if the incident had really happened, she responded, "I don't mean that exactly". In cross-examination he denied that A had ever been crying when they spoke on the phone. He denied also that she and he had spoken by phone in May 2022, and that A had contacted him asking for his help. He had never told A that he would speak to M on her behalf.

[88] OM received another message three days later, repeating the account given in the earlier message. He said that A's messages were very long and he did not read the whole of the messages. A said in the messages that she and M were fighting a lot and that he was talking to her in "not a good way". OM asked M about the matter, and M said that he never raised his hand, but that A would try to make him angry and nervous. OM counselled him to spend time alone if that happened, and to calm down. OM expressed a view to M that A was jealous, even of M's relationship with the children.

[89] OM next received further messages on 9 August 2022. In them A alleged that M hit her in front of the children, and that she had had time off work because she had signs of injury on her face. She said that she was going to divorce M because M had hit her every day for eight years in front of the children. The messages also included allegations that in January 2022 he hit her a lot, and that his mother and father, and OM himself, had promised her that it would not happen again. OM's evidence was that he "did not know where she had got that from". She said that she had gone to Spain for a vacation but had changed her mind because M had told her that he would still be hitting her when she returned. OM did not respond to the message. He knew something was wrong, and warned M that something was going on and that A was planning something. He knew his brother and knew that he would never behave in the way A alleged. The next message he received was on 31 December 2022.

[90] He had never seen M being violent to the children. He did hear M and A fighting verbally and talking loudly. When he called A in January 2022 he could hear arguing. M was shouting, and asking A why she was talking to OM. He never witnessed M being violent to A.

[91] The children would be in a very good environment in Qatar. M's accommodation was in a highly desirable area. He did not know A well, but was of the view that she was not a good woman to raise the children.

Mohammed Alkahtani

[92] The witness is an assistant professor of electrical engineering and a friend of M. He described a mutual loving relationship between M and the children. He had never seen M being harsh with them. Mr Alkahtani was shocked when A left M, because M's life was "amazing". He expressed the view that A and M had a good life together, given M's job, their accommodation, and the circumstance that M had bought A a car. There was nothing wrong that would cause A to leave. M would never do bad things.

Dr Ayman Mustafa

[93] Dr Mustafa is a friend and colleague of M. He is a dentist and associate professor of anatomy in Doha. He has children of similar ages to Hanna and Yara. Hanna and Yara seemed like "daddy's girls", and M liked to buy them expensive gifts. Dr Mustafa sometimes accompanied M when he was picking the children up from school. M often looked after them when A was working. He did not come into the university unless he had a lecture to give and "stopped going out with the guys" to stay with the girls when A was working at night. Dr Mustafa had never seen M behave inappropriately or violently towards the girls or A. He was shocked when A left because nothing had seemed amiss between her and M. M had initially not wanted to talk about the matter, but Dr Mustafa had sensed that something was wrong.

[94] M had been distraught during the time he was unable to contact his daughters.

Dr Mustafa had seen how happy he was that contact had been re-established.

Detective Sergeant Andrina Hunter

[95] DS Hunter is a police officer and works in Edinburgh. She became involved in February 2023 after A was stopped with the children at Edinburgh Airport. She was able to provide relatively little evidence from her own involvement in the case, and was asked to interpret records that others had prepared, and to comment on whether it appeared that A had not provided the police with relevant information about the proceedings in England. She was asked to speak to records that in some cases derived from social workers who were not witnesses. As a result her evidence was of little assistance and I have not recorded it here in detail.

[96] The witness was clear and consistent in saying that the police would have investigated any allegation of domestic abuse, regardless of whether there might be information suggesting that the matter was more complex than the complainer had initially suggested, or whether they learned that the complainer had omitted to provide some potentially relevant information adverse to her own interest.

The defender's case

[97] The defender provided two affidavits and gave oral evidence. She led evidence from PC Samantha Caulfield. The defender had not lodged an affidavit from PC Caulfield. In the absence of objection I allowed counsel to take PC Caulfield's evidence without reference to an affidavit. The defender also led evidence from Ms DRA, Dr Ali Altabel, Ms URA, Ms RRA and Dr ARA. The defender started to lead evidence from her mother,

Mrs R Al-A Al-D, but it transpired that her affidavit had not been obtained in an appropriate manner. Counsel indicated that she would not lead any further evidence from the witness, or ask me to rely on the affidavit or oral provided by her.

[98] The defender also provided a short affidavit from her sister SRA, who was not required for cross-examination. It contains an account of an occasion in summer 2022 when Yara told the witness that M threw and smashed glass and plates.

A

[99] A is a dentist. She works in an NHS practice for four days each week and is in the process of joining the Army as a reserve dental officer. Her working hours in the former role are from 0930 to 1600 hours, and she said that that she had arranged those hours to fit with the children's attendance at school, including a breakfast club. Her evidence in chief was that she would have a choice in the latter role as to whether to work outside Scotland or not. In cross-examination she declined to answer questions as to whether she might require to attend training at Sandhurst, on the basis that she was not at liberty to disclose that information.

[100] A's evidence was that she has been the primary carer for the children throughout the relationship, and that M did not assist her with household tasks, or spend quality time alone with the children. That was the position even when she was working and he was unemployed, in 2017 and 2018. As a result she did not notice any change in her own routine or responsibilities when he moved to Qatar in 2018. She was happy living and working in England, and moved to Qatar in 2019 only because M threatened to remove the children from her care and take them to Qatar if she did not. In her oral evidence she described an episode when he was holding the children's passports and making that threat, and in the

course of which he also slapped her. In cross-examination she accepted that she had given notice to the three practices in which she had been working in July 2019, and that she had arranged for furniture to be transported from Liverpool to Madrid. She said that the incident in which M had threatened to take the children to Qatar was on the same day that she had been due to travel with the children to Doha.

[101] A said that M had manipulated her into returning to Qatar in 2021. He had had an epileptic seizure in Liverpool and had refused medical attention. Paramedics had suggested that scans were necessary and M had declined. Shortly before, on the same day, A had said that she wanted a divorce. A did not suggest that the seizure was anything other than genuine. M had been tired afterwards, but fit to travel. A accepted that in about June 2021 there had been an incident in the course of her work as a dentist in the UK, in relation to her treatment of a patient, that had given rise to some professional difficulty for her, although she refused to explain what that was or accept any of the more particularised propositions that counsel put to her about it.

[102] Between 4 August 2016 and 18 February 2019 M forced A to transfer most of her salary to him. She started working at weekends to make more money. She was not left with much money for herself. In cross-examination counsel asked her particularly about the period from August 2018 to August 2019. She initially suggested that she had been “paying financially” during that period. She was asked whether her evidence was that M had paid nothing towards the family finances, and responded that she was not saying that exactly, and started to give evidence about what she said the position was in December 2016. She then said that in the period from August 2018 to 2019 she had been transferring her salary. Most of the time she had been using her Halifax account, but she was not sure whether she made transactions on the account.

[103] In cross-examination A accepted that the parties had a joint account. She said she had paid money only into M's personal account. She was shown 6/50/1 which was a statement from Lloyds Bank account xxxx1360 dated 20 August 2021. She claimed she had never seen it before. She was shown records for the same account from December 2016 and 2017 showing payments out to "GDC DD" of £890 and apparently corresponding payments into the account from A, for the same amount. Her personal Halifax account, extracts of which she had produced at 7/11 showed those payments as made to M. She said that she did not remember transferring those sums into the joint account. She said that M had had to give up an academic course, and that he had taken loans from his brother and a friend to assist with the costs of his course. A accepted that the joint account statements showed payments out for household expenses including Sky TV, energy supplies and rent. She accepted also that once M had started working in Qatar he had paid money back to her, although she said it was not equal to the funds that she had contributed at an earlier stage. She was shown 6/108 which was a record of payments from M to A between 2015 and October 2021. A described that as M "starting helping with the car and home expenses, after he started his job", and said that the payments were child maintenance. Notwithstanding the terms of the joint minute, A claimed that she had not had access to the joint account.

[104] M was verbally abusive between 2017 and July 2022. He said he had never liked A, and criticised her appearance. He told the children that she was a bad mother. He would use derogatory expressions to her. He stood close to her and shouted in her face.

[105] He was physically abusive between December 2016 and July 2022. A described a pattern of his providing gifts to her after episodes of abuse. He never admitted he had done anything wrong. She took the gifts as his telling her to forget about what happened and move on. In Arab culture domestic abuse was a secret, and it was not appropriate to

tell other people it was happening. She had contacted M's father in 2022 and his principal concern had been that she should not contact her own family about the matter, and that the matter should be sorted out privately.

[106] In December 2016 when A was pregnant she felt sick and tired during a visit to M's family in Saudi Arabia. As clarified in oral evidence, this account must have related to late 2015 or early 2016, as Yara was born in August 2016. M asked her why she was not talking to his family, and she explained she was unwell. When they got back to their room, M slapped her on the face. M's mother came into the room, and A told her what M had done. He hit her three or four more times with his mother watching. A tried to leave and travel to Spain, but M and his mother prevented her. M's mother threatened to retain Hanna in Saudi Arabia. M promised not to hit her again. In cross-examination she accepted that she had visited M's parents without M, but with the children, in 2018. She had tried to make arrangements for M's parents to visit Qatar in 2021 for the World Cup. She denied that any of her family or extended family had required to ask M for assistance with sponsorship for immigration purposes. A was asked about an account she had given to OM that both M's parents had been present when M assaulted her. She said that she might have made a mistake in her message to OM about that.

[107] On an occasion in 2017, M slapped A on the face in their home in Liverpool. Again he promised that this would not happen again. He bought her expensive handbags. A's evidence was that she had been pregnant with Yara at the time, but that cannot be correct if the incident was in 2017. In 2017 or 2018 he slapped A again, when her father was present. In cross-examination A said that her father was not available to give evidence because he was supporting her during the proof by collecting the children and their cousins from school.

[108] On an occasion during the morning of Eid in 2017 M could not find a place to park near the mosque, became angry, and threatened just to drive home. A asked him not to, as the children were dressed up and everyone was looking forward to the celebrations. He started driving home in a dangerous manner. When they arrived home M hit A on the head with both his hands. The children saw the incident. In cross-examination she said the assault occurred within a few minutes of their arrival home. After the assault M left and took the children with him. She was shown 6/121/4, which she accepted was a photograph of her placing a dummy in Yara's mouth at 11.34am on 25 June 2017. Both children are in party dresses as if dressed for a special occasion. She then sought to query the concession counsel had made on her behalf as to the date of Eid in Manchester in 2017, and said that she not told her lawyer that the incident had occurred on any particular date. She denied having said that the assault occurred at Eid in 2019, which was the date that had been referred to in defences lodged on her behalf.

[109] M continued to abuse A physically in Qatar when she moved there in 2019. In 2020 he started to hit her all over her body, and shout at her in the presence of the children. He often took her phone away so she could not speak to her family. He told her she was a bad wife and that it was her fault that he behaved abusively towards her. He compared her obedience to him unfavourably to that of his neighbours' wives towards their husbands.

[110] His behaviour deteriorated between December 2021 and January 2022. On one occasion he called her at work. He was angry and shouting and claimed he had been waiting for her for hours to come home, although he knew that she needed to finish her shift at work. She knew he would hit her when she got home. She phoned her mother and asked her to remain on the call. She tried to explain to M that there had been a misunderstanding about her finishing time at work. He started hitting her in the presence of the children. He

said that he was going to kill her. A's mother was still on the telephone call when he said this. A said she wanted a divorce and to return to Liverpool.

[111] M hit her again on 6 January 2022. He wanted her to make his breakfast, and she said he needed to wait as she was helping the children. He became angry and threatened to stop her sponsorship (to live in Qatar) and told her to leave her job. He grabbed her by the neck and started to strangle her. He removed his hands from her neck and hit her head against the bathroom door. In the course of cross-examination A demonstrated physically the manner in which she said M had grabbed her. She explained that her head hit the "wall of the door of the toilet" which was wooden. I took that to be a reference to a wooden doorframe. She feared for her life. The children were sitting downstairs doing schoolwork online. M blamed her for the incident and told her to put ice on her injuries. She contacted the family court in Qatar to start divorce proceedings. M was her sponsor in Qatar and she could not do anything without his permission.

[112] A contacted her father and told him about the incident. He came to Qatar. She moved to the hotel where her father was staying. She reported M's abuse to the police and attended the emergency department at Hamad hospital. M phoned her and asked her to come back and promised he would change. He referred to his own health problems, and said that Yara's heart condition was affecting her growth. The family court told her that the divorce process would take a long time and that she should remain living with M. The police in Qatar made M sign an undertaking that he would not hit A again. He did not hit her again until June 2022, but continued to be verbally abusive towards her. A had sent a photograph of her bruised eye to members of M's family. On 11 January she had visited the parties' home to collect some belongings.

[113] In cross-examination A was shown 6/92/14 which appeared to be a translation of an email exchange between her and M on 11 January 2022. In an email timed at 1648 hours, apparently from A to M, she writes that she is on sick leave because of her eye. M's response, timed at 1824 hours is to the effect that he does not know what is wrong with her eye, and he makes an offer to take her to the health centre. That email, and another from him at 2024 hours both ask where A and the children are, and why she has left. A's evidence was that she had not sent the email at 1648 hours and that the whole sequence of emails was a fake produced by M.

[114] OM contacted her in January 2022 to ask how she was. He had been helpful and said that M should not hit A.

[115] A produced a video-recording and translated transcript of an incident that took place, she said, on 4 June 2022. In her oral evidence she said that during that incident M had thrown a plate of fish and then gone upstairs. She said that in the argument M had called her an actress. She said that in the "Arab world" that was equivalent to calling someone a whore or a prostitute. The argument had started because M alleged that A was treating Hanna differently from Yara. She did not accept that she ever raised her voice or called M names.

[116] In June 2022 M hit Hanna on the arm in A's presence. He tried to pretend that he was only playing.

[117] M raped A on two occasions. A's affidavit provided relatively little detail of these allegations. She said that whenever M had been physically abusive towards her he still expected her to go to bed with him. She was angry and would not agree or consent to do so, but he forced himself on her anyway. In oral evidence she said that there was an incident in January 2022 after the one in which she had sustained bruises. He asked her

to come to him, and said that if she did not he would continue shouting. She went to him in order to try to avoid the situation escalating and he forced himself into her. He said "I am raping you". He would have been able to see that she was crying. The incident ended because he could see "it was not good". Her counsel asked her whether, when she used the phrase "forced himself into [her]" she meant that he had forced his penis into her vagina. A said that she did not remember, and that, "It was his body on me". She said that there had been another incident in June 2022 before M travelled to Jeddah, because "he wanted to feel like [they] were a nice family" before he did so. She did not describe the incident in detail. When asked what had happened, she said,

"Maybe the same. I didn't want to have sex with him. I was not in the mood, but the same happened. If I do not go he will start becoming angry, and it will end with physical abuse as well."

[118] A took the children to England in 2022 after a holiday in Spain. Her evidence was that she had not told them what was happening "through the divorce" and that she kept in contact with M and his parents. She had told them "nothing", simply that they were coming back to the United Kingdom. The children had said that was good; because they had witnessed a lot of the domestic abuse they were "happy" to be going to the United Kingdom. M had traced A to Liverpool, she believed using her Apple location, and had gone to her father's home. She alleged that he had tried to force entry. It was suggested to her that her father had wished to admit M to the house. She did not answer the question directly, and said that she had not wished to see M. She did not let the children know that their father was there. After that incident she sought the non-molestation order referred to in the joint minute.

[119] She was shown a signed statement of truth from the Liverpool proceedings (6/18). That statement contained a representation that she did not know M's address, and to the

effect that in August 2022 he was living between Qatar and the United Kingdom. It did not mention that A had been living in Qatar until August 2022. It was so drafted as to produce the impression that she had been living with M in a property in England until August 2022, when she had left that property while M was outside the United Kingdom. She said that she had told her solicitor that the statement was wrong and that it had been taken over the phone. In re-examination she was shown a series of emails between herself and her solicitor (7/9) in which she appeared to be trying to make corrections to her statement.

[120] A said that she did not remember whether it was correct that she had informed her solicitor in England of her move to Scotland, which took place in October 2022, only in February 2023. She was shown an email bearing to be from her solicitor, dated 1 March 2023, which read:

“Whilst this firm has been acting for [A] prior to her move to Scotland in October 2022, this move only became known to us when [A] disclosed this to us on 14 February 2023 during an appointment to discuss the possibility of public funding for, and give preliminary advice to [A] in respect of the wardship application before the High Court”.

She maintained that her solicitor knew of her move to Scotland and that there had been a mistake. She said she did not remember being provided with the order made by the High Court on 9 February 2023, or a draft of that order. She did recall receiving a call from her sister, who was in Liverpool, saying that the police wanted to talk to her. She had spoken to them by video call. The police had not told her that they had a court order, but had mentioned a letter from the court.

[121] A was shown also 6/120, which was her application for divorce in the courts of England and Wales. It contained a representation that both parties to the marriage were last habitually resident in England and Wales.

[122] In re-examination A explained that she had attempted to leave Scotland on 21 February 2023 because she had received a communication from the children's former school in Liverpool regarding the provision of her address in Edinburgh to the authorities in England and Wales. She believed that M was going to find her in Scotland as a result.

[123] A spoke in positive terms about the education that the children were receiving at their current school. Yara's English had improved, and she was receiving support to build her confidence in the "Nest" facility at school. She was making progress both at school and in private tuition. She thought Yara had struggled at first partly because she had missed part of the reception year in Qatar. Her confidence had improved. Hanna was happy at school and progressing well. Both girls had swimming classes as part of their school education. Outside of school both children attended private tuition, and swimming. A was looking for gym classes for Hanna, and also for arts activities. Both girls enjoyed time outdoors at local beaches and parks. Hanna had suffered from headaches. A paediatrician in England had made recommendations about diet and regular sleep times, but a paediatrician in Qatar had recommended avoiding the sun. In cross-examination A said that she had not provided information to M about the support that Yara was receiving at school or about the arrangements for private tutoring. She said that she had provided the school with his contact details.

[124] Both children now spoke daily to their father for between 10 and 40 minutes. They also contacted him using messaging applications. A denied that she had ever contacted M pretending to be one of the children. She recalled an occasion when Hanna had been upset because her father had criticised her haircut. Her friends and teacher had all complimented her on it, and the matter with her father had not been a big issue. A denied having failed to comply with the order for indirect contact ordered by the High Court. She had been out

when there had been attempts to deliver the phone provided by M for indirect contact. She had gone to collect the telephone from her solicitor's office on 29 March 2023. Hanna had been unhappy initially to speak by phone, but A said that she had done so after A encouraged her to do so. A denied that M's calls had thereafter gone unanswered for about two weeks until 10 April 2023. She accepted that the calls had become "better" following the curator's involvement. She did not recall offering information about M to the curator in the presence of the children despite the curator's admonition that she should not do so. She denied having encouraged either child to ask to see M's accommodation during video calls, although she said she had informed M's employer about his changed family circumstances.

[125] A had called the police on 26 April 2023 during a period of direct contact with M to say that the children had not called her at 6.00pm. They did call her 20 minutes later. She had called the police again on 27 April. Edinburgh City Council case notes recorded that A was concerned that M would take the children to Qatar, and that her concern was exacerbated because the children had not attended school that day. She was also concerned that he might obtain Syrian passports for them.

[126] She had called the police during M's direct contact with the children in July 2023 because the children's phone had been switched off for 24 hours. She had sent a WhatsApp message which had not "gone through". After some hours she telephoned her lawyer for advice, and her lawyer said that she would check her emails. A went home from work and by 7.00pm had still heard nothing. She had not called the police with a view to getting her husband into trouble. In cross-examination A accepted that she had not provided the children with much by way of clothing or toiletries for this period of contact, on the basis that their father could buy them things. She did not accept that in doing so she had been

trying to make things difficult for M, and responded that she had provided a high factor sun cream which had not been used.

[127] In examination in chief, A said that she did not know why M's parents had been unable to make contact with the children. She said she had no objection to the children speaking to their paternal grandparents, that she would be happy for them to do so, and that she would be happy to facilitate that. In cross-examination she appeared to retreat from that position and said that it would be a new thing for the children to have contact with their grandparents, as they had never been close to them.

[128] In re-examination A said that she had installed a Google family link on the children's phone to ensure that they could not access age-inappropriate content. In the family link it was impossible to disable location services.

[129] She had known Dr Ali Altabel for a number of years. His daughters were friends with the children. She had no concerns about his behaviour in the presence of the children. A volunteered in the course of re-examination that she had done some research into the MyFamilyWizard app, and that she thought it was a tool that might assist her and M in communicating about the children and contact.

PC Samantha Caulfield

[130] PC Caulfield and her colleague were directed to respond to a call made by A on 11 July 2023 at about 1915 hours. They went to her home. She seemed distressed and did not know where her children were. A told the officers that the children were subject to a court order and that certain conditions were in place regarding contact. The officers contacted social work to ascertain if they knew where M was. While the officers were at A's home, one of the children video-called A. The call took place at about 2030 hours. The

child said she was at the Apex Hotel. PC Caulfield could see on the call that the hotel was in the Old Town, and understood that it was in the Grassmarket. She and her colleague contacted their sergeant, who told them to attend and trace the children.

[131] Hotel staff provided a room key, but no-one was in the room. Shortly afterwards the officers saw M and the children not far from the hotel. They asked M to stop and speak to them. He was confrontational and evasive, and was unhappy that the police were involved. He did not want to speak to them. The officers advised him that they had attended because the children had not called at a specified time. He stated that his daughter had lost her phone, and that they should speak to his solicitor. He did not shout or swear. His manner was abrupt.

[132] A had not told the officers that there was a specified time at which a call ought to have been made. She had said that the court order required that she should be able to reach the children by telephone at all times.

DAL

[133] The witness is A's sister. She lives in Birmingham. She said that in 2018 when M moved to Qatar, all of A's wages went into his bank account. A did not wish to move to Qatar as she had a good job in Liverpool and was studying for a master's degree. She said that A was persuaded to move to Qatar only to secure family-sized accommodation there for M. Before she moved there, he was provided only with a single hotel room. At about the time in 2019 when A moved to Qatar, A arranged and cancelled a lavish party for Eid. She explained in a telephone call, during which she was crying, that she had cancelled it because M had hit her. DAL travelled to see her sister the next day. She did not observe any injuries, but A "showed her that she had learned to hide the bruises by watching

YouTube tutorials on how to cover blue marks under the eye". A had not removed her makeup. A told her that M had hit her in Saudi Arabia, and that his family had demanded that A apologise to M.

[134] While A was in Qatar she telephoned DAL and told her that M had become abusive and bad-tempered towards the children. He would shout and throw his slippers at them if they had been naughty. In 2022 A had telephoned DAL in tears and told her that M had grabbed her by the throat and slammed her against a wall. The police had advised A that the children would not be able to leave Qatar without M's permission. DAL gave an account of an argument between A and M in about June 2022 about whether Hanna should be made to eat fish she had been given at a mealtime. This was the recorded conversation.

Dr Ali Altabel

[135] Dr Altabel lives in Edinburgh. He is a dentist. He was involved in facilitating handovers for contact between M and the children. He thought the children looked uncomfortable before contact, and that they were not happy or excited. M had delivered the children back from contact late on four occasions. On one occasion he had been 26 minutes late. He had not apologised. He was rude and his behaviour inappropriate. On that occasion Hanna had telephoned her mother from the taxi to explain that they had been taken to the train station rather than the tram station. Dr Altabel was unrepentant about having video-recorded M and the children arriving, and said he had told A to make a recording as well. M had shouted to the children, "Could you tell your mum to stop recording". Dr Altabel did not accept that he could have done more to make the handover pleasant for the children, and was adamant that the situation simply resulted from M's failure to respect the agreed drop-off time.

Ms URA

[136] URA lives in The Wirral. She is a pharmacist, and a younger sister of A. Her evidence was that after the children were born, A became withdrawn and seemed to lack self-esteem, despite her professional achievements. She never seemed to have any money. URA said that she understood that in 2013 A arranged to hold a lavish Eid party and then cancelled it. When URA and another sister visited A in Liverpool she had thick make up on and "it was clear she had used make-up to cover bruising to her eye". She stayed in contact via video-calls after A moved to Qatar. She seemed bubblier when her husband was not present. A always switched off the camera on video calls, and URA believed that was to hide her face because M hit her. After A and the girls moved to Edinburgh they were happier and more relaxed than they had been when she saw them in Liverpool in 2022. The children were reluctant to phone their father and became tearful when they had to do so.

[137] The witness described A as an amazing working mum. She believed that A could provide a stable upbringing for the children in Edinburgh. She expressed the view that in Qatar A and the children would be oppressed and "under the control of her narcissist ex-husband". URA had been staying with A during the week of the proof. The children had been happy and excited. They seemed more open and talkative than previously. Hanna had made the witness a loom band bracelet because she knew that her aunt liked the colour pink and was going to court.

Ms RRA

[138] RRA is a younger sister of A, and lives in Madrid. She has recently graduated in the field of pharmacy. Her evidence was that she had observed that A was unhappy with M in Liverpool in 2017. RRA was aged 16 at the time. She witnessed an argument in the course of which M shouted aggressively, and held A's hand aggressively. A came to hide in the bathroom. Both children were upset. After the incident RRA, A and the children all slept together. M demanded that A sleep in his room, and said that she required his permission to do otherwise. A told RRA not to tell their parents what had happened, and to keep it private.

[139] She described also an incident in Qatar in July 2022 when she and her mother were visiting. During the last few days of their visit, M returned with the children from his trip to Saudi Arabia. RRA, A, their mother and some friends were planning to go out to a restaurant. M prohibited them from doing so because the restaurant would be full of men, and he would be there with his friends. A made a booking at a different restaurant.

[140] During a car journey A said to M that it would have been easier had he been willing to change his plans if he were uncomfortable with the arrangement. He started shouting aggressively and driving erratically. RRA and the other passengers were frightened, and Hanna was crying. A sent RRA a copy of the medical report she had obtained from Hamad Hospital. During the time they were in Qatar together A told RRA about difficulties she had been experiencing in her marriage, although she remembered times in 2015 when A would call their mother in tears. At that time she had not known why that was happening.

[141] The witness said that she spoke with Hanna and Yara twice a week. They did not talk about how they felt about living with their father, but she could see they were not

happy. They had said they did not want to go back to Qatar. They were happy at school in Scotland. They would not be able to do anything in Qatar without the consent of a man.

[142] In cross-examination counsel asked RRA about an incident when she had been visiting her sister in Liverpool some years ago. She had been in the kitchen of the flat, which was an upstairs flat. M was outside and looked up at the window and saw her without her headdress on. She was angry because he should not have been looking up at her. She was shown an exchange of messages between M and A from 2022 concerning her visit to Qatar (6/92). In that exchange A told M that she had argued with Ms RRA about the dates of her visit, the context being that there would be some overlap between her visit and M's return. M responded that he did not want there to be problems similar to what had happened in Liverpool. RRA accepted that her mother had wanted M to match-make for RRA with one of his university students. She and A had not wanted him to do so. Counsel suggested, in relation to the incident in which both M and A and others had planned separately to go to the same restaurant, that M had been going there to meet the student in question, and that M had been trying to avoid embarrassing the man. RRA denied that, saying, "That was another day." In the course of cross-examination she volunteered that she had seen bruises on her sister during the 2022 visit to Qatar. She could not say where on A's person those had been.

Dr ARA

[143] ARA lives in Edinburgh. She is a doctor. She gave evidence from Spain as she was pursuing a course of study there. It is at her address that A has been staying since moving to Edinburgh. She is a sister of A. Initially A and M had appeared to be happy together. ARA lost touch with A after her marriage. She recalled an incident during the time that A

and M lived together in Liverpool when they came to visit family members, including ARA, in Spain. There was an argument between M and another male family member. A was concerned and told ARA, "You don't know how aggressive M [can] be".

[144] She first became aware of issues in the relationship when her father had to go to Qatar in 2022. His trip had been unexpected. A phoned her and told her that she had been suffering domestic abuse, had a "horrible eye", would send her a picture, and was going to the police. ARA encouraged A to go to the police, and also to the Spanish embassy. A initially did not follow her advice to go to the embassy, but eventually did so. A Qatari lawyer had told A that her children could not leave the country without a man's permission, so she had decided to stay in Qatar until the summer. According to ARA, "we" - which I took to mean she and other family members - advised A to move to the United Kingdom, as she had lived there before, and the children did not speak Spanish. If M came to the United Kingdom, he would have to observe "British law".

[145] After A moved to Edinburgh she wanted the children to speak to their father, but Hanna was unhappy during calls. ARA gave the following account in her affidavit:

"A was all the time telling the daughters they could speak to dad, although the calls were very short and once Hanna started crying after speaking to her father. She was really crying, she was having a lot of anxiety. A asked me to speak to Hanna about it, so I did. Hanna said she doesn't want to speak anymore, she said her dad is asking where are you, where is your mum, what are you doing, and Hanna said 'I don't want to lie, I don't want to tell him everything that my mum is doing and what we are doing, I can't answer all of those questions.'"

In the light of that ARA told A that if Hanna did not want to speak to her dad, she should not be forced to. She believed that A had done a lot to keep contact going, and had tried to stay in contact with relatives of M, including the children's paternal grandparents.

[146] A became aware that M wanted to take the children back to Qatar. The police had been looking for her in Liverpool with an order from the High Court. At that point A went

to the police in Scotland. ARA alleged that M had threatened A that if she reported matters to the police or told her sisters about them, she would not see her daughters again. ARA said that Hanna's paternal grandmother had asked Hanna in Saudi Arabia whether she preferred her (the grandmother) or A. ARA placed that in the context of an allegation that during that same visit M said he could get another wife to look after the children.

[147] Both children remained frightened that their father would take them to Qatar. ARA did not think that Hanna had told the curator her true feelings, because she was scared that the curator would tell her father. ARA had encouraged her to speak to the curator. She was of the view that neither child had been open with the curator. ARA knew that Hanna had witnessed M hitting A, although Hanna had not told her that was so. She alleged that M had told Hanna to film herself or record herself saying that he had never hit her.

[148] A and both the children were happier and healthier in Edinburgh. A had previously suffered from IBS, and Hanna suffered from headaches less frequently than previously. ARA had four children herself, who had a good relationship with Hanna and Yara. She volunteered that one of her children had told her that Hanna had confided in her that she was not going back to Qatar because M hit A. In a curious passage in her evidence, she indicated that her children had not seen Hanna and Yara since before summer 2023, despite A's living at her address. She initially refused to explain the position, other than to say that her children had a father who was not living with her and that she did not want to discuss anything about their private life. She then said that her children were living at her Edinburgh address with A.

[149] In cross-examination she said she had never seen M being violent. In relation to the incident she described in Spain, counsel suggested that the dispute had arisen because the husband of A's sister F asked how much M earned and wanted to see his payslips; that

he wanted M to act as his sponsor; and that M and A refused to do that, and ignored his messages. ARA said she was unaware of that context. She was however unable to say who had been the aggressor on the day in question. In 2022 A had sent her pictures of bruising to her eye. She had never seen any injuries to A.

The relevant law

[150] Parties were agreed that Qatar was a non-Hague convention country, and the court required to apply section 11 of the Children (Scotland) Act 1995. The welfare of each child was the paramount consideration, and the court must not make any order unless it considered that it was better for the child that the order be made than that no order be made: section 11(7)(a). In carrying out the duties imposed by section 11(7)(a) the court must have regard to a range of matters connected with abuse or a risk of abuse which affects or might affect the child: section 11(7A)-(7E).

[151] Counsel for the pursuer referred to authorities regarding “parental alienation”:
Re S (Parental Alienation: Cult) [2020] EWCA Civ 568, paragraph 13; *Re C* [2023] EWHC 345 (Fam), paragraph 103. The court had a positive duty to promote family relationships in the absence of agreement between the parents: *M v K* [2015] CSIH 54 and *J v M* [2016] CSIH 52; SC 835. The standard of proof was proof on the balance of probabilities, but the nature of an allegation of criminal conduct might require evidence of quality and weight, and for careful examination and scrutiny: *B v The Scottish Ministers*, 2010 SC 472. She referred also to *In Re B (Children) (Sexual Assault: Standard of Proof)* (2008) 3 WLR 1, paragraph 2. In considering the video recording produced by A, I should apply the law as set out in *Gubinas v HM Advocate* [2017] HCJAC 59.

[152] I have sought to apply the law regarding the standard of proof in the light of the discussion of *B v Scottish Ministers* in *A v A* 2013 SLT 355, at paragraphs 21 and 22. In any case, whether the evidence tips the balance of probabilities will depend on the whole circumstances of the case, including the nature of the allegations and the quality and weight of the evidence relied upon. All relevant circumstances require to be taken into account. There is no presumption that an individual will not engage in criminal conduct of any particular kind.

Conclusions on the evidence

Credibility and reliability

[153] My conclusions in this case are informed by the oral and affidavit evidence of non-professional witnesses. I make here some general observations as to the credibility and reliability of the evidence of the parties and witnesses.

[154] I am not satisfied that the evidence of either M or A is wholly credible and reliable where it touches on matters affecting their respective interests in this action. Each displayed a tendency to be evasive and self-justifying when asked questions about something tending to his or her discredit. A number of matters caused me to be cautious about the credibility and reliability of A's evidence, particularly where it was not supported by other evidence. M tended to attribute outcomes that he did not like to the conduct of others, even when his own conduct had had a part to play in bringing them about. He eventually admitted in evidence to having turned the children's phone off for a period in July 2023, when initially he suggested that Hanna had lost the phone.

[155] M was evasive when asked about the availability of a phone to the children during direct contact in July 2023. He gave varying accounts of its being lost and its being switched

off. He was dismissive in relation to his returning the children late from contact and in relation to any deficiencies in their indirect contact with their mother while they were with him. He was aggrieved by the manner in which they had been removed and retained by their mother and thought that failures on his part to adhere to agreements about timings or indirect contact were essentially trivial and excusable against that background. M was also evasive when asked about the transcript of the recording from June 2022. He did not answer directly the question he was asked about whether the parties had reconciled in January 2022 because he had promised to abstain from violence.

[156] A was evasive when asked about contact between the children and their paternal grandparents. I did not believe her when she said she did not understand why there had been a difficulty. A is capable of promoting and facilitating remote contact when she is minded to do so. I take into account the manner in which indirect contact with M developed after the curator's intervention. I am confident that if A had acted positively to initiate and support indirect contact with the paternal grandparents, that contact would have occurred. I infer that she has done nothing to initiate or support that contact, and that she expressed a willingness to do so only in the context of these proceedings and when actually giving evidence, because she realised that her failure in this regard was not to her credit.

[157] A single anomaly in the information provided by A to the courts of England and Wales in the proceedings there might have been capable of explanation. The information provided to those courts was, however, inaccurate in a number of respects. The signed statement of truth provided in the non-molestation proceedings is misleading. It does not mention the family life of the parties in Qatar at all, or say that that is where the domestic abuse was alleged to have occurred. It suggested that the address of M was not known, which was not true. The emails between A and her solicitor do not assist A.

They are not complete. They say that they relate to alterations made in a particular colour, and only black and white copies are available, so it is impossible to say what changes A was trying to make. The only passage of what is said to be a proposed change which has been produced is in relation to the paragraph dealing with M's address. It does include the sentence, which the signed statement does not, that M was at that time residing in Qatar. It is impossible to tell whether this was a proposed deletion or a proposed insertion. It does not disclose that A knew his address. The courts were not told that A was living in Scotland from October 2022, and the court in Liverpool continued to make decisions in the proceedings after October 2022. A accepts responsibility for none of these anomalies, and blames her solicitors for them. The information provided about habitual residence in the application for divorce was wrong. A was asked whether she was represented at the time. She did not answer the question directly, but said that "they" had asked her about all her most recent addresses. It was not clear whether she was referring to solicitors or to court officials. I regard the accumulation of inaccurate material provided to the courts in England and Wales as providing significant grounds for caution in approaching the credibility and reliability of A's evidence in this case.

[158] A misled the police officers who attended on 11 July 2023. She caused them to think that the court had imposed a requirement that she be able to contact the children at all times during their contact with M. There was no such requirement.

[159] With few exceptions, the evidence from the family members and friends of each party was partial to the party concerned, or based on very limited information, often at second hand, and I was unable to place much reliance on it. I comment further on the evidence of Dr AM, Mrs HAM, and Mr OM, in relation to the evidence about allegations of physical abuse.

[160] DAL's evidence derives almost entirely from information she says was provided to her by A. She is partial so far as A is concerned. I doubt the reliability of her evidence in the light of what she said about the video recording being "horrible to watch". The recording is really just an audio recording made using a video recording application. Relatively little of Ms URA's evidence derived from observations at first hand, and parts of her affidavit evidence are expressed in terms of her understanding.

[161] RRA gave detailed evidence about events she said she had witnessed in 2017, and I found it credible and reliable. I accept that there is a background of some acrimony between her and M in relation to the incident in which she objected to him seeing her from outside the flat without her headress. RRA did not dispute that. There is no dispute that during her 2022 visit to Qatar there was an incident involving an argument about attending a restaurant. I accept RRA's account of that incident. Her denial of the context that counsel suggested to her came across as entirely genuine and credible, as did her repetition in her oral evidence of the account of it that she provided in her affidavit. I did not accept the account that she volunteered in her oral evidence of seeing bruises on her sister when in Qatar. She could not remember where the bruises were located, the account did not feature in her affidavit and her visit overlapped only to a limited extent with M's presence in Qatar. I regard ARA's evidence about what A said to her in Spain about M's aggression, and about A's communications with her in early 2022 as credible and reliable. I do not entirely accept her account of A's attitude to indirect contact between the children and M and M's parents.

[162] I have already narrated the circumstances that caused counsel to withdraw Mrs R Al-A Al-D's evidence. Against that background I do not draw any inference adverse to A from the circumstance that her mother's evidence was not available.

Allegations of domestic abuse

[163] It was M's position that A had fabricated all of her allegations to justify her abduction of the children from Qatar. I am satisfied that there is a core of truth to her allegations, but I am not satisfied that her evidence about all of them is truthful or accurate.

Physical assault in January 2022

[164] I am satisfied that M assaulted A on about 6 January 2022 in Qatar, and that that caused A to attend at hospital, to contact the police and her father, and to initiate proceedings for divorce. He assaulted her by grabbing her by the neck and striking her head against the wooden frame of the toilet door. She sustained bruising to her eye as a result. The account she gave of it in her oral evidence was compelling. She demonstrated in the witness box the way in which she said M had grabbed her and caused her head to strike the wooden fitting.

[165] Although the author of the hospital record was not available to give evidence, there was no suggestion that the document had been fabricated. There was no dispute that A had left the family home around that time, that she had contacted her father, who had come to Qatar as a result, or that she had started divorce proceedings in Qatar. Looked at in the context of those uncontentious facts, I have no reason to doubt the authenticity of the hospital record. It fits with those facts. Its contents are consistent with A's account in evidence of an assault on her by M. There is also a letter dated 15 February 2023 bearing to be from the Spanish embassy in Doha relating to an attendance by A on 13 January 2022. It contains an account of an assault that is generally consistent with A's evidence. There is no evidence in relation to the provenance of this document, but I accept ARA's evidence

that she positively encouraged A to visit the embassy at about that time, and infer that A followed that advice.

[166] A's evidence about the sequence of emails on 11 January 2022 (6/92/14) was odd. It is possible to create fake emails with a view to misleading a court about the nature of communications between parties. There is, however, no obvious reason why M should have created an email from A in which she says she is on sick leave because of her eye. It is if anything a contemporaneous record that supports A's account of having sustained an injury. M's emails read as genuine emails, containing disingenuous attempts on his part to place on record, in response to A's email, that he knew nothing about her injury or why she might have left. I do not, however, regard A's evidence about these emails as undermining her account of events on or about 6 January 2022, although it is an example of her giving an exaggerated, or, at best, misconceived account of wrongdoing by M.

[167] I place no weight on the photographs produced by M showing A smiling and apparently happy and dating from about three weeks after 6 January 2022. They are manifestly not incompatible with the occurrence of domestic abuse. That A's mother had a protracted stay with the parties later in 2022 and apparently had a good time tells me nothing of relevance about whether or not A was assaulted in the way that she alleged. Family life may well go on without any particular incident, and may involve events that are positive and enjoyable, notwithstanding that one intimate partner has assaulted the other.

Other allegations of physical assault

[168] A alleges an assault by M in 2015 or 2016 in Saudi Arabia, witnessed by M's mother. When asked about this incident Mrs HAM's demeanour was expressive of distress, but it is difficult to be confident as to whether that was because the allegation was true or because it

was untrue, or untrue in part. I did not accept Mrs HAM's evidence as to the explanation for what she had said to A by phone in January 2022. I formed the view that she was keen in 2022 for A to go back with the children to her home and to her husband, and that she would have preferred for the parties to have resolved their differences and remained together. She tended to minimise the parties' difficulties, saying that they had solved the matter in 2022 and that everything was fine. Against that background I am not prepared to place any reliance on her denial that she witnessed an incident involving A and M in Saudi Arabia. I did accept the logic of her position that any threat she might have made to retain the children in Saudi Arabia would have been pointless, as the children had no right to reside there. Dr AM said that there had been no disputes during the visit when A was pregnant with Yara. Again, I gained the impression that he was very keen to produce only a positive account of his family's interactions with A up until the point that A and M finally separated.

[169] A has given an account of this incident not just to this court, but also to OM in her communications with him in early 2022. She accepted that she might have erroneously given an account to him that was different from the account she gave in court in that she had told him that Dr AM was also present during the incident.

[170] OM's evidence was that his immediate reaction to A's allegations about an incident in Jeddah witnessed by his parents was that they were untrue. My impression was that he was simply not prepared to believe that his parents would behave in the way that A alleged, and that he was never open to the possibility that A's account, or any part of it, might be true. He had a negative view of A, and was firmly of the view that his brother would not behave in the way alleged. I regard his evidence as given generally in the context of partiality towards M. Although OM said that he had had the messages between himself and

A to hand when he prepared the affidavit, only her message of 31 December 2022 was produced. He did describe his interactions with A as including her making an allegation, retreating from it, and seeking to take the conversation in a different direction. That bore some similarities to A's tendency to be evasive at times when answering questions in court, and to speak about matters she wished to relate rather than answering the question, and I consider that part of his account to be credible and reliable.

[171] I am not satisfied on the balance of probabilities that an incident occurred in the manner that A alleged. I take into account that I have found A in other respects to have exaggerated, the reasons for caution in relation to her credibility and reliability, and her admission in evidence that she may have given differing accounts of it at different times.

[172] A alleged three assaults in 2017, one when she was pregnant with Yara, one in the presence of her father, and the other at Eid in Liverpool that year.

[173] A's father did not give evidence. There was no certificate vouching that he was unfit to provide evidence, and there was no motion for evidence on commission or special measures. At one point in her evidence A suggested that her father was unavailable because he was supporting her during the proof by collecting the children from school. So far as that single incident in 2017 is concerned, a negative inference falls to be drawn from the circumstance that A did not lead evidence that should have been available to support her account. I am not satisfied that this incident occurred.

[174] I note that A's father would also have been able to cast light on the discussions that took place during his visit to Qatar in 2022, and to provide an account of why he had travelled. That is of less significance, given my conclusions about that episode in the light of other available evidence. The absence of his evidence is significant in relation to A's allegation that M tried to force entry to her father's house in Liverpool.

[175] It cannot be correct that an assault took place in 2017 at a time when A was pregnant with Yara, given the date of Yara's birth. I cannot rule out the possibility that an assault occurred either in 2017 or when A was pregnant with Yara, but I am not able to make a finding that an assault occurred on the basis of this allegation.

[176] A gave an account of the incident said to have occurred at Eid 2017. The description of M's loss of temper when driving on that occasion is strikingly similar to the description given by RRA as to his conduct during her visit to Qatar in 2022, and I take that into account, and I regard evidence that he behaved in a similar way on another occasion as on the face of matters credible. Pleadings lodged on A's behalf alleged that the incident at Eid took place in 2019. It was suggested that A had changed her account after M lodged pictures of the parties taken together, on his account at Eid in 2019. There was indeed a change in her position, in the course of these proceedings, as to when this incident took place. There was no exploration in evidence as to whether parties were referring to Eid al-Fitr or Eid al-Adha in relation to either of the given years. I noted that A attempted to depart from the position put forward on her behalf by her counsel that the date of the Eid to which both parties were referring in 2017 was 25 June 2017 when she was shown photographs from that day. I am not satisfied on the balance of probabilities that M assaulted A at Eid in Liverpool in 2017.

[177] A made other allegations about physical abuse that occurred while she was in Qatar in 2019-2020. I consider those allegations in the context of the whole of the evidence. I am satisfied that M assaulted A in January 2022. For the reasons given below I am satisfied both that verbal abuse occurred on more than one occasion and that a sexual assault occurred on one occasion. In that context I am satisfied that it is more likely than not that other incidents of physical abuse occurred during times that A was in Qatar. I am unable on the evidence

confidently to make a finding on the balance of probabilities as to whether one or more of the children witnessed any of those events.

Allegations that M manipulated A into moving to Qatar in 2019 and 2021

[178] I am not satisfied that M manipulated A into going to Qatar either in 2019 or 2021. I accept that an argument occurred on the day on which A was due to travel to Doha in 2019. A intimated on that day that she did not wish to go, and an argument ensued in which M threatened to take the girls without her. It occurred some time after the parties had resolved to go to Qatar together. I note that A and the children returned to the United Kingdom for a period by agreement.

[179] Taking A's account of events in 2021 at its highest and assuming it to be true and accurate, it is an account that A said she wanted a divorce, that M shortly after had a seizure, which was genuine and unfeigned, and that A then did not insist on separating. That does not amount to an account of manipulation in relation to the underlying decisions to move to Qatar.

[180] A's characterisation of these incidents as M's manipulating her to go to Qatar is inaccurate, exaggerated and misleading.

Verbal abuse

[181] It is more likely than not that M has engaged in verbal abuse of A on more than one occasion. Her account is supported by RRA's account of M's conduct in 2017 and in 2022, and also, to some extent, by the recording that A produced. As I have already noted, M was evasive when asked about verbal abuse. There is no dispute that there was an argument in late 2021 or early January 2022 that arose from confusion about when A was finishing work.

I formed the impression that M was minimising this incident. I accept A's account of it. For the reasons already given I do not draw a negative inference in relation to the absence of her mother's testimony about it.

[182] I found the video recording of little assistance. The position in which the phone was left meant that it did not record any moving images of assistance. There is no dispute that the people speaking in the recording are M and A. The speech recorded is in Arabic. Both parties produced what were said to be translations of what was said. The translations differed in significant respects, and neither party led a translator. That produced by M appeared to be much more detailed than that produced by A. The translation produced by A includes allegations by her that M beat her, and some responses that imply acceptance of those allegations. Those responses are not present in the translation produced by M. A and M gave accounts in evidence of what each respectively claimed was recorded, although the evidence of both about this matter was at times confusing and difficult to follow.

[183] I have no basis on which I can assess the reliability of either written translation or the competing claims of the parties as to what was said or not said in the recording. A made the recording, and I attach no weight to her tone during the discussion, as she knew that the recording was taking place. M's tone becomes increasingly heated and angry as the recording progresses. At one point he sounds very angry indeed. M accepted that in the course of the discussion A alleged that M hit her, but said that in the discussion he also denied that allegation, by saying, "No, no, I have not". The only conclusion that I am prepared to draw from the recording is that an argument took place in the course of which M's tone became extremely angry and unpleasant. It is common ground that the argument arose in the context of the children's meal time and a dispute about whether Hanna should

or should not be required to eat fish. It is close to inconceivable that the children were unaware of this incident.

Financial abuse

[184] I am not satisfied that M engaged in financial abuse by depriving A of funds, or controlling her access to funds, with a view to making her dependent on him, controlling her activities or restricting her actions. I am not satisfied that he coerced or intimidated her into making funds available to him. I am satisfied that A did make payments from her personal account which are listed as going to M. Some of those listed were, however, clearly payments made to a joint account and for her benefit. A produced at 7/11 a record showing payments made by her to M between 12 December 2016 and 14 January 2019. Among those are the two payments of £890 which correspond with payments out to "GDC" and in respect of which the obvious inference is that they were annual payments in respect of A's own professional registration. Although those two payments are shown in A's personal account as payments to M, they are in fact payments to the parties' joint account, in respect of a liability of A's. I was unimpressed by A's reluctance to admit even that the payments to the GDC were payments that she made into the joint account for her own benefit, and by her attempts in evidence to depart from the agreement in the joint minute that she had access to the joint account and used it for personal and family expenses. The parties appear each to have made payments listed in their bank statements as being made to the other at different times during their relationship. I consider that it is more likely than not that occurred in a context where for a time M was developing his career when A was working, and she made the greater financial contribution to their expenses. It is likely that the household, collectively, was short of funds, and that most of them came from A's endeavours for a time.

When M came to earn more money he made payments out of his account to A's personal account.

Sexual assault

[185] I am not satisfied that M engaged in conduct amounting to the crime of rape as defined in Scots law. That is because A in her oral evidence said she could not remember whether he had forced his penis into her vagina, and said she remembered only his body on hers. Force is not a necessary element of the crime of rape, but the use of a penis in effecting the assault is. I was left uncertain on the evidence whether the conduct included any penetration of any part of A's body with M's penis. I note A's evidence that M said, "I am raping you", but note also that there was no exploration as to the words he actually used, and that he was not speaking in English at the time.

[186] I accept A's evidence that there was an incident in January 2022 after a dispute between her and M when M demanded that she come to his bed. Her evidence that he behaved in that way is consistent with the way that RRA described him as having behaved in Liverpool in 2017 when she was visiting. On that occasion, also after an argument, M insisted that A sleep in his room. I am satisfied that there was conduct of a sexual nature involving at least M placing his body on A's body, which would constitute the crime of sexual assault in Scots law, because A did not consent to it. It was obvious that A was not consenting. She was crying. As she put it, M saw that it was "not good" and stopped. I am not satisfied that a similar incident occurred in June 2022. A's evidence barely described the incident - she said it was, "Maybe the same".

[187] I observe that where it is a part of a party's case that a sexual assault has occurred, and evidence in chief is to be by affidavit, the nature of the conduct alleged should be set out clearly in the affidavit. That did not happen in this case.

Allegation that M hit Hanna in 2022

[188] I note that A alleges that this was an incident in which M "pretended he was playing". As I have already noted, there were times in A's evidence when she mischaracterised incidents with a view to enhancing her case. I have in mind particularly the allegations that M manipulated her into moving to Qatar. I am not satisfied on the balance of probabilities that M assaulted Hanna.

Contact with M and others after A moved to Scotland

Indirect contact

[189] A did not comply with the order that the High Court made on 23 February 2023 for indirect contact. M sent a phone for use, but it was not delivered.

[190] A moved to Scotland in October 2022, something that she did not disclose to the English courts until March 2023. She did not want M, or the court in Liverpool, to know she was in Scotland. It would have been very hard to conceal her location had there been any meaningful communication between M and the children. There was no contact between M and the children between December 2022 and 10 April 2023. There were difficulties even getting A to take delivery of the phone provided for indirect contact, and until the curator became involved, A was reluctant to facilitate it. I do accept the account from ARA that Hanna was upset, and that the context was that Hanna did not want to lie in calls to her father. I draw the inference that A had told Hanna that she must not tell her father where

she was. A child who is asked to lie to and/or conceal information from a parent is placed in a difficult and stressful position, and it is no wonder that Hanna was upset and did not want to continue. She was only eight years old at the time.

[191] I do not accept that A made efforts to see that the children kept in touch with their paternal grandparents. I refer to the observations I have recorded at paragraph 156.

[192] I am not satisfied that Hanna's recent text messages to her father were written by A. M's view that a nine year old girl would not of her own volition answer back or voice discontent towards a parent in a text conversation is unrealistic.

[193] I am satisfied that following the curator's intervention, and because of it, indirect contact between M and the children started to operate satisfactorily and regularly. It has generally gone well, and the children enjoy it and benefit from it.

[194] At the time of M's direct contact with the children in April 2023, indirect contact was regulated by this court's interlocutor of 13 April 2023, which provided for indirect contact with the children by means of mutually agreed video calling method every day at 6.00pm whenever the children were in the care of the other party. M did not consistently comply with that requirement in April 2023, and in particular he did not do so on 26 April 2023.

[195] I varied that interlocutor on 3 May 2023 so as to require indirect contact by means of mutually-agreed daily video-calling method and text messages whenever the children were in the care of the other party. That requirement was continued and referred to in the interlocutor of 16 June 2023. While the requirement was not for contact at any particular time, I am satisfied that M did not comply with it, because he switched off the phone and prevented text message contact. He did not ensure that the children called their mother until 2030 hours. She had no notice to expect a call at that time.

Direct contact

[196] The accounts from Dr Altabel and from A's sisters that the children seemed apprehensive about direct contact with M, or reluctant to telephone him are markedly at odds with their views as expressed to the curator, and their presentation as she reported it.

[197] Both parties have been to some degree at fault in relation to the operation of direct contact. I accept Dr Altabel's evidence that M has been late in returning the children from contact on more than one occasion. That is conduct that is unlikely to build the sort of trust between the parties that will enable contact in the future to operate so that the children can gain the greatest benefit from it. M sought to justify lapses on his part from settled arrangements by reference to the disparity between the time he could spend with the children and the time that they have been spending with A. That is misguided and unhelpful, so far as the operation of contact in the children's interests is concerned.

[198] I accept M's explanation for why Hanna and Yara did not attend school during their contact with him on 27 April 2023. In the light of the telephone records to which he referred in his evidence I accept that he telephoned the school timeously to explain the position and took the decision to keep both children from school in good faith.

[199] The involvement of Dr Altabel has not been helpful. His demeanour when giving evidence was belligerent and uncompromising. He did not accept that his conduct in relation to the incident at the Gyle aggravated a difficult situation in which neither of the other two adults involved was behaving in a way that put the interests of the children first. A was filming the incident, and M was exhorting the children to tell her to stop. Dr Altabel regarded himself as entirely justified in having filmed the incident. He should not be involved in handovers in the future, given the way he has conducted himself.

[200] It was M's unchallenged evidence that the children were not provided with sufficient clothing and toiletries for the period of contact. A accepted that she had not provided much, and in particular that she had not sent them with toothbrushes. I regard that as a deliberate and inappropriate choice on the part of A.

[201] Neither party emerges with credit in relation to the involvement of the police in July 2023. M was unhappy because A had set up the children's phone so as to enable her to track their movements. It was not unreasonable for M to be unhappy about that. It was inappropriate and unduly intrusive. M's conduct in switching off the phone and inhibiting ordinary messaging between the children and their mother was, however, petulant, unhelpful, and contrary to the interests of the children. It was understandable that A should have been concerned when she could not contact the children by messaging, given the terms of the interlocutor of 16 June 2023. She contacted the police at about 1915 hours, not having received a call from the children. I consider that in contacting the police she over-reacted, but to some extent understandably. What is of more concern is that she misled the police as to the requirements that the court had imposed in relation to contact, and in particular that she led them to believe that M was breaching a requirement that the children should be contactable at all times. I accept the evidence of PC Caulfield as to M's demeanour when they approached him. While it is, again, understandable that M should have been unhappy that the police attended, he failed to recognise that his own conduct in inhibiting communication by messaging between the children and their mother and facilitating a phone call only at a time of his choosing contributed to the incident. I was particularly unimpressed by his having told the children, while they were still on the call with their mother, that he was going for dinner at that point. That demonstrates a lack of respect for the importance of their indirect contact with her. Neither parent demonstrated much care

for, or insight into, the impact that the attendance of the police on this occasion might have had on the children.

[202] Notwithstanding these issues, contact has gone well. It has involved a range of suitable trips and activities, and the children have enjoyed the time they have spent with their father.

Influence on the views of the children

[203] I consider that it is more likely than not that at times A, and at least one other member of her family, have influenced the views of the children about both direct and indirect contact with their father. What the children have told the curator about their fears that their father will take them to Qatar in the course of direct contact reflects fears that A has, and which she referred to in her evidence. I infer that they are repeating concerns that A has voiced to them.

[204] I note the curator's detailed account of the manner in which the children spoke to her in May 2023, and her concerns that A had influenced the children both directly and indirectly as to what to say to her. Neither party led the curator as a witness, and I do not make any finding in relation to what she reported. It is, however, consistent with my own impression.

[205] It is a matter of concern that ARA has been proactive in advising the children as to how they should communicate with the curator. ARA was herself, at least at one stage, hostile to indirect contact with M. She discouraged A from supporting it. It is more likely than not that ARA's communication with the children has contributed to their fear that their father will abduct them and take them to Qatar.

[206] I infer that the requests to M that he display his accommodation during video calls were deliberately prompted by A. Counsel put to M, presumably on A's instructions, that as a matter of fact he was no longer living in his family-sized accommodation and had been moved to smaller accommodation. A took positive action to tell M's employer that she and the children no longer lived with him. I conclude that A has tried to use the children's indirect contact with their father to gather evidence adverse to his interest.

[207] I am satisfied that the behaviour of A and ARA has influenced the views of the children about where direct contact should take place. In part this has reflected A's own fears that M will seek to remove the children to Qatar without the authority of the court. I am satisfied on the balance of probabilities that they are fears that she genuinely holds. I bear in mind that she has been the victim of domestic violence at the hands of M, and that her subjective fears as to his future conduct have developed against that background.

[208] I do not consider that the children have been alienated from their father. They enjoy contact with him and are happy for that continue, notwithstanding their concerns that they may be taken to Qatar.

Health issues

[209] In the light of the matters agreed in the joint minute regarding the health of M and Yara respectively, I consider that there is nothing about the health of either that is relevant to the disposal of this action.

[210] In dealing with the question of residence, I place no weight on A's contention that Hanna suffered from headaches because of the sun in Qatar. The paediatrician in Qatar who dealt with the children was not a witness. I cannot assess whether the contention is well-founded or not. I do not doubt the truthfulness or accuracy of M's evidence that Hanna

had a severe headache while having contact with him in Edinburgh. Equally, I do not regard A's anxiety that sun may have caused the headaches as a legitimate ground for criticising her. She may be right or wrong about that but her concerns were genuinely held.

Syrian passports

[211] I am satisfied that there is no substance to A's concern that M would obtain Syrian passports for the children. The circumstance that he sought protection from the United Kingdom on the basis that he was a refugee from Syria, and came to benefit from a declaration of refugee status makes that unlikely.

Educational opportunities

[212] I do not regard the evidence about education in Qatar and in Scotland respectively as indicating that there is any marked advantage to the children in receiving their education in one location rather than the other. It is therefore unnecessary to narrate the evidence about educational facilities in detail. There is no dispute that the children were enrolled in a reputable private school in Qatar before A removed them. It was not the first choice of parties so far as Hanna was concerned. When the children moved back to Qatar in August 2021 there were no places available in the school she had attended in 2019 and 2020. Although A suggested that the children are happier at school in Scotland than they had been or would be in Qatar, I am satisfied that the children would receive a high quality of education if in the care of their father in Qatar. Both parents clearly regard education as of great importance and support and promote it in the lives of the children.

[213] The education that the children are receiving in Scotland meets their needs. That is evident from the school reports produced. M accepted that they were doing well at school

in Scotland, although he was concerned that Yara required more support and felt that the schools in Qatar would be in a better position to provide it. A supports their education and involves them in extra-curricular activities. Both children are enrolled for private tuition in maths and English. They attend classes at the Mosque.

Caring for the children's day-to-day needs

[214] Both parents are capable of caring for the children's day-to-day needs and have "hands-on" experience of having done so. A's evidence understates the extent of M's involvement in caring for the children when the parties lived in family together in Qatar, particularly in the period 2021 to 2022. I accept M's evidence that he dropped them off at and picked them up from school, that he cared for them when A was at work and that he assisted them with homework. A has spent fairly protracted periods before summer 2022 as the sole parental carer for the children. That was the situation between August 2018 and August 2019, and between November 2020 and June 2021 when she and the children were living in England and M was living in Qatar.

Accommodation

[215] In the short term, the accommodation available for the children in Qatar would be likely to be of a higher standard than that available in Edinburgh. I accept M's evidence that he remains in accommodation that is suitable for the children. At the moment they are having to share a room with their mother in the home of their aunt, uncle and cousins. That situation is not likely to continue. A works in a professional role four days a week and will be able to meet the costs of other accommodation for her and the children.

[216] Some witnesses asserted that the children, as girls, would be adversely affected by living in Qatar rather than Scotland because of the position of women in society there. M objected to that evidence because it was not expert evidence about conditions in Qatar. My decision is not based on any restrictions that the children might face by virtue of being girls or women in Qatar.

Conduct of M towards A after separation

[217] I am not satisfied on the balance of probabilities that M attempted to force entry to the home of A's father in Liverpool, particularly where A's father did not provide evidence.

[218] A is designed in these proceedings as care of her solicitors. Some care was taken by the court in the initial stages of this action to avoid disclosure of her address, against the background of allegations of domestic violence. Her address was in fact disclosed to the defender by A's solicitors. It was disclosed in ARA's affidavit. There is no suggestion that M has sought to approach A at that address. He has sought to progress matters through the court.

Disposal

[219] I approach the orders sought by the parties against the background of the conclusions narrated above.

Residence

[220] I have decided for the following reasons to grant the order sought by A that the children should reside with her, and to refuse the first and second conclusions for M.

[221] A has been the only parent caring for the children since at least August 2022 when she left Qatar. She was the only parent caring for them for substantial periods between August 2018 and August 2019, and between November 2020 and August 2021 when she and they lived in England without M. Being removed from A's care would be distressing to them and contrary to their best interests. I am satisfied that A removed herself and them from a situation in which she experienced domestic abuse, including physical violence.

[222] The children wish to reside with her. They see their home as being with her in Edinburgh. Hanna has clearly expressed her wish to live in Edinburgh and go to school there. Yara, who is younger, has expressed her agreement with Hanna.

[223] A has employment in a professional role which she has arranged so as to be compatible with the time that the children spend at school and breakfast club. She is capable of meeting their everyday needs for care and financial support.

[224] The children have experienced a number of changes of school in recent times. I do not accept that it follows that a further change of school, if they moved back to Qatar, would be immaterial to their interests against that background. On the contrary, I regard it as in their interests to remain in a settled situation at the school which they had by the time of the proof already been attending for several months. The education they receive there meets their needs.

[225] Both parties and both children are citizens of the United Kingdom. All have a right to live in the United Kingdom. Both parties have a right to work in the United Kingdom. I did not hear evidence about arrangements for immigration or visits to Qatar so far as A is concerned, following her divorce from M. M's evidence was only as to the immigration status of his "family". I noted that M's right to reside in Qatar depended on his current employment. With that in mind, there is, on the face of matters, no obvious basis on which

A would be entitled to reside in Qatar absent some form of permission for her to do so.

There was no evidence as to the basis on which she might be entitled to visit there for the purposes of contact. She would not be able to continue to care for the children if they resided in Qatar. I am not satisfied on the evidence that she would be able even to visit them regularly there. What M proposed was that he would make them available for contact with her in the United Kingdom.

[226] M's case is predicated in part on the proposition that the children will suffer harm if they remain in the care of A, because she has behaved both intentionally and unintentionally in ways that have manipulated the children so as to cause them to have a negative view of him. Counsel submitted that whatever distress they might suffer in the short term by virtue of having to move back to Qatar would be outweighed by the longer term benefit which would ensue in the form of positive relationships with both parents. Although contact with him was positive at the moment, there was a risk that his relationship with the children would deteriorate if they remained in A's care.

[227] I have found that the views of the children as to where contact should take place have been influenced by A and ARA. It is plain from the evidence that both A and other members of her family have been hostile towards M. Some of that hostility is understandable, because M subjected A to domestic abuse. A has at times provided misleading and inaccurate information in the context of that hostility. The fact that she has experienced domestic abuse does not excuse the provision of misleading and inaccurate information.

[228] The children nonetheless continue to have a generally positive view of their father and of their contact with him. Hanna told the curator that she knew that both her parents loved her. There is no indication that the children have rejected their father or that they

have a negative and un-nuanced view of him. Matters have improved so far as contact is concerned since this action was commenced. It is encouraging that A has, initially with the support of the curator, now managed consistently for a lengthy period to encourage and support indirect contact between M and the children. Direct contact has been successful from the point of view of the children, who have enjoyed it, notwithstanding some aspects of the conduct of both parties. It is to her credit that A on her own initiative investigated and was willing to use the MyFamilyWizard app to communicate with M about the children and matters relevant to contact. It was also encouraging that M expressed, through his counsel at the close of proof, a willingness also to use the application. It has features which can assist parties in effective and courteous communication about their children. I am not satisfied that the best interests of the children require that they move from a settled situation in Scotland to Qatar to live with their father in order to protect them from a risk that their mother will cause their relationship with him to deteriorate.

[229] It is better that I should make an order that the children should reside with their mother than that I should make no order. It will provide stability and security for the children.

Contact and specific issue orders regarding contact and holidays

[230] M does not have a distinct conclusion in respect of indirect contact; his conclusion is for residential contact. Indirect contact is currently regulated in respect of each party by interim orders of this court in respect of any time that the children are in the care of the other party. It remains in my view desirable that it should be regulated by order of the court. That is both to ensure that there is no departure from the progress that has been made to date so far as contact with M is concerned, and with a view to ensuring that M facilitates

daily video contact with A while the children are in his care. There is no dispute that indirect contact with M should continue, although there was a suggestion in the evidence that it might be desirable for the timings to be varied in accordance with the children's after school activities.

[231] There is no dispute in principle that M should continue to have direct residential contact with the children. The children are happy for it to continue. There was no evidence directed particularly to the precise timings of that contact. I am satisfied that he should have residential contact with the children for three weeks in the summer holidays, as he did in 2023. That residential contact was arranged by consent, although the arrangement was formalised in an interlocutor. A has not argued that the children are at risk of injury or abuse in the course of direct contact. I consider that M should have residential contact with them also during half of the Easter, Christmas, February and October school breaks. There was no evidence directed to the duration of any of those holidays. Equal division should be achieved by contact in alternating years in the case of a period of a single week of school break, or by equal sharing of the period where the holiday is of two weeks' duration. I am satisfied in principle that I should impose a condition that no device provided to the children shall enable either party to track their whereabouts while they are in the care of the other parent.

[232] M sought a specific issue order providing that he should be permitted without restriction to remove the children from the United Kingdom for the purposes of residential contact. There was very little evidence directed to this conclusion. M gave evidence that Qatar was "a good base" from which to visit all the members of his extended family, including his parents in Saudi Arabia. A opposed this order, and was concerned about the risks involved in the children going to a non-Hague convention country, but again directed

little or no evidence to what might serve the interests of the children so far as an order of this sort was concerned. I am not satisfied on the basis of the evidence that it is better, so far as the welfare of the children is concerned, that I should make an order of this sort than that I should decline to do so. I would in any event have been concerned about allowing residential contact with M anywhere in the world in circumstances where he has failed to comply in some respects with the requirements imposed by this court. It was submitted on his behalf that he had never sought to abduct the children, and that is true. I do not, however, regard his disrespect for the orders of the court, and perhaps more importantly for the rights of the children to maintain indirect contact with their mother when in his care, as trivial or insignificant.

[233] What will serve the interests of the children is the development of contact with their father in circumstances where each of their parents acts in a way that will promote the trust of the other parent, and of the children, that contact will take place in an orderly way, in accordance with the orders of the court, and respecting pick-up and return times agreed between the parties. Residential contact with M, at least for the time being, must be exercised in the United Kingdom only. I am not satisfied that it should be exercised elsewhere until such time as there is an established pattern of compliance on M's part with court orders associated with that contact.

[234] A also sought a specific issue order permitting her to travel outside of the United Kingdom with the children to reside at one of two specified addresses in Spain. That was to enable them to spend time with their maternal family. M opposed that on the basis that A had made a number of moves with the children and he was concerned that she would again seek to disrupt his relationship with them. It is correct that A has moved the children on a number of occasions, and also that she attempted to take them to Spain in February 2023. It

remains unclear precisely what her intention was at that time. A and the children are now settled in Edinburgh. She has secure employment in the Edinburgh area. Other family members live in Edinburgh. I consider it is unlikely in that context that A will disrupt the relationship between M and the children by absconding with them to Spain and relocating in a location where the M is unable to find them. She now has substantial ties to the community in Edinburgh, as do the children. I am satisfied that it would be in the interests of the children to be able spend time with their maternal family at specified locations in a European Union country. The periods sought in the order are not unreasonable, and amount to a total of four weeks across the Easter, Christmas and summer holidays. Those periods would not prevent M from exercising residential contact on the basis that I have already described.

Interdict

[235] There is no evidence of any real risk that M will assault A or otherwise molest her in the present situation in which she lives in Scotland and his visits to Scotland are for the purpose of contact with the children. There has been no incident of that nature. He knows her address, and has not sought to approach her there. I am not satisfied that it is necessary for me to grant interdict in the terms concluded for.

By order hearing

[236] I will put the cause out by order to be addressed on the precise terms in which I should make orders to put into effect the decisions set out above.

Observations

[237] Both parties in this case proceeded on the basis that resolution of the issue between them required findings on disputed allegations of domestic abuse. M alleged that A had simply abducted the children and sought to alienate them from him with a view to excluding him from their lives because she did not want to live in Qatar, or live with him. I am satisfied that the background to A's leaving Qatar with the children, and in particular her desire to remove herself and them from a situation in which she experienced domestic abuse, was relevant to answering that allegation, and that fact-finding in relation to those matters was merited. Counsel referred to section 11(7A)-(7E) of the 1995 Act. There was, however, little focus in submissions on the application of those provisions in the context of the potential outcomes in this case as to where and with whom the children might come to reside, and in relation to the risks that might arise in the context of allegations of domestic abuse that the court might find to have been proved. By the time of the proof there was no suggestion that the children were unsafe with M during unsupervised, direct contact. That has caused me to reflect upon whether it was necessary for the court to adjudicate upon the full range of allegations that A made in these proceedings. The Court of Appeal of England and Wales has observed that not every case requires a fact-finding exercise, even where domestic abuse is alleged. The court must have in mind in deciding whether fact-finding is needed its purpose, which is to assess risk and the impact of the alleged abuse on the child or children. None of that is to underestimate or misunderstand the pernicious nature of domestic abuse and its impact on children: *Re H-N* [2021] EWCA Civ 448; *K v K* [2022] EWCA Civ 468. I regard the guidance in those cases as helpful and applicable in this jurisdiction. An early focus in case management as to what allegations, if any, require

judicial determination in order to allow a proper assessment of what will serve the welfare of the child or children concerned is required.