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Case No: ZC19P01540

**IN THE CENTRAL FAMILY COURT**  
**IN THE MATTER OF THE CHILDREN ACT 1989**  
**AND IN THE MATTER H (A CHILD)**

**Date: 28 August 2020**

Before **His Honour Judge Robin Tolson QC**

**Between:**

MH **Applicant**

- and -

RN **Respondent**

Ms Laura Briggs instructed for the Applicant  
Ms Camini Kumar instructed for the First Respondent

Hearing dates: 21-23 August 2020

**APPROVED JUDGMENT**

1. **Introduction.** This has been a fact-finding exercise within an application for a child arrangements order. It has taken place over 3 days and I have heard evidence only from the parents. An attempt to join a witness from France was unsuccessful. The child is H, now aged 4 ½. H lives with his mother in London and has not seen his father since September 2019 following the events described later. The mother is English. The father is French and lives in South West France.
2. It was apparent to me on reading the papers that the individual allegations of domestic violence in the Schedule advanced by the mother against the father were insignificant in themselves. Long after 2 of the alleged events described, the mother had not just permitted the child to spend time with the father but left him to stay for months in France with him. They were hardly likely to affect child arrangements in future and I would have been reluctant to try them, especially in the current Covid-19 affected environment when it is essential that the family court follows the President's "Road Ahead" and sticks to the issues which it is necessary to try.
3. What matters, why in my view this exercise had to take place, and why I have taken some time over it, is the bigger, troubling picture. The parents could hardly be further apart in their description of their relationship and each other. Was this the relationship characterised by the deeply-controlling father described by the mother, a relationship in which she was blameless and under his spell? Or is the problem in this case the deeply-troubled mother with mental health difficulties unrelated to the father's behaviour and responsible herself for the wild, unboundaried behaviour described by the father? This behaviour is said to have been so troubling that the father launches a case not just for time with H, but to care for him as his primary carer in France.
4. Without the court's view on these wider issues it would be very difficult for any professional, specifically the Cafcass officer due to report in September, to get a handle on the case. Moreover, in reality I must have my eye not just on H, the subject of the application, but also on P, his older half-brother, now aged 11 who is not currently before the court, but in respect of whom what I find to be a worrying picture has emerged.

5. On the morning of the trial, without objection from the father, the mother added an allegation of rape to those in the Schedule. This complicated the picture. Any allegation of rape is very serious. Again, however, the allegation preceded not just many other later occasions of consensual sex between the parents, but also H's long stay during 2018 with his father in France. In this context its relevance becomes more limited. If this should seem to the layman to be a striking statement it needs to be understood that the family court is all about outcomes for children and not attribution of blame and infliction of punishment on wrongdoers. Moreover, it should also be understood that such allegations – of an occasion on non-consensual sex in the midst of an otherwise entirely consensual relationship - are nowadays very common in child arrangements proceedings such as these. In other circumstances I might have been slow to try this issue arising without warning to the father as it did. There was, however, no objection and in those circumstances I had little alternative. Nevertheless, and whilst acknowledging that each individual occasion builds to a bigger picture, it remains the wider landscape which is the real issue in this case.
6. **The Outcome.** At the end of the hearing, now a week ago, I announced my decision in what I at least had not found to be a difficult case. Beyond the limited admissions made by the father, none of the allegations were proven. I indicated that a guardian should be appointed for H. I made a direction that the relevant local authority undertake an investigation of both children to determine whether public law proceedings should be issued. By consent, I directed a psychiatric assessment of the mother. I made an order for H to spend time with his father, supervised by an independent social worker, once the international quarantine rules permitted this.
7. At the outset of this judgment I would like, however, to emphasise to the mother, as I said in court, that I do not want these arrangements to increase the anxiety from which I accept she is suffering. The father's time with H (if it occurs) is to be supervised in part for this reason (there are other reasons). H remains living with his mother. This judgment should be read as silent as to where H should live in future. I believe it is entirely possible that the mother's approach may change. She has cut off contact in the last year, but she had particular reasons to do so following the father retaining H in France. The position in respect of this is nuanced, but it is easy to see why the mother reacted as she did. I am sympathetic to her position. I hope, however, that

she now encourages H to see his father (she tells me she has already done so).

Moreover, although she has made unfounded allegations against the father, in the past she has on many occasions shown an entirely different approach to him, sympathetic to his position in the face of her own (for want of a better expression) ‘demons’.

8. Any court must also bear in mind that the making of allegations of this kind is increasingly common. I am not making a political point in a judgment where such a comment would have no place when I say that I believe it is necessary to factor in the effects of a system which encourages allegations of domestic abuse. There are very significant advantages to a litigant portraying herself as a victim of serious domestic abuse: public funding is obtained (and it is known there will be none on the other side); considerable professional sympathy and assistance is usually gained from Cafcass and other agencies; special measures in court are put in place merely on the basis of the allegations. In this case there is quite a hard edge to the mother’s behaviour but the relevant point is that I think it would be unwise to assume that the mother is irrationally and irreversibly against the father merely because she has made such allegations and spoken as she has at this hearing. In fact, it will not be myself trying this case in future. The mother will have a fresh start before another judge. I hope she can take it. If she will allow me to say so, I hope she will also be aware and seek help for her vulnerabilities. It is common ground that she is vulnerable as a result of mental health issues, although in so saying I am not to be seen as trespassing on the ground of the psychiatric assessment which is to come.
  
9. One thing also I should say about the future. The mother has the benefit of a very able legal team in this case to whom I express my gratitude. Notwithstanding my findings, she remains a victim of domestic abuse as a result of the father’s minor admissions and I very much hope she retains her public funding in future. She needs this. The father is paying privately for his equally skilled legal team. I know little of his finances other than that he is successful in life. I suspect the costs will be a significant burden to him, but his means are unlikely to qualify for public funding. Happily, however, in this case I do not have to consider the fair trial implications of one side having legal representation and the other not.

10. **The Background.** The context to the allegations is important. The mother lives in a relatively small flat in London. P and H are her only children. The father lives in an apartment in a village in South West France. He has two older children with whom he spends substantial time on a regular basis.
11. The mother seems to have had mental health issues for a long time before she met the father. It is important to note, however, that the mother's medical records are not currently before the court. I am therefore left to piece together a history from what the mother herself has had to say, together with only strands of external evidence. It will become apparent that I regard the mother as an unreliable witness, thus the full history may look very different and I must adopt a cautious approach.
12. When the mother was pregnant with P the local authority carried out a pre-birth assessment as a result of the mother's mental health issues as they presented, first, to a midwife at the hospital where the mother was due to give birth. Some 2 years later, P is said to have suffered an asthma attack and in this context the mother tells me she self-referred to social services. No action seems to have been taken following these local authority involvements. It is clear that P has been treated for significant medical issues for a long time. He is said to be allergic (to "more than 40" substances the mother told me). He suffers from asthma. He has been under the care of a hospital team from birth. I lack any independent information however as to either the history or the current position.
13. The mother and father met in 2013 and began their relationship. They were never to marry and were to cohabit only for brief periods. It is of some significance to note that the mother's allegations of extreme coercive control are made in an unusual context: a brief period of cohabitation followed by frequent trips to France for what she has herself described as holidays; and return visits by the father. Her case is that the father's controlling behaviour somehow compelled or at least persuaded her to go to France.
14. Some more detail will assist. Between July 2013 and September 2014 the parents lived next door to each other before the father moved elsewhere in London. Then in April 2015 the father moved back to the mother's home. They cohabited between

then and January 2016. It is in this period that the mother alleges the father was responsible for 2 incidents of domestic violence (Allegations 1 and 2) and increasing levels of emotionally abusive and controlling behaviour (Allegation 5). The father makes a partial admission in respect of Allegation 2. In January 2016 the father left for France. The mother removed P (then aged 7) from school. He has been home-educated since then, the mother tells me successfully. H was born in February 2016.

15. During 2016 the father was a frequent visitor to England. The mother and children also stayed with the father in France for 5 days in July and then for a period of 5 weeks in August-September. She returned for a further stay for 19 days in October. It is during this stay that the mother alleges she was raped (the allegation is not in the Schedule and so has no number). During this period in October H then aged only 8 months was to suffer an undisplaced fracture of the parietal bone in his skull. The mother alleges that the father was dilatory in seeking medical attention for this (Allegation 7). I should emphasise that no question of non-accidental injury arises on the papers available to me. By my calculations, the parents spent the majority of 2016 together, either in London or France.

16. During 2017 the Whittington hospital, then treating P, referred the mother to the local authority and an investigation took place into the family between April and June 2017. The concerns of the Whittington were around the mother missing medical appointments and her difficulties in following treatment regimes in respect of P. The concerns as a result of the local authority investigation were around the mother's mental health and lifestyle – her ability to establish routine for the children – as well as around her anxiety levels. The investigation proceeded to an initial child protection case conference on 3 July 2017 which both parents attended. The father was to be positive in respect of the mother's parenting (allocating her 9 out of 10 on the scale adopted in the conference). The view of the conference was that only a children in need plan was required. The mother was subsequently to reject that plan and all local authority assistance which ended in September 2017. The involvement of outside professionals in her life is said to have made her highly anxious. The mother made only one trip to France in 2017 and the father far fewer visits to England. The parents saw much less of each other in 2017.

17. 2018 was to be an important year. The father's case is that the difficulties in the mother's mental health and functioning worsened during the course of this year, culminating in the end of the relationship in December 2018 and his retaining P and H in France in January 2019. The mother's case is that the difficulties were nothing like those portrayed by the father, who continued to be controlling – never more so than when retaining H in France (Allegations 6 and 9). In the early part of the year the father visited the mother in England, finding a lack of routine in the mother's home. P was up late at night playing on his X Box. H would be left to fend for himself in the mornings whilst his mother remained in bed, sometimes until 1pm.
18. In April 2018 the mother's home is said to have had an infestation of mice, causing the mother and father to agree that H should travel to France with the father and remain with him. I lack the evidence to judge whether the mice infestation was a genuine reason for this move or whether the local authority was again involved with the family and the desire was to avoid investigation. H was to remain in France until September 2018 (almost 6 months), being joined by the mother and P in July. In August 2018, the father admits to placing the flat side of a knife against his own wrist during an argument. The mother alleges that it was in fact the sharp edge of the blade against the wrist (Allegation 3). The mother alleges that the father "psychologically, emotionally and verbally" abused H during this time (Allegation 8).
19. On either 2 or 4 December 2018 the father, then in England, returned to France with H and P. The mother travelled to the USA to stay with a "close friend" (her expression). She had not in fact met the man in question other than on the internet and via social media and the telephone. The children went to France with the mother's agreement – indeed she needed this to happen because of her planned trip. The mother returned to London on either 18 or 19 December, having ended her relationship with the father by telephone a day or so before her return. There is controversy over how strenuously the mother sought the return of the children before early January 2019. By the first few days of the new year, emails demonstrate that she was more urgent in her desire to see the return of the children to London. The father accepts that, by then, he had determined to retain H in his care if he could. (The retention forms the core of allegations 6 and 9 directed towards the father's behaviour against the mother and H respectively). On 9 January 2019 the mother

travelled to France without warning to the father. She seems to have consulted the French police before going to the father's home. There an altercation took place. The mother maintains that she was assaulted by the father (Allegation 4). The mother left France only with P. On 10 January she began Hague Convention proceedings in France via ICACU in respect of H. These were contested by the father. The French court ordered the return of H to London on 25 September 2019. He was handed over to his mother the following day. By then H had been attending nursery school in France for 6 months.

20. Since then the mother has refused the father any time or other contact with H. On 19 November 2019 the father began his application for permission to remove H from England to live with him in France. H is now said by the mother to be frightened of his father, displaying some extreme behaviours. He has been referred to the local CAMHS and thence to the Tavistock Clinic, who have subsequently indicated that they will not accept the referral in the midst of court proceedings. As will become apparent, I am not to be taken as accepting that the mother's descriptions of H's behaviours are accurate or the referral necessary, nor, if H is troubled, that the father's actions are the cause of this.
21. Little progress has been made in these court proceedings until now. On 13 March 2020 DDJ Barrie made an order for limited supervised time between H and his father. Covid-19 intervened and that has not occurred.
22. Clearly, this is a case and a family which have been heading in the wrong direction for some while now. Even the description above does scant justice to the immense difference between the parents in their perception of events. They are poles apart. Progress now needs to be made. This is unlikely to occur until the court has done what it can to fix the factual background.
23. **The Law.** This is easily stated. The standard of proof is the simple balance of probabilities. It does not vary with the seriousness of the allegation (rape on the one hand; whether it was the sharp or blunt side of the knife to the father's wrist on the other). The burden of proof is on the party making the allegation. This is the mother in terms of specific allegations; but the father when it comes to establishing his case



that the mother's personality, functioning and mental health issues add up to a picture of a chaotic lifestyle in which 'anything goes' and anything will be said, to fit the circumstances.

24. I should add two other points. First, this case is not about the law of consent in the context of rape. No law has been cited to me. No point has been taken on this. As with so many cases, the question is which of two people is to be believed. Anything I say concerning the rape is in that context alone. If the mother is right, she did not consent. If the father is right, there was no such incident as the mother describes.
25. Secondly, I recognise that in almost all cases the retention of a child in circumstances found to be 'wrongful' by a court represents an act of very great control by the retainer (usually a father). I hesitate to use the word 'coercive' because such acts are usually worse: they do not leave any scope for the mother to be coerced - she loses all ability to act whether freely or otherwise and is presented with a 'fait accompli'. In other cases I regularly find myself describing such acts of abduction or retention as controlling. I often say it is hard to imagine a more controlling act. It is important that I recognise this. In this case, however, I find that there is a very different context than is usual to the father's actions.
26. Finally, as the father has made limited admissions of domestic abuse, Practice Direction 12J is relevant to this case. I have borne it in mind.
27. **Analysis.** Where then does the truth lie? I find that, on a very clear balance of probabilities, it lies with the father.
28. All turns on the credibility of the witnesses. The father gave evidence in a straightforward manner, moderately and without conflict or contradiction. Generally, my impression was that the mother, a highly intelligent person, trimmed to fit as occasion demanded (it is a feature of the father's case that the mother does this in her life generally, matching her perception of risk to the needs of the moment). She dissembled frequently, failing to answer the question but often heading off in a direction of her own at some length. She was prone to tears and, when it came to the allegation of rape, to a demonstration of emotion and vehement condemnation of the

father (“*he knows what he did*”). My impression was that this was staged for my benefit. These, however, are but soft signs. A judge must beware acting merely on impression.

29. There are better guides to the truth in this case. First, in terms of the general personalities of the parents as revealed by the papers. The documents demonstrate that the mother is someone who is prone to lay the blame for her difficulties in many quarters. She writes long emails containing self-analysis and self-reflection, setting out her difficulties in life and attributing blame to others and to herself. I find it is significant that now she blames the father for all, or at least the vast majority, of her difficulties. It is instructive to read the email at pC148, written to the father on 23 December 2015. In it she blames, in succession “*the outside world*” (which is a “*terrifying thing*”); “*everything*”; and “*A*” [her former partner and P’s father] for the panic attacks which she claims are overwhelming her. She goes on to blame herself. She says this:

*“I cannot hurt everyone around me, which is what will happen if I don’t find a way of dealing with this now...”*

The whole email is in similar vein and repays reading. It is a fit with the context given by the father of a woman who was highly prone to anxiety and not in control of her own life – for example unable even to keep her home in good order or establish a routine for her children. During her oral evidence she was to tell me that she had been abused by her father as a child. In her statement she comments merely that she was abused as a child (paragraph 52) without identifying her abuser. I am not to be taken as accepting this as true. The relevant point is that the mother is entirely inconsistent in attributing blame. This must give any tribunal pause for careful thought before accepting her present attribution. It is very difficult to find solid ground anywhere when the mother expresses a view as to responsibility for past incidents or difficulties. At paragraph 52 of her statement, when describing her past mental health difficulties, she states that she was “*formally diagnosed*” with PTSD in 2015 following a year of therapy. During her oral evidence it was difficult to identify when, by whom or even whether this diagnosis had in fact been made. This is significant because in the same paragraph she states that the PTSD

*“was triggered when [the father] moved in with me and started to become physically and verbally abusive towards me”,*

thereby giving the reader the impression that the father was to blame. Clearly the timing did not fit and the mother explained that by “*triggered*” she meant only that pre-existing PTSD, with another cause entirely, was brought back to the surface. This is a typical example of how the mother trims to fit.

30. It is right to point out that there have been occasions in the past when the mother has sought to blame the father for her difficulties. The email at C107 is an example. The mother blames the father for a great deal: for “*bullying*” her; breaking her heart and, significantly for having punched her, slapped her and grabbed her round her throat. The email is extreme in its tone. Yet only 4 days earlier the mother had voluntarily allowed H to travel with the father to France for an indeterminate period, where she and P were to join him in July for what was in effect a holiday of over a month. I can of course acknowledge that women the subject of domestically abusive relationships will act in ways that make no logical sense – that is a part of the coercion exercised. That, however, is not the point here. The point is that the mother will cast the blame far and wide in ways which are not a fit with the background picture at the time. Thus she is unreliable as a witness of truth.
31. It must in my judgment not be forgotten that this was not a full-time relationship. This was a relationship separated by distance. The mother’s case now is that the father made her travel to France as a part of his coercive control - but there is simply no evidence beyond the mother’s assertion to support this. She accepts that she was going in effect for a holiday; that they would have pleasant days together in and around the French countryside.
32. In fact, all the intensity and manipulation appears to me to be coming from the mother. It must have been very difficult for the father to respond to emails such as those I have described. The father told me in evidence that a great deal of effort would go into making an arrangement to meet which the mother would then break on what appeared to be a whim. He would, he told me, spend many hours daily on the

telephone to the mother attempting to calm her anxieties. It is important to note that the mother accepts that it was she who was making the calls to the father, not the other way around. She ran up, she told me, one telephone bill of over £1000.

33. Finally, in terms of the more general picture, it is also worth considering what seems to have been the only significant investigation by the local authority into the family functioning: the 2017 section 47 assessment. Large parts of this referring to P have unfortunately been redacted by the local authority. Nevertheless, it is clear that “[the mother’s] own emotional welfare is central to this assessment”. There were significant concerns about her functioning. There is no mention of her being the subject of a controlling relationship, nor does the mother appear to have advanced that case. There is reference to one incident of domestic abuse (in January 2016) and the mother reported that the father “*was very supportive of her*”. It is the mother who is the centre of concern: not the father and not the relationship.
34. Overall, I find that there is strong support in the general picture for the contentions of the father.
35. I now turn to a narrower consideration of particular allegations, searching for conflicts or the lack of them, and corroboration where it might be available. Here, it is instructive to start with the allegation of rape. There are stark differences between the mother’s oral account and her written statement. Her case is that on an occasion in October 2016, 8 months after H was born, sex was too painful for her as a result of the after-effects of giving birth and that although she would, she told the father, go into the bedroom with him he was on no account to penetrate her. Her statement deals with the matter at paragraph 25. It contains the clear implication that, when he did penetrate her, this was the first time they had had sex since H was born (“...and was unable to have penetrative sex...”). In cross-examination for the first time she was to accept that she and the father had “*tried*” sex on more than one occasion and had had intercourse more than once. I cannot explain this contradiction if the mother’s account of rape is true: it relies on the rape being the first occasion of sex since H was born.

36. The mother's statement also maintains that, in the aftermath of the rape, her own mother came to assist ("*my mother flew over to France to help me return to London*"). In fact, the mother told me that she at no point told her mother about the alleged rape. The mother's trip to France emerged as being planned simply as a holiday for her. Thus the context given by the mother is simply not true.
37. The context given by the father is very different. The mother, he told me, was someone who enjoyed sex and had an active sex drive. She had taken control of matters following H's birth, being keen to begin sex again and testing out any pain by using a vibrator to probe her vagina. She was not in pain. Before October, they had enjoyed frequent sex together over the months since H's birth. All had been well. Most of the time their sex drives matched. No particular occasion stood out in his mind. He recalled an occasion when the mother had been in the bathroom crying hysterically (her case on the occasion of the rape) but this was not related in his mind to any particular occasion of sex, and certainly not to any difficulty in the sex. She had been "*rehearsing all her trauma*". He gave me the impression that this would be typical of the mother's behaviour.
38. Another aspect of the rape allegation is concerning, although ultimately not probative. A convincing account of rape, regarded by the mother as traumatic and highly significant still to her (as she now claims) would surely have been pleaded in the Schedule or at least before the morning of the trial. The allegation was made in the mother's statement dated 4 February 2020 (albeit with not much in the way of detail). Yet when the schedule of allegations came to be drafted (it is undated but was due with the statement and refers to that statement) there was no place for the allegation of rape. Why not? I enquired whether the mother's solicitors were able to state that this had been an error of omission. No such indication was forthcoming.
39. The mother herself went to the police to report domestic abuse on 31 May 2020. This included the allegation of rape, albeit that the mother seems to have reported this only in response to a direct question. Still no attempt was made to bring the alleged rape within these proceedings.

40. I record merely that I must be careful not to be influenced by what may be the view of others as to the allegation (the mother's own view would of course be relevant) and that I find it unsurprising that despite having to deal with the matter without warning, the father and his legal team made no objection. This is a measure of the strength of the father's case on the subject and of the contradictions which emerged and were perhaps bound to emerge.
41. An analysis of Allegation No. 2, namely that on an occasion in January 2016 the mother slapped the mother with great force, also reveals contradictions in the mother's evidence, but consistency from the father. It is important to note that a slap is admitted, albeit that the father maintains he did not connect with the full force of his palm, but merely his finger ends. The mother, the father maintains, slapped him in return. The mother's contention, however, is that he went much further, slapping her hard and powerfully: *"it was intended to hurt and it did"*. She denies slapping the father in return. She gives a context to the incident in her statement and oral evidence which places all the blame on the father (see paragraphs 11 and 12).
42. About 20 minutes after the slap the mother called the police. I have the benefit of the police records. They support the father's contentions. The mother told the police that: *"she had been shouting more than him"*. She said that *"he had never shown any aggression or violence to her before."* She felt that the slap had been *"only with a couple of his fingers and not his whole hand and that she believed this was not because he had missed but because he had been trying to stop himself from hitting her."*
43. The police, who had separated the mother and father on their arrival at the scene so that they could not contaminate each other's evidence, expressed the view that the version given by the father was virtually identical to that given by the mother. The father was arrested and spent a night in the cells but seems to have accepted a caution (or the police took no further action). The mother explains the differences between her present position and the police records by saying that either (i) she simply answered 'no' to every question (which cannot be the case); and/or, (ii) she was merely repeating what the father had to say to her before the police arrived (which seems unlikely and does not sit easily with the comments above which contain her

own view of the situation). Finally, in cross-examination, the mother was to accept that “*possibly*” she had slapped the father. It was implausible stuff from the mother.

44. Allegation 2 occurred in January 2016. Allegation 1 is said to have pre-dated Allegation 2 – it is dated by the mother to March/April 2015. The father is said to have become violent in response to her complaint that he had wrongly opened all her mail. She claims he pushed her backwards across a room with his hand on her throat before punching her forcefully. It will be seen that both to the police and to the local authority the mother seems not to have mentioned any earlier incident of domestic abuse before that in January 2016 – and to the police at least to have denied any earlier incident. It is important to note that there is a partial admission by the father to domestic abuse on an earlier occasion in that he admits punching the mother on one occasion “*without force*”. He believes this was before 2015. Other than a punch there is nothing to link the incident described by the father to that described by the mother. I find it implausible that the mother would not have mentioned the March/April 2015 incident to the police in January 2016 or the local authority in 2017 if it had occurred when and as she now portrays. It is of course notorious that domestic abuse is amongst the most hidden of crimes and frequently denied by the victim: but a failure to report in the context of reporting another incident is in my view relevant.

45. Thus it will be seen that, to this point, where there is any external evidence bearing upon the contentions of the parents it is the father’s version of events which is favoured. In this way, my own impression of the witnesses, the wider general picture and the particular analysis (where possible) of individual incidents all point in the same direction: the father is telling the truth; the mother is not.

46. It is important, however, that the one occasion when the mother has external support for an allegation of controlling behaviour is brought into the general assessment of credibility. This is the father’s retention of H in France in January 2019.

47. In this context it is necessary for me to analyse the developing nature of the parents’ relationship. The background circumstances of the relationship do not leave much room for coercive control (the frequent physical distance; the frequent holidays in

France). The mother's actions leave less room (she simply hands the children over to the father when it suits her). She is plainly a woman who takes independent strong action: for example her simply announcing to the father that she was departing to the USA to see a male friend. Thus the mother's descriptions of concerning behaviour from H on his return to England from France in September 2018 are not a fit with her actions later in the year. If she had been as genuinely concerned as she now describes, then I find it is unlikely she would have again entrusted H to the father's care in December of that year merely because she wished to pursue a potential new relationship in the USA. The circumstances strongly indicate that the mother was entirely content for H to be in France in his father's care for long periods of time – if it suited her own circumstances. I do not think it was a case of her trimming her view of risk to suit those circumstances. I do not believe she felt there was any risk to the boys in France. She went to see her friend and begin a new relationship in New York. She then simply ended her relationship with the father by telephone. None of these are the actions of a controlled woman or a woman who believes her children are at any risk of harm. On her return, with Christmas approaching, she took no urgent steps to return the children to their home and to Christmas with her. I accept the father's evidence that the exchange of texts is desultory and lacks urgency. It looks as it was: the mother was disorganised. She had prioritised her own needs over those of the children and seems to have been unconcerned at their return to her care before Christmas. I cannot find in all this any reliable evidence that the father was controlling.

48. The circumstances of the father's retention of H in France require closer analysis. In January 2019 the position changed and the father determined to retain at least H in his care. The mother's emails seeking the return of the children acquire much greater urgency and it is the father who prevaricates. He undoubtedly had other means of achieving his end: he could have handed the children back to the mother and sought the care of H at least through the English courts. If he was genuinely concerned about P (and I believe he was) then he must have known that in England there were agencies he could contact who might be able to do something about the situation. Instead he chose to contest the French proceedings for 8 months. I do not think that this can be described as blameless behaviour. His case, however, is that his motivation was genuine and child-centred. He contends that he had grounds to



believe that the mother's mental health was worsening and her care of the children compromised.

49. I agree that the father did have such evidence. He had the history of his relationship with the mother. He knew the intensity and unpredictability of her behaviour at times. He knew the lack of routine for herself and the children. He knew the poor state of her home. He had witnessed how the boys were left with him in December so that she could visit someone whom she had not previously met but with whom she clearly hoped she would form a relationship (and this only shortly after she had sent him a text saying how "*friends terrified*" her (C267)). He had received several concerning later text messages from the mother speaking of her ill-health shortly after her return from the USA ("*painkillers; lots of painkillers*"). On any view she was acting strangely and in a concerning manner.

50. Having heard him and read the material, my view is that he believed (i) that he was genuinely the better option as a carer (probably for both children); and that (ii) it might have been the case that the mother would simply leave the children with him. It was in my view unwise of him to act merely on these viewpoints. It was, moreover, reasonably clear by early January as her emails became more urgent, that the mother was determined to seek the return of the children.

51. The first key point however is whether I believe the circumstances demonstrate that the father is controlling and so support the mother's case not just in respect of January 2019 but also in respect of a wider controlling relationship. I do not believe events can be given this construction. Nor do I believe they undermine the father's credibility or establish the credibility of the mother.

52. **The Findings.** It is now possible to set out my findings.

53. The alleged rape. No such incident occurred.

54. Allegation 1 (grabbing by the throat and punching). I find that the incident described by the mother did not happen. There was a disagreement over the mail on one occasion – and it would be typical of the mother, as is the father's submission, to

take a trivial incident and blow it out of all proportion - but I do not find that this occasion involved violence by the father. If the incident had occurred as the mother described then she would not have told the police and the local authority of only one incident of domestic violence. I accept the father's admission to one earlier incident involving a punch, but also that it involved no great force and occurred earlier than 2015.

55. Allegation 2 (the slap). This occurred as the father describes. The police records demonstrate this.
56. Allegation 3 (the knife). I accept the father's evidence. It was the blunt side of the blade against his own wrist. This shows there is a side to the father's character which was not on display in court, but it does not assist in establishing the mother's case.
57. Allegation 4 (the alleged incident in France in January 2019). Again, I prefer the evidence of the father. A neighbour in France was present during a part (but not the whole) of the altercation and saw nothing to support the mother's case, but I am unable to rely on her evidence as it remains untested. My view is formed on the basis of the credibility of the parents in other areas.
58. Allegation 5 (emotionally abusive controlling behaviour by the father in 2015 and onwards). This behaviour did not occur. The father was dealing with a mother whose own behaviour was very intense, unpredictable and chaotic. Her home was a mess (see the photographs) and her childcare routines lacking as the father describes.
59. Allegations 6 and 9 (emotionally abusive and controlling behaviour towards the mother and H by retaining H in France). See above. The key issue is whether the father's behaviour and my view of it demonstrates that he was guilty of being "*emotionally, mentally and psychologically*" abusive of the mother by retaining H and P in France. I can accept that his actions had an effect on the mother. I do not judge that they affected her mentally in the long-term save that they determined her upon denying the father any relationship with H in future. The mother presents too great a picture of mental damage before events in January-September 2019 for me to ascribe

those events as an active cause of her problems. Moreover, the father's motives were genuine. Accordingly, I do not find allegation No. 6 proven.

60. The second key point is whether the father's actions were abusive of H. I do not believe they were. There is no reliable evidence before me that H has suffered harm. There are only the contentions of the mother. Consequently, Allegation No. 9 is rejected. I add that in recent months the mother has come close to alleging that the father is somehow responsible for sexual abuse of H. It would be an unfortunate but possible development in this case if such allegations were in future to be made. More than this, I do not wish to say. It is important to note that the real investigation into the situation of both H and P has not yet begun. In my judgment this must now, urgently, become the focus of this case.
61. Allegation 7 (dilatatory obtaining of treatment in respect of the skull fracture to H in October 2016). I have not so far discussed H's skull fracture. Clearly it attracted the concern of the local authority in 2017. That is unsurprising. H was only 8 months old when the injury occurred. The family were in France. The mother tells me she saw the incident – a fall. The father, it is common ground, did not - although he was close by in an open plan area. It is important to state that there is nothing in the papers before me to indicate that the injury was anything other than an accident. Equally, however, if this is so then there is nothing in the evidence to demonstrate that either parent acted unreasonably in failing to seek treatment. They checked H. They noticed a bump on his head the next day and sought the advice of the GP. When the bump did not go away they took him to hospital. The mother's case is that the father removed protective measures in his home which might have prevented the accident. I do not think this is correct. There is much more force in the father's assertions that the mother let H roam at will as a part of her parenting style.
62. Allegation 8 (emotional abuse of H during his stay in France April-September 2018). This is not proven. If the mother had genuine concerns as to H's behaviour and the father's responsibility for it she would not have returned H to the father's care in December 2018. There is nothing to support the mother's contentions.

63. Generally. The father establishes his case concerning the mother. I have not mentioned many incidents or allegations made by him in this judgment, but the general picture he describes is, in my judgment, correct. Specifically, when he describes the state of the home and the lack of child care routines he is accurate.
64. **Steps to be taken.** In my judgment, most urgent is the current situation of P. I know almost nothing about him. He is said to suffer from significant medical conditions. I lack the evidence to assess this, or to judge how and in what ways his parenting affects these conditions (insofar as he has them). Plainly those treating P have had concerns about his parenting in the past and apparently wished strongly to see a child protection plan in place. The mother was to reject these concerns and as I understand it, made a formal complaint about the actions of the health professionals. The local authority has also had concerns in the past. In 2017 these were expected to result in a child protection plan. It may be that this was downgraded as a result of a desire not to stress the mother. I am afraid I do not believe that is any longer a sufficient reason. The father now maintains that the mother's situation seems worse than it was in 2017. P is home schooled. I cannot look to that any school for assistance. The father has described P as being up most of the night playing on the X Box and having no routine. The mother described a different more orderly state of affairs, but I find that I cannot trust what she says.
65. In my view there are reasonable grounds to believe that P has suffered or is likely to suffer significant harm and that the circumstances for public law proceedings may be met. I will direct an investigation under section 37 of the Children Act 1989. My experience of such directions has led me to the view that on occasions, the belief is that what is required is a report from the local authority. In fact the thrust of section 37 directs the local authority to consider whether to begin public law proceedings. I trust them to consider that issue.
66. I take the same view in respect of H and he will be included in the direction.
67. It seems highly likely to me that the 'live with' arrangements for H will remain contested with real arguments on both sides. I have no clear view of H, his wishes or

feelings; nor do I have a viewpoint in court that is independent of the parents. It is necessary in my view that a guardian be appointed for H.

68. The mother agrees to a psychiatric assessment which is clearly necessary.

69. Almost a year has gone by without the father seeing H. This must change as soon as possible. By his own admission the father is a perpetrator of domestic abuse. I judge, however, that the only 2 occasions of any violence, neither of which resulted in any injury to the mother, were 'situational', that is to say the product of the dysfunctional relationship between the parents rather than a character trait of the father which is likely to be repeated in future. The incidents were a long time ago and the relationship has now ended. In any event there is no threat to H himself. I will take on board and meet the mother's anxiety by directing that any time with H should be supervised for the present. In this way the requirements of Practice Direction 12J are met. There is no unmanageable risk created by the order which I am making. In any event Covid-19 travel restrictions prevent the father taking up supervised time with H for the present.

70. The case should hereafter be managed by a single circuit judge but it cannot be myself. This is my last case at the Central Family Court and it would be inconvenient for the parties to have to travel to the court centre to which I will be transferring.

71. I have already invited counsel to draft an order reflecting these findings.

HHJ Robin Tolson QC

The Central Family Court

28 August 2020.