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IN THE CENTRAL FAMILY COURT

No. ZC19P01540

First Avenue House  
42-49 High Holborn  
London, WC1V 6NP

Tuesday, 5 October 2021

Before:

HER HONOUR JUDGE LYNN ROBERTS

**(In Private)**

B E T W E E N :

AH

Applicant

- and -

(1) AN

(2) H-N (via their Guardian)

Respondents

\_\_\_\_\_  
THE APPLICANT appeared in Person.

MR C. HAMES QC and MS C. KUMAR (instructed by Goodman Ray) appeared on behalf of the First Respondent.

MR S. ASHWORTH (instructed by Creighton & Partners) appeared on behalf of the Guardian.

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**J U D G M E N T**  
**(Cloud Video Platform Hearing)**

(This transcript was prepared from a poor quality recording and without the assistance of requested documentation to check quotes, etc.)

JUDGE ROBERTS:

- 1 This is a fact-finding hearing within proceedings brought by AH for a child arrangements order with regard to the child, H-N, who is now five. AH, who is his father, seeks an order that H-N lives with him and that he might remove H-N to France where he lives.
- 2 The respondent to the applications is AN, who is H-N's mother, and she opposes the applications. H-N is also a party to the proceedings and he has a Children's Guardian.
- 3 Within the Children Act proceedings, the mother made allegations against the father of domestic abuse. Directions were given for evidence to be prepared and for a schedule of allegations to be completed by the mother and responded to by the father. There was then a fact-finding hearing before HHJ Tolson in August 2020, in which the court determined the allegations of abuse made by the mother against the father. HHJ Tolson did not make the findings sought by the mother, but noted that the father had made limited admissions of domestic abuse. The case was thereafter to proceed, according to the order of HHJ Tolson, dated 21 August 2020, on the basis that the matters raised by the father did not happen.
- 4 The mother appealed and the Court of Appeal allowed the appeal. The appeal was heard together with three other cases and a judgment has been delivered, known as *Re H-N & others (Children) (Domestic Abuse: Finding of Fact Hearings)* [2021] EWCA Civ 448, on 30 March 2021.
- 5 The Court of Appeal recorded certain admissions made by the father and later on in its order to set aside the findings and order of HHJ Tolson dated 21 August 2020. The matter was remitted to me, as the DFJ for CFC. I determined, at a hearing on 27 April 2021, that although there were admissions made by the father of some domestic abuse recorded in the Court of Appeal order, it was necessary for a further fact-finding hearing to take place. I gave the mother permission to file a recrafted schedule of allegations and that one of the allegations on the original schedule did not need further fact-finding. The father has responded to the schedule and does not accept the allegations are true.
- 6 The schedule for this second hearing has a specific category of abuse headed "Controlling and coercive behaviour", which was not in the schedule for the first fact-finding hearing. However, many of the allegations under this heading were contained in the first schedule. It was clearly important, after the Court of Appeal judgment, to set out clearly what the mother's case was in that regard.
- 7 This has, therefore, been a further fact-finding hearing in order for future determination by me as to the relevance or otherwise of those allegations the father accepts and any further that I find proven in the applications before me and to the father's future time with H-N if he remains in this country.
- 8 This is, therefore, an unusual situation which I can see is particularly stressful for both parents. The proceedings have been going on for nearly two years and that followed an eight month court case in France. The lives of all involved have been disrupted since December 2018. The parents have both been through one lengthy hearing which would, I am

sure, have been an unpleasant experience. Now, over a year later, they have had to do it again. In the meantime, the father has become a litigant in person as he tells me he can no longer afford to be represented. He no doubt feels disappointed that what he would have experienced as a successful first hearing has been set aside. The mother, I expect, has found it difficult to go through her account of very painful experiences a further time.

- 9 As to the hearing, I assured both sides at the start that I am approaching this case afresh. I have not read the judgment of HHJ Tolson. I am aware of part of it from the appeal judgment but I have kept an open mind about all aspects of the case and waited to read and hear the evidence before forming my view.
- 10 The representation before me for the fact-finding hearing has been that the mother has been represented by Mr Hames QC and Ms Kumar. The father represents himself and H-N is represented by Mr Ashworth who takes instructions from H-N's Children's Guardian.
- 11 I have read the bundle of documents prepared for this hearing and also re-read the Court of Appeal judgment I have referred to, and PD 12J, which is the guidance all judges are to follow when deciding cases where domestic abuse has been raised as an issue. I will refer later to other reading that I have done and taken into account.

### Background

- 12 The father is French and he now lives once more in France. The mother is British and lives in London. They met when the father was working in London and they began a relationship in July 2013. At that time, the mother had her son B living with her and the father had two sons, a bit older than B, who were living in France but who he regularly spent time with in France. From about April 2015 until December 2015, the father lived with the mother and B in their home whilst still spending much time in France. He went back to make his main base in France in December 2015 principally, as I understand it, so that he could have regular time with his sons there. H-N was born in February 2016. From time to time over the next two years, the mother, B and H-N visited the father in France and the father and his older sons visited them in London.
- 13 For a period of time in 2017, the local authority made statutory enquiries about the family here and there was an initial CPC. In April 2018, the mother arranged for H-N to stay with the father in France while she dealt with mice in her property. Three months later, the mother and B joined the father and H-N in France and they all stayed together until early September.
- 14 In December 2018, the mother went to New York City to spend time with a male friend there. The father looked after both boys in France by agreement with the mother. This was meant to be for about two weeks. On 16 December 2018, the mother telephoned the father and during that telephone call she ended their relationship. The mother, shortly afterwards, returned to England and told the father that she was unwell with flu. Arrangements for her to collect the children were discussed but it was only in early January 2019 that the mother tried to firm up the arrangements. She was then unable to secure the return of both children from the father.
- 15 She succeeded on 9 January 2019 in getting B's return but not H-N and had to make an application under the Hague Convention. This took until September 2019, when the French courts ordered H-N's return to England, rejecting the father's defence under Article 13(b) of

the Convention that there would be a grave risk that his return would expose H-N to physical or psychological harm or otherwise place H-N in an intolerable situation.

- 16 The mother collected H-N on September 26, 2019 and returned with him to England. The father has not seen H-N in person, I believe, since that date. H-N was referred to CAMHS on his return by his GP. The father made a referral to the local authority but the local authority did not have concerns about H-N's care by the mother. No agreement on contact was reached and on 19 November 2019 the father began these proceedings. He has been having video contact with H-N since the beginning of 2021.
- 17 I am acutely aware that H-N's life has been very seriously affected by all that has happened since December 2018 and that he went for nine months without seeing his primary carer, his mother, and then has gone for two years without seeing his father. I am aware that he has been involved in proceedings of some sort for more than half his life.

### The hearing

- 18 The mother has been provided with special measures to make the hearing less upsetting for her and the father has willingly complied with anything that was asked of him in that regard. This has been an attended hearing, except by the father's witness to the events of 9 January 2019, AV, who gave evidence over a video-link from France. I am also giving this judgment remotely as I am not well today.
- 19 I directed the father to provide me with his questions in advance, which he did. I put the questions to the mother. The father also had an opportunity to ask follow-up questions through me. I have to say, and I hope that the father will understand that I am not criticising him, this procedure was not satisfactory. The French system is very different and although the father has gone through one fact-finding hearing before, it is clearly a foreign way of doing things for him and he is not a lawyer. If the father had had a professional advocate acting for him the questions would have been very different, I am sure, and more helpful to the court. Furthermore, it has put him at a disadvantage not to be able to develop his questions as the answers were given.
- 20 Mr Ashworth made it plain that the Children's Guardian was not putting a positive case one way or the other in the fact-finding hearing. He assisted the court by asking some of the questions that an advocate for the father would no doubt have asked but his role is different and he challenged both parents equally.

### The law

- 21 As the President of the Family Division sets out in the Court of Appeal judgment of *H-N*, when I approach this fact-finding hearing I must apply the ordinary civil law. The burden of establishing proof is on the parent who makes the application. It is for that parent to satisfy the court, on the balance of probabilities, that the account of the event was more likely than not. This is a binary analysis in which each allegation is either found to be proved or not proved.
- 22 As the President reminds us in *Re H-N*, it has been recognised for over twenty years now that there can be serious consequences on children being exposed to domestic violence in their homes. That is one of the main reasons why the courts try to establish the facts of what

has happened when one or both the parents say that domestic abuse has taken place. Contact going forward must be safe for the children and for the parent with whom they live.

23 I have in mind the guidance in *H-N* and in PD 12J and, in particular, about the widening definition of domestic abuse. In para.25 of *Re H-N*, the President says:

“... there are many cases in which the allegations are not of violence, but of a pattern of behaviour which it is now understood is abusive. This has led to an increasing recognition of the need in many cases for the court to focus on a pattern of behaviour and this is reflected by (PD12J).”

24 I have also re-read the key parts of *F v M* [2021] EWFC 4, in which Hayden J carefully analyses allegations of coercive and/or controlling behaviour, an issue which has not figured much in the Court of Appeal cases prior to that.

25 Paragraphs 31-32 of *Re H-N* are very relevant to what I have to consider in this case, and it says:

“The circumstances encompassed by the definition of 'domestic abuse' in PD12J fully recognise that coercive and/or controlling behaviour by one party may cause serious emotional and psychological harm to the other members of the family unit, whether or not there has been any actual episode of violence or sexual abuse. In short, a pattern of coercive and/or controlling behaviour can be as abusive as or more abusive than any particular factual incident that might be written down and included in a schedule in court proceedings ... It follows that the harm to a child in an abusive household is not limited to cases of actual violence to the child or to the parent. A pattern of abusive behaviour is as relevant to the child as to the adult victim. The child can be harmed in any one or a combination of ways for example where the abusive behaviour:

- i) Is directed against, or witnessed by, the child;
- ii) Causes the victim of the abuse to be so frightened of provoking an outburst or reaction from the perpetrator that she/he is unable to give priority to the needs of her/his child;
- iii) Creates an atmosphere of fear and anxiety in the home which is inimical to the welfare of the child;
- iv) Risks inculcating, particularly in boys, a set of values which involve treating women as being inferior to men.”

It goes on to say:

“It is equally important to be clear that not all directive, assertive, stubborn or selfish behaviour, will be 'abuse' in the context of proceedings concerning the welfare of a child; much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour. We would endorse the approach taken by

Peter Jackson LJ in *Re L (Relocation: Second Appeal)* [2017] EWCA Civ 2121 (paragraph 61):

‘Few relationships lack instances of bad behaviour on the part of one or both parties at some time and it is a rare family case that does not contain complaints by one party against the other, and often complaints are made by both. Yet not all such behaviour will amount to ‘domestic abuse’, where ‘coercive behaviour’ is defined as behaviour that is ‘*used to harm, punish, or frighten the victim...*’ and ‘controlling behaviour’ as behaviour ‘*designed to make a person subordinate...*’ In cases where the alleged behaviour does not have this character it is likely to be unnecessary and disproportionate for detailed findings of fact to be made about the complaints; indeed, in such cases it will not be in the interests of the child or of justice for the court to allow itself to become another battleground for adult conflict.’”

26 The President goes on to explain in the next paragraph that the definition of domestic abuse and its reference to patterns of behaviour, not only in respect of domestic abuse refers to a ‘pattern of incidents’ not only in relation to coercive and/or controlling behaviour but to all forms of abuse including physical and sexual violence. As Mr Hames submitted, it will be necessary for me to look at each bit of evidence as well as the totality of evidence.

27 I also re-read the relevant parts of a report commissioned by the Ministry of Justice called “Assessing risk of harm to children and parents in private law children cases” from last year. That has very useful sections on the evidential difficulties in domestic abuse cases.

28 The context of this fact-finding hearing is applications under the Children Act and, at a later stage, I will have to determine what arrangements are best for H-N following s.1 of that Act and I had and will have in mind H-N’s welfare throughout the length of this process.

29 I have read the recent case of *B-M (Children: Findings of Fact)* [2021] EWCA Civ 1371, and find para.25, in particular, of assistance in this case. It says:

“No judge would consider it proper to reach a conclusion about a witness's credibility based solely on the way that he or she gives evidence, at least in any normal circumstances. The ordinary process of reasoning will draw the judge to consider a number of other matters, such as the consistency of the account with known facts, with previous accounts given by the witness, with other evidence, and with the overall probabilities. However, in a case where the facts are not likely to be primarily found in contemporaneous documents the assessment of credibility can quite properly include the impression made upon the court by the witness, with due allowance being made for the pressures that may arise from the process of giving evidence. Indeed in family cases, where the question is not only ‘what happened in the past?’ but also ‘what may happen in the future?’, a witness's demeanour may offer important information to the court about what sort of a person the witness truly is, and consequently whether an account of past events or future intentions is likely to be reliable.

26. I therefore respectfully agree with what Macur LJ said in *Re M (Children)* at [12], with emphasis on the word 'solely':

‘It is obviously a counsel of perfection but seems to me advisable that any judge appraising witnesses in the emotionally charged atmosphere of a contested family dispute should warn themselves to guard against an assessment solely by virtue of their behaviour in the witness box and to expressly indicate that they have done so.’

30 In this case I have carefully considered all the evidence and my appraisal of the way the witnesses have given their evidence has been but one part of the whole. I am also giving myself a *Lucas* direction, by which I mean that I am taking into account the fact that a witness lying about one matter does not mean that they are lying about other matters necessarily.

#### The witnesses and the evidence

31 Each of the mother and the father have provided the court with lengthy statements and each have attached numerous exhibits to their statements. They disagree about the particular incidents which are dealt with in the allegations made by the mother, but also disagree profoundly about the nature of their relationship.

32 A woman who has been subjected to domestic abuse, including possibly coercive and controlling behaviour, can react to what has happened to her in various ways. For example, she can take a long time to realise her situation and give an impression of a happy relationship to others in the meantime. She can be intimidated by her partner, either directly or subtly, so that she feels unable to be honest about how she feels to outsiders and within the relationship. It is sometimes the case that a traumatised person’s memory is affected and that can affect the evidence they give. A woman in this position can find it hard to give evidence about her experiences because it is so painful to relive what has happened.

33 I have had all these points, and many others which are in the literature and which I have seen in other cases, in mind when considering this case. In summary, I am very much aware that a person (usually a woman) who has been subjected to domestic abuse by the other party to the proceedings can experience many barriers which prevent her case being properly understood. At the same time, it does not follow that a woman who has experienced some domestic abuse, which both parents accept is the case here, has necessarily experienced any of the difficulties which I have given examples of or any other of a similar type which can interfere with a woman being believed in court proceedings. It also does not follow that a man who has admitted two incidents of domestic abuse, and has been accused of further domestic abuse, coercive and controlling behaviour and rape, has done those further things or that he has done anything which had the effect of preventing the woman giving her best evidence. My duty is to decide this case on the evidence before me.

34 The mother gave evidence first. She told me, when asked, that she has been assessed as having an IQ in the 140s and she is clearly very intelligent. I found her to be an articulate woman who did her best to answer all the questions put to her, even when they were painful or challenging. The mother is a vulnerable woman who has experienced abuse as a child and as a teenager. These experiences have left their mark and she has had mental health

support in the past. These are also important points for me to bear in mind because these factors will have affected how she reacted to the father's personality and behaviour as well as to how she lived her life generally.

- 35 What is not in dispute is that she was separated from H-N in December 2018 until September 2019. The first month was as a result of her choice but thereafter it was imposed on her by the actions of the father. It must have been very painful and frightening as she could not be sure that she would get him back.

### The father

- 36 I found the father also to be an intelligent and articulate person. He is fluent in English and only missed the odd nuance or unusual word. At times in his evidence he smiled, which I took to mean in an ironic way. I did not think he was minimising the seriousness of the situation. I certainly did not find him to be smug, as was suggested. He seemed to me, more than anything else, very weary.
- 37 He has not spent time with H-N now since September 2019. The French court ordered H-N's return to his mother and since then he has not managed to secure such contact, partly because of the mother's response to his requests, partly because of the pandemic and also because of the length of these proceedings. This must be very painful for him, regardless of his responsibility for H-N's retention in January 2019 which led to this situation.
- 38 In a case where the two parents give such contradictory evidence about their relationship and the alleged incidents, it is necessary to consider carefully each aspect of the evidence and how it was given, how the father's responses to questions were given after careful consideration and how he was willing to admit and accept things he had done wrong and things he could have done better or differently. There were numerous examples of this, such as accepting that he started the slapping in January 2016 and, therefore, holds more responsibility for it than does the mother. He accepted that he has not been kind in one or two of his emails. He accepted that he should have respected the mother's wishes and immediately left when she asked him to after the slap in January 2016.
- 39 He tried, in my view, to give honest answers, even when it would have been easy for him not to do so. One striking example was when he was asked if he had ever hit the mother of his two older sons. There is no documentary evidence about this. He could have denied doing so or said he could not remember. He told me that he had slapped her on one occasion when that relationship was breaking down in 2008 in response to her spitting in his face and then smearing the spit around it. He was criticised for not remembering clearly if that former partner had also accused him of controlling or coercive behaviour but there are no doubt different concepts of such matters in France that are considered relevant and I accepted that his answer was genuine.
- 40 He also told me when dealing with these issues that it appeared to him that the two mothers of his children were now in touch about their litigation and that clearly before this trial the first mother had written to him to tell him she was taking him back to court. Such behaviour of the two women would, no doubt, add to his weariness with the process.
- 41 I found his responses to be genuine. I got no sense of him giving the answers which he knew would make him look good, but much more that he was telling me what he thinks happened and what he thought and I generally believed what he said to me.



42 In contrast, I found the mother's evidence to be less convincing and less genuine and that is despite taking into account all I have set out about the difficulties of a woman in her position in giving evidence. Whereas the father's evidence, in his statements and in his oral evidence, is generally supported by the documentary evidence, there are many occasions where the mother's evidence is undermined by the documentary evidence. I will go through some of the examples of this later. Some of the examples are explained by the situation she was in at the time but others are not.

43 Some of her communications with professionals contain what she now says were lies. There is no reason to have lied, for example, to Dr M when she wrote a very long letter of complaint to him in February 2017. In this email she tells Dr M – this is in relation to the January 2016 incident – and I quote:

“My partner slapped me, yes. I phoned the police not because I was frightened but because my partner wouldn't leave the house. He didn't realise the seriousness of what he had done. He didn't try to stop me calling the police and when they arrived he told them what had happened so they took him away for an interview. He wasn't charged with a crime. The following day a police officer came to my house and told me that my partner was an idiot (his word) but that he didn't really believe me to be in a domestically violent relationship. It was just a one-off due to the immense stress we were both under from us both being in the middle of court custody battles with abusive ex-partners who are both diagnosed with mental health problems. His recommendation was to make my partner suffer but not for too long.”

44 She goes on to say that she was assessed in 2016 by Social Services, I believe as being at risk of being in a violent relationship with father, and she says:

“Two separate bodies have concluded that my partner was a good man and not abusive. He has never even raised his voice to me since. I reacted in the extreme when I phoned the police and I did so because I would never have anything happen in my home or around my children that is detrimental to their wellbeing.”

She said in that email that the father had not even raised his voice to her since the slap incident in January 2016. All this very much accords with what the father has said and not with what the mother now says happened or how she felt. The mother now says she lied in that email about the father not shouting because that is what she wanted to believe.

45 I do not know why she would write this account to a third party in 2017, when the father was in France, and give an account to that doctor which is so very different from what she now says happened in that incident and thereafter but I find it all very unconvincing as to the allegations she has made since.

46 I have also come to the view that some of the mother's key actions are inconsistent with her allegations and I will, again, turn to those. Some of her actions can be explained by the situation she was in and I have carefully considered whether they and others can be explained by having been under the father's control, but I have concluded that this is not the

situation in this case. Generally, where the evidence of the mother and the father clashes, I prefer the evidence of the father.

- 47 I turn now to a consideration of the relationship between the parents. Before I deal with the specific allegations, it is helpful for me to consider that relationship. As already discussed, PD 12J sets out, and the Court of Appeal has endorsed, an approach which focuses on patterns of behaviour as opposed to specific incidents, whether considering coercive and/or controlling behaviour or any other form of abuse. The mother's schedule of allegations adopts that approach and asks me to consider whether the father's behaviour towards her and H-N constitutes a pattern of abusive and controlling behaviour, as well as seeking that I consider specific allegations of physical and sexual violence.
- 48 It is the mother's case that the father has minimised the seriousness of the allegations he has accepted and that overall his behaviour has caused the mother significant harm and that there is a substantial risk of significant harm further going forward. The risk of future harm falls to be considered at a later hearing.
- 49 The father denies that he was an abusive or controlling partner and his case is that he did his best to be a supportive partner to a woman who had fragile mental health, led an isolated existence and did not have good relationships with people who tried to help her and her family. He has expressed some remorse for the two incidents of violence committed by him and his case is that he then learned to behave differently. He suggests that the mother has invented allegations against him and that he has sought to do the best for H-N throughout his life.
- 50 An understanding of the relationship between these two parents is, therefore, important both for my assessment of the general allegation that the mother experienced coercive and controlling behaviour by the father, but also because it is the context for all that has happened.
- 51 When the mother was asked about the relationship at the start of the evidence, she said: "In the beginning it was quite full-on. We met over the wall. I invited him in and then he came most nights. It got quite pleasant. He corresponded in kind. It felt good. As things moved on, especially after he moved in in 2015 and especially when I was pregnant, things changed. There had been minor criticisms before but from then it felt anger developed and my life was not my own. He was angry and aggressive. I could not say no to anything. I felt I could not breathe. I did not want to go home. When the children were in bed I sat in the garden because he did not shout in the garden. He would chase me around the house but nothing would stop him shouting at me. When he decided to move to France I was completely relieved."
- 52 She says in her statement much about the relationship. For example, at the start she says:
- "Almost immediately after the father moved in, his behaviour towards me dramatically changed for the worst. He had an explosive temper and chased me around the house screaming even for the smallest of reasons. Anything would set him off. He was volatile and unpredictable and he was frightening. He would constantly criticise me for not cleaning enough, not spending enough time with him, not paying him enough attention or for spending too much time with my son B, for wearing ugly clothes. He criticised me for my choice as to

what to eat and criticised me for how I ate. It was an unpleasant environment and so I asked the father to leave but he refused. His behaviour continued and I felt intimidated.”

- 53 When the father was asked the same question by Mr Ashworth, he said: “There are some patterns. She was in constant pain, I’m sure it has been real. I tried to explain, I slapped her which was not smart. I tried to explain why. Her pattern was someone in extreme pain who was talking about her problems with me listening, trying to get by so I could just be around her and the children. I’m very, very positive that I was not abusive. I got Dr L involved. I did not make a mistake after a while but it was very difficult and it was impossible to help her. You cannot help if she does not want to be helped. I did try. I hoped she’d ask for some help. She cries for help. The professionals reach out but nothing happened”.
- 54 In his statement he says:
- “Whilst we lived together the mother said to me on several occasions she was a control freak, had an avoidant personality and that the way I could help her was by being there without being there. Practically this meant that it was difficult to do anything together. We slept in different rooms and didn’t eat together. It felt extremely exhausting and nerve-racking to be around the mother at times. Every day was littered with traps and I had to constantly tiptoe around her to avoid picking up one. I felt like she was crying out for help but when I tried to help her she always refused it.”
- 55 In my judgment, the father’s description of the relationship is more accurate than that given by the mother. There are many reasons for this conclusion. The documentary evidence of the email and text exchanges between the parents generally supports the father’s contention that mother was volatile and that he tried to be supportive. It does not generally support mother’s contentions of bullying by father. There are many examples. I will quote one.
- 56 On 28 December 2016, the mother told the father: “I have broken the phone slowly but surely determinedly leaving the world to itself.” The father responded: “Poor you. What put you in such anger or despair?” The mother replies: “I broke it after we got off the phone. I tore it apart. Something possessed me and before I could think about what I was doing, I pulled it apart in my hands.”
- 57 Also in the emails there were times when the mother has tried to present the relationship, a bitter description of it, and has manipulated the evidence to do so. An example is the events leading up to New Year’s Eve 2015 and the days following. The mother sets out in her statement that it was an example of the father’s controlling behaviour and exhibits an email exchange in support. However, the father has a very different version. He exhibits the emails which the mother did not, making the conversation complete, and it supports what he says in his statement, which was that the mother read one of his emails, there was a misunderstanding, all was easily resolved and the mother apologised and welcomed him to her home. He, meanwhile, in his statement apologised for using bad language in one email but says, and he is right, that that was often how the parties communicated, particularly, as far as I can see, the mother.

There is an email from the mother to the father on 8 October 2016 which supports the father's case that the mother is very troubled and that they both saw him as trying to help her. She says:

“Okay, so writing what is in my head with a keyboard is not easy, it doesn't usually flow as well but I will try. Here is my diary entry, or one of them, for this week. So I haven't written in a while but I sat down the other day, exhaled, and had an all-consuming feeling of, oh, fuck, when I thought about my life. Why? That's the best bit. I don't even know. There's too much. I think I have a reason, a cause and effect, and then something else worms its way out of my memory to the forefront of my mind and I realise, oh God, that happened as well. Now here I am trying to regurgitate all, eventually I hope, but for now at least some of the emotional events of the last two years which have crowded my brain so that it feels like the Houses of Parliament during a debate, where nobody agrees and everybody wants to be heard, so all my thoughts are shouting and falling over each other so none of it makes sense and there's never enough time to give one's attention to any one feeling for any significant amount of time before something else is shouting. For example, I know I've had a baby. I can see him. My body still hurts from having him and my breasts are his buffet, but how the fuck did that happen? That wasn't the plan seriously. Who decided to do that? How do I now have two children plus two more? Oh, yes, two more that are not mine, who have their own crazy mother to deal with. What the fuck was I thinking? Now they have two crazy mothers. How did my quiet little insignificant life plan get so fucking complicated? AAAARRRRRRGGGGHHHHHEEEEE What on earth is going on? I'd like to blame AH. It's his fault. I let him convince me that that's what I should do and that I could do it. I love him so I want to be what he wants and I wanted to believe it. I wanted to believe I could be less like me and more like other people but I keep failing. What if I always fail? What if this man, who thinks he can fix things, this good man who for some crazy reason wants to try and fix me, has deluded himself too and I just forever exhaust him with my incessant inability to function without fear? I don't want to make his life hard because I am too damaged and stuck to be normal. He says I'm fearless. I'm not fearless. I'm frightened of everything. But when you live in a state where every little normal thing that people do is terrifying to you and then on top of that you have little regard for yourself, it is easy to seem fearless because the things that are frightening to everybody are no more frightening to me than the everyday stuff. Everything is frightening even if nothing is happening. That is frightening too. So when the things started to calm down and I have time to look around me, I realised I had no idea what was going on. Everything I've known has changed, everything I wanted for my life has gone and instead there is all this new and scary stuff that just kind of worked its way in when I wasn't paying attention or held my breath and just hoped I wouldn't notice, hope that I would cope just fine and not even feel like I was coping. It would be easy, right? Everybody does this stuff, right? So after dropping with my eyes closed down a hole that just kept going for the past two to

three years with everything whizzing by me in a blur, I've now landed at the bottom on my arse in a strange place that leaves me more than a little bewildered and obviously inevitably, and especially since I told myself not to, I have found myself in a blind..... There's more but I'll end there. There rest would be on another page."

- 59 There is an email from the mother to the father in April 2018 in which she sets out some of the complaints that she later makes in these proceedings but not on the rape. I have no context for this email other than he had just taken H-N to France at her behest because she had a mouse infestation. Some of what the mother says in the email is clearly incorrect. For example, she said there would not have been a Social Services referral without him whereas the Social Services referral was made about concerns about her behaviour. I do not find this email corroborative of the mother's case and I do not find the allegations in the email are true, except for the ones the father admits. I think it more likely that, as the father says, the mother lashes out at times. He exhibits a note she wrote to him after the advice he received in 2017 where she thanks him for giving him space and then goes on to say:

"I don't want to talk to you about any more horrible stuff and you're happy it is over for you, it isn't for me, and I'm not sure what to do but I do know that if it is over for you then I want you to be happy, enjoy H-N, enjoy the sun, enjoy the garden again today. I don't want my head and heart to make you suffer and I will if you keep trying to be near me and keep trying to make me happy. I'm just not and right now I'm not ready to be. I want to keep my anger. I do not want to forget. I want to hate, punish and maim so I exhaust myself in the garden and come to weigh all the damage, all the mess, all that it means."

And it ends by saying:

"Please be free and happy."

- 60 At times it appears to me, on the balance of probability, that the mother does, indeed, want to hate, punish and maim. It does not appear to me that her wrath is necessarily directed at those who have objectively done her wrong. In my judgment, it is not safe to rely on what the mother has said or written to corroborate what she says she has experienced.
- 61 There are examples of the father trying to arrange times to see H-N and, indeed, the mother responding quite irrationally aggressively and the father responding calmly. In January 2017, the father is trying to arrange a visit. He receives an email from mother suggesting she has to concentrate on her course in March instead and he responds, "Sounds good" with kisses. Her response is:

"If you add up the weeks he has spent approximately a quarter of his life in France which, since he isn't even a year old yet and couldn't travel for six weeks, doesn't seem to me like you're being short changed all the time. He recognised you. We both make the effort and I would have thought that my own desire to advance myself, which you fucking started by the way, and my need to have a routine with two small children so I can fit in the work hours and achieve something, isn't a concept that should fucking be alien to you".

He responds:

“It is very simple. I just wished we could spend more time in the same home and that we could be with all the children, work, and also have some time for both of us without it being too detrimental to the children, work, love, togetherness or sex. Maybe life hasn’t been hard enough for me that I should be thankful my son recognises me. Other than that, yes, I like the concept.”

The mother responds:

“I wasn’t suggesting that you be thankful. I was pointing out the fact that he had been around you enough to bond with you...the issue is every time I say no to you you fucking try and manipulate and emotionally blackmail me with, ‘I would like to see my son’. So fuckin come and get him and piss off.”

62 In January 2017 the mother appears to have been struggling with her mental health and she writes to the father that he could not call her anymore and she was very upset about his older son, C. The father responded in a conciliatory way, saying, amongst other things:

“I have understood what you do and sticking to your routine and simply my presence is a distraction or a disturbance. It is annoying and it hurts but I’m trying to respect that and make it possible for you to do it alone without distraction. We spoke about C extensively. If I may, maybe by your criteria, a lot of children are dangerous. I wish we could have gone to bed not on an agreement because the last few days phone conversations were so constructive and good again.”

63 There is then a very long disturbing email from the mother to the father, in which she says, amongst other things:

“You lived in here. It didn’t work. I couldn’t do it, we couldn’t do it. I was trying to do things right this time without things escalating out of control, smoothly, steadily, more tortoise, not hare. When you were the hare and I’m the tortoise and you think that because I’m behind your way is the right way to get things done but we all know who gets to the finish line in that race and I just wanted it to be both of us. You already got me to the starting line and gave me the confidence to run. You just needed to let me get on with it at my own pace for a bit because otherwise I will fail, because otherwise I will never catch up. I will get lost on the way and fail again. AH, please understand, I cannot fail again. This is a pivotal point in my life. Everything rides on this for me. This will make or break me. I will either manage and feel some pride and hope in myself or I will fail and never to do anything more than work in a supermarket until I die. I want the dream that you see. I want not to be frightened of trying and of hoping, if I fail this I will never hope or try for anything ever again. I will die as the worthless waste of humanity that I am and all I can hope for is that I protected B whilst I was here.”

64 I find that the mother is deluding herself by accusing the father unfairly of ill-treating her during and after the relationship but that he was doing his best to support her.

65 The mother's mental health has not always been good, as I believe she accepts. She was referred in 2008 to the Local Authority because of such concerns. In 2017, when the Local Authority were again involved, a social worker wrote:

“The mother stated that she is aware when she needs support for her mental wellbeing and in the past she has sought help when needed. She believes she was diagnosed with PTSD during the court battle with B's father due to the abuse that she suffered within a relationship with him. When pregnant with H-N she was also feeling low and sought support from the maternal services. However, she was not presenting as a risk to herself or others so they would not take her case. The mother also has admitted from suffering from depression in the past. I informed her that she presented as overwhelmed and stressed. She was also very emotional and appeared to change topics of conversation without any structure or thought. The mother feels that her mental health deteriorates when external services are involved with her family. However, she will seek help if she thinks she needs it. I advised her to speak to her GP about this as soon as possible because she presented as though she needed someone to offload to.”

66 I refer to this as it is corroboration of the difficulties which the father describes experiencing. It does not justify any abuse, of course, but is an example of another person experiencing the mother's behaviour which was a concern. Later in the same note, the social worker said that the mother missed an appointment, I believe for B, and said:

“She did not ring them to cancel and blamed this on having LLI which means she does not like letting people down.”

This, I believe, is supportive of the father's case that the mother has self-diagnosed herself with LLI. I am not aware of her having been professionally diagnosed and that is relevant to allegation 13.

67 I do not get the sense from the numerous emails and texts I have seen that the mother was in any way unable to act as a free agent and was in any way having to act in a certain way or do things because she was frightened of or under the power of the father. It is correct that the mother makes those claims during the relationship but objectively, on the balance of probability, I do not find this to be the case. Much of the time the father was in a different country. The period of cohabitation was minimal. In the evidence, there was much more aggression and abuse from the mother to the father than from the father to the mother. The case is not made out.

68 I have considered carefully whether the matters admitted by the father, and recorded by the Court of Appeal, amount in themselves to the father being controlling and coercive of the mother when considered together, but I do not. I will deal with the individual points later but I do not see them as forming part of a pattern of such behaviour. There is not, in my judgment, evidence for me to conclude that the two incidents of violence in April 2015 and January 2016, neither of which should have happened and were abusive, establish a

relationship in which the mother was frightened of the father or frightened of going against him, or felt it necessary to avoid confrontations. The mother told me in her evidence that she lied to the police at the time of the second incident, for example, telling them that there had been no attempt to strangle her whereas now she says there was, but I do not find that credible. The evidence is nearly all the opposite of that. I do not find the knife incident of particular significance in this relationship and do not believe it held any particular significance at the time.

69 I deal in some detail with the retention of H-N and the altercation on 9 January 2019, but I do not find that the father was motivated by a wish to control or bully the mother, other than to prevent her from removing H-N from his care. His decisions were made on the basis of what he thought was best for H-N, though I am clear that he acted wrongly when he failed to allow H-N to return to London with the mother.

70 I now turn to another issue. It is my judgment that there are too many discrepancies between what the mother says and what the independent evidence says for me to find, on the balance of probability, that the mother's description of the nature of the relationship, and of many of the incidents, is reliable. On the incident of 9 January 2019, for example, I deprecate the father's retention of H-N and I have complete sympathy with the mother going to great lengths to secure her child's return. However, she has, in my judgment, then exaggerated what happened.

71 I have the independent evidence of the father's neighbour, AV. In my judgment, she was a witness of truth and she had a clear view of what happened, even if she did not recall or did not see the father's hand on the mother's leg. I prefer the father's and AV's account rather than the mother's exaggerated and embellished account of what happened on that day.

72 There are many occasions when the mother has said one thing to professionals and other things within these proceedings, such as telling the police in January 2016 that there was no strangling but telling this court that there was. I am aware that the mother was eight months' pregnant and it could be that she feared the father's return but that does not appear to be the case as she has written to the doctor, in a quote I gave earlier, and they reconciled soon after.

73 She told the police in January 2019, after H-N's retention, in relation to sex:

"I'm not allowed to say no. I'd had a bad pregnancy which meant it hurt to have sex but I never told him no."

In these proceedings she said she had said "no" in October 2018 and he forced her.

74 There is the letter to Dr M, which I have quoted, in which she said the father was not abusive and there are other examples. Other allegations were made during the proceedings. When the mother returned to this country with B but without H-N, and was making her application under the Hague Convention, she wrote to the police:

"He has never shown anger towards them [referring to the children] in front of me."

It was in these proceedings, in a separate statement, when she said that in the summer of 2018 father shouted at H-N, lunged at him and shook him hard. These allegations were



made for the first time in the mother's July 2021 statement. She also refers in that recent statement to father lying at and taunting H-N. This had not been said before that July 2021 statement.

- 75 I think these allegations are most unlikely to be true, looking at the totality of the evidence and my assessment of how the father appears throughout the papers and in court.
- 76 There are other examples of the mother being inaccurate, to put it at its lowest, in what she says to professionals and she admitted in the hearing to lying to police, social workers and doctors, but I do not accept that her reasons were sound. She said variously it was because of her fear of the father, because she said that she wanted to believe it to be true, because she wanted her son to have his father in his life. I do not think those are credible reasons in this particular case and that this particular the mother is not a credible witness when compared to the father.
- 77 It also seems to me that some significant actions of the mother did not accord with her account of the relationship. It was the mother's choice to send H-N, aged two, to stay with his father for three months on his own when she had a problem with mice in the spring of 2018. This was in the context of, on her account, him being a bully and an inadequate father, on her case, and about four days before she wrote him in an email accusing him of all sorts of events. She has included in her evidence, and in what she has said to the local authority at various times, that she has very good local family support so, as far as I can see, she did have a choice at this time.
- 78 It was the mother who chose to send both boys to France with the father in December 2018 when she visited New York. This was not long after what she had described as father shouting at, lunging at and shaking H-N, shutting him up in a dark bedroom and all the other horrible things that she accuses him of. I do not accept what she now says, that he promised to behave differently, that his parents, who live on the other side of France, would have been a sufficient safeguard, when it was clear that only a couple of weeks, at most, of that time was to be spent with them. I think it was a week, in fact.
- 79 It is not convincing. I do not believe, on a balance of probability, her account of the relationship, the power each held in it or, when contradicted by the father, her allegations against the father.
- 80 I now turn to the allegations. The father is recorded by the Court of Appeal as having made the following admissions; punching the mother early in the relationship, slapping the mother when she was eight months pregnant, punching a wall, holding a knife to his wrist in front of the mother, being involved in an altercation when the mother tried to collect the child, during which he blocked her way and held her by the arms, and that the mother's jacket was ripped when she tried to pass him, and wrongfully retaining the child in France. I will deal with each of these as they arise in the allegations. The mother's case is that each of these incidents was more serious than the father admits to.
- 81 Allegation 1 says:
- “Shortly after the parties started cohabiting in April 2015, the father physically assaulted the mother. He grabbed her by the throat and pushed her across the room, up against a wall. He punched her hard

in the right upper shoulder using a lot of force with his clenched fist whilst holding her against a wall by her throat with his other hand.”

82 The father denies this, though accepts he punched the mother on the shoulder on one occasion but without great force. I do not find the additional allegations, other than the punch, proven. It is correct that the mother has referred to the strangling at various times, including before these proceedings, but I do not consider this to be probative, as I have said. On the balance of probability, I consider that the incident involved the punch. This was in her home, where she was entitled to feel safe. It was completely wrong of the father to punch the mother and it was abusive.

83 Allegation 2:

“When cohabiting the father would frequently lose his temper and break things. He smashed bottles or glasses once or twice a week and on one occasion stabbed a kitchen knife into a wooden table in a fit of rage, criticising the mother for not cleaning the table.”

84 The father denies this and does not recognise either that he frequently lost his temper or broke things deliberately. He says:

“The father denies that he would frequently lose his temper. The father denies that he would ever smash bottles or glasses deliberately. The mother trashed her kitchen once and cut her foot in September 2016. He accepts the parties would argue but that both he and the mother would raise their voices during arguments. The father does not believe that he has raised his voice during an argument since around January 2016, although the mother would continue to shout at him. The father simply temporarily removed things (two marmalade pots and a dictionary) as it would be the only available tiny flat surface to work on. He denies ever stabbing a knife into the table.”

85 I do not find this allegation proven. I find that the father’s account is more likely to be true than the mother’s, based on the evidence as a whole. I find that the father was telling the truth that after the incident in January 2016, he made a conscious change in his behaviour and did not shout at the mother thereafter. It was a key moment in this relationship and in this family. I do not find that the fact that the father punched the mother in April 2015 and slapped her in January 2016 is probative of him behaving generally in a violent and aggressive way. The evidence supports my conclusion that the father thereafter was very careful to keep control of his temper. Nor do I find that this description of the father is supported by the evidence before or after January 2016.

86 Allegation 3:

“The mother accuses the father of punching a hole in anger in a wall in France in August 2018.”

The father accepts he punched a wall in frustration but says this was in August 2016.

87 The incident happened, I think the father is more likely to be the accurate historian as to when but I do not find that this has any general significance.

88 Allegation 4:

“When father would not return H-N to mother on 9 January 2019 there was an altercation.”

The mother says in her allegation that the father physically assaulted the mother when she travelled to France to collect H-N and B. He grabbed her by her clothes and hair causing her jacket to be ripped and for her to fall to the floor. He dragged her by her leg. As the mother tried to escape, she got up. The father held her up against a wall, grabbing her by the throat and pinning her against a wall causing her to have difficulty breathing.

89 The father says in his response that the father knew the mother would be picking a fight when she attended at his flat unexpectedly to collect H-N and B. The father denies grabbing the mother by her throat or hair. He denies dragging her by the leg. He denies holding the mother by her throat or pinning her against a wall. The father accepts blocking the mother’s path in the neighbour’s flat by putting both arms across the corridor. He accepts holding the mother by her arms just by the shoulder to prevent her attacking him or progressing further into the flat. This is after the mother forced her way inside the neighbour’s flat, hurting the neighbour’s knee.

90 I have dealt in part with this allegation. I accepted the evidence of the neighbour and prefer the father’s account which accords with that of the neighbour. However, I do not criticise the mother for taking extreme measures to try to secure the return of her child, who had been wrongly kept from her. I think that the father tried to keep the physical interaction to a minimum because he knew that it would be more likely that if the police came he, as a man, would be arrested than the mother.

91 The next category of allegation is of sexual abuse and there is one allegation. Allegation 5. “The mother says that in October 2016 the father had penetrative sexual intercourse with the mother against her will.” The father denies that this happens and says “the mother was very much aware of her body, did the Kegel and self probed. The mother was totally in charge of the couple resuming their sex life after the February 2016 traumatic birth.”

#### The evidence

92 The mother has described how H-N’s birth was very difficult and left her with bruising and stitches and how she was advised to take time to heal. She says there was one painful occasion of penetration but otherwise no sexual intercourse after H-N’s birth. She said on this occasion, in October, the father forced himself on her when they had agreed that there would be no penetration. The father said that normal sexual relations resumed after three months and that this simply did not happen.

93 I have already dealt to some extent with this incident and referred to the mother telling the police years later that she had never said that, but also saying that she had not been allowed to say “no”. There is no mention of this incident prior to January 2019, when the father retained H-N. In particular, the mother does not mention it when she sets out at other times all the things she says the father has done wrong to her. The father was very clear in his evidence that he understands consent and did not do this.

94 I think it is unlikely that this father would have behaved in such a way, based on all my understanding of the parents from my reading and now hearing the case. In the first hearing, before HHJ Tolson, the mother said she would call her mother to give supportive evidence about this but she has not done so.

95 For all these reasons, and those I have already given, I do not find that the mother has discharged the burden of proof upon her and I do not find this allegation proved.

96 Allegations 6 to 12 come under the heading of “controlling and coercive behaviour”. Several examples of such behaviour are given by the mother. The father generally denies them or says they are exaggerated or are distortions of behaviour of his which was justified in the context of what was happening in their relationship and in his relationship with H-N. I have already dealt with the pattern of behaviour and have found that there was not controlling or coercive behaviour by the father towards the mother during their relationship. I will now deal with the specific examples given.

97 Allegation 6. The allegation is that the father would shout and swear in anger at the mother whether the children were present or not and he would chase the mother around the house, trying to block her from escaping, with the mother crying and trying to hide from the father, begging him to stop, and the father refusing to.

98 The father says that “when the mother had a crisis at the beginning of the relationship, the father would attempt to have a reasonable exchange. Later her would calmly listen to her complaints and sometimes accusations. The father went to a psychologist to help himself deal with the mother’s tremendous pain.”

99 I do not find this allegation proven and I do not think that the mother’s account of life with the father is accurate. I think it is the case that the mother has had a great need to be on her own at various times and found the presence of another adult in the home to be intolerable but I do not find that the father behaved in the way described. What the father says in response appears to be borne out by the evidence.

100 Allegation 7:

“Shortly after H-N’s birth the father tried to drag the mother by the arms out of a chair whilst she was breastfeeding H-N because he wanted her to vacuum the carpet.”

The father responds:

“The father would offer to vacuum clean and offer to clear the floor of things scattered everywhere, toys, coins, clothes.”

101 There is nothing in the written or oral evidence which makes me think that the father is capable of behaving in such a way. He explained to me his parents were coming to visit and I think it is likely that he wanted the house to be cleaned up before their arrival. They had come to see H-N, who had just been born. I think it is likely that the mother has embellished her allegation in a wholly unreasonable way and it is much more likely that, as the father said, he wanted to vacuum whilst she was breastfeeding and that was the end of it, although they may have had some argument about it.

102 Similarly, although it is not in the allegations, the mother says that the father chased her round the house when she was in labour. I also find that not credible. I do not find that the father is a person who would do such a thing. Moreover, the father says that he was not even present when the mother went into labour as she went to hospital early with her mother. He has produced a text exchange with the mother's mother which supports that. I see nothing in his behaviour or character to suggest that he would do such a thing, which would be monstrous. I think this has been invented by the mother.

103 Allegation 8:

“Whilst in France the father held a large kitchen knife to his wrist in front of the mother and said, ‘Do you want me to kill myself?’ because he did not want to the mother to return to England, causing the mother to panic in fear.”

The father says:

“The father believes this incident is blown out of proportion.”

104 He accepts that he did hold a knife to his wrist but he did not threaten suicide. He says it was part of him trying to show the mother how her behaviour can make him feel. It also seems to me most unlikely that he was trying to prevent the mother and the children returning to England as this was the pattern of their relationship and there is no other evidence to suggest that he tried to force her to stay. It was an unwise thing for the father to do but, on balance, I do not find this incident to be coercive or controlling.

105 Allegation 8 appears to have two parts to it. The first part says that the father would repeatedly intimidate the mother by referring to times when he would lose his temper, for instance when he had an argument with his mother and smashed a computer. The father told me in his evidence that his answer seems not to be to the allegation and he cannot quite explain why that is because his answer says: “At less anxious times, the mother joked about the one slap incident.” In any event, he tells me that the incident with a computer and his mother happened in 2009 and was not told to the mother in order to intimidate her. I accept that. I have already dealt with the mother destroying her telephone and I do not believe that was said to intimidate the father.

106 Allegation 9 reads:

“The father was demanding of the mother's attention. He would criticise her for spending too much time with her son B. He would isolate her from family and friends. In December 2015 he was angry when she spent time with her family over New Year and not him, calling her an asshole and telling her to kiss his arse but turned up anyway, despite telling him she did not want him to.”

The father says in response:

“What the mother perceived as harassment was mainly the father trying to spend time with H-N and her and B. It is the mother herself who is reclusive. The father was carefully treading around her demands.”

107 I have dealt with the specific incident about New Year's Eve and found that the mother has provided an extract from the email exchange only and that she has, therefore, provided an interpretation which is inaccurate. I find no credible evidence in support of a general contention of this allegation and do not find it proven.

108 Allegation 10:

“The father would force the mother to travel to France with him when H-N was very young. The father was unreasonably angry with the mother that she could not travel on account of H-N falling ill and sent her an email saying or explaining, ‘Explain, or fuck you’.”

The father responds that:

“The father recalls the mother cancelling the pre-Christmas vacation plans shortly before the travelling date.”

109 I have already dealt with this allegation to some extent. I did not find that the evidence supports this allegation. The only occasion when the father behaved in such an angry and rude way was when the mother and the children missed a plane, to use her word, because she said, “H-N had a cold”. The email showed that it was difficult for the father to get the mother to make firm arrangements and it was also not straightforward for him to make arrangements at some time to see H-N. This allegation is not made out.

110 Allegation 11:

“The father told the mother she caused him to be violent towards her with her fear. He would justify his behaviour by telling her that this was how relationships worked and if she did not understand this there was something wrong with her. The father would claim that his abusive behaviour was him helping the mother and that it was her anxiety that caused him to be abusive towards her and that it was her fault.”

This allegation was incorrectly drafted and was corrected at the start of the hearing, I recall.

111 I have not recorded the father's response in my judgment and I have not got it in front of me. In any event, this is a serious allegation but I find it not proven. There is no suggestion in anything the father has written to the mother of such an attitude, unless an email is taken completely out of context. I have found that the father's attitude of trying to support the mother with her anxieties was a truer picture of what happened. That being said, if the response to the allegation is that the father slapped the mother once and that the mother slapped the father once, which I think is the response, then that reply is a concern to me. The father slapped the mother when she was eight months pregnant with his child. I think he believed that the mother slapped him back but that is irrelevant. To hit a pregnant woman is inexcusable and to hit a person who is eight months pregnant and, therefore, unable to move around quickly, is even worse. I think the father has minimised this as, although he accepts he should not have done it, he does not appear to understand the particularly serious aspect of it, namely that she was eight months pregnant and, therefore, particularly vulnerable physically and emotionally.

112 In evidence, he was also criticised for not leaving when the mother wanted him to. There is no doubt in my mind that he should have done and not waited for the police to arrive, albeit they arrived very swiftly. I do not accept the mother's evidence that he had opened all of her post across the kitchen table. At the time the mother said he had opened some of her post. At the time the father said what he says now, that he found an item of post in the recycling box and opened it.

113 On the balance of probability, I prefer his evidence. He should not have opened that piece of post but I do not find that to do so in such circumstances was controlling. I also note that the mother has embellished what happened. She says in her statement that:

“When the police arrived at the property AH blocked me from getting to the front door and so I had no choice but to let him answer the door.”

The police evidence says:

“As the police arrived on the scene, the father was at the top of the stairs and the mother opened the door.”

114 I accept the father's evidence that this was a turning point for him and that he has not been violent to the mother, or to anyone else, since then as he realised, probably assisted by a night in a police cell, that he could not behave in such a way.

115 Allegation 12:

“After the father returned to France following H-N's birth, he would text, email and Skype the mother and berate her if she did not answer immediately.”

The father responds:

“The father struggled to organise H-N's birth registration and passport ID with the mother's lack of engagement. The tacit understanding was that the father would not take the initiative to call the mother but rather would text or email.”

116 I do not find evidence in support of this allegation. I have dealt with it in part earlier. I think it is likely that this is how the mother felt but, objectively, I do not find that the father acted in an unreasonable, controlling or coercive way in relation to communications.

117 The next section is psychological abuse. The mother includes five examples of what she says constituted psychological abuse by the father. Allegation 13 says that:

“The father taunted the mother that she was not normal and labelled her as having Asperger's Syndrome.”

The father's response is:

“Psychology was a topic of conversation. The mother had told the father she had been diagnosed with Asperger’s. She self-diagnosed as suffering from echoism, LLI, wrote one of the father’s sons had a narcissistic personality disorder.”

### The evidence

118 I find that this allegation is not proven. There is sufficient evidence in the papers to support the father’s response that both parties engaged in attempts to diagnose themselves, each other and others. I am not able to be sure where the idea of Asperger’s originated, and from which parent, but I see nothing remotely abusive in the extreme and, indeed, it appears that the father was trying to be helpful. The mother obviously spent much time trying to understand her own functioning and it appeared, as I have mentioned, had diagnosed herself with something called LLI. She also has told various professionals that the father was diagnosed with borderline personality disorder but there is no evidence to that effect and the father says it is not true. She said that the father told her this but he denies this and I accept that he did not tell her this. I note that the mother’s attempts to diagnose the father’s son with a serious psychological condition may have been upsetting for the father. I accept the father’s evidence that both parties engaged in these discussions and I do not find that it was psychologically abusive on the father’s part.

119 Allegation 14:

“The father was critical of the mother, criticising her clothes, how clean her home was, her relationship with her son B, her eating habits, and her parenting skills. This caused her to lose self-confidence and damaged her self-esteem.”

The father responds:

“The father attempted to help alleviate the mother’s immense pain by listening to her with empathy. The father raised concerns early about the cleanliness and tidiness of the mother’s home but then stopped.”

120 There is no evidence to support the mother’s allegation other than her own and I do not find this allegation proven. It appears, partly from the photographs I have seen, that the couple have very different ideas about such things as how the home should look, tidiness, but I do not find evidence to support the mother’s contention that the father was psychologically abusive in this way.

121 Allegation 15. The mother’s allegation is:

“In December 2018, the father wrongfully retained B and H-N in France and refused to return them to her care after she had ended the relationship. The father denied the mother proper contact with H-N over the course of ten months. After the order to return H-N was made by the French court, the father failed to return H-N to the mother. The mother was forced to involve the police to facilitate H-N’s return to her.”

The father responds:



“In December 2018 the mother asked the father to come to London to take H-N and B with him to France whilst she flew to the USA to meet “Whispy”, a man she only knew from the internet. After he received worrying SMS from the mother evoking suicide, after he called the mother’s sister and the mother’s mother and Social Services, the father decided to keep H-N with him in France. For the first time in their relationship the mother demanded video contact with H-N which the father facilitated two to three times a week. She refused to take direct contact and stopped taking up indirect contact after June 2019. The decision regarding the Hague proceedings was made on Wednesday, 25 September 2019. As is customary in France, neither parent was present and the father was notified of this decision that afternoon by his lawyer. The father was not notified of any handover agreements or requests. The next morning the French police, sent by the mother, arrived at his flat and H-N was taken from school and handed to the mother at the police station.”

- 122 The father has already accepted at the Court of Appeal that he wrongfully retained H-N in France. There is no evidence that he wrongfully retained B. The mother did not come to collect the children for more than three weeks after she said she would. I do not think there is evidence to prove that the father did not cooperate after the French court’s decision was made. As to contact, the father was prepared to offer the mother contact but on his terms and it is not surprising she found it unacceptable.
- 123 The father was wrong to have retained H-N and I have no doubt that it was extremely upsetting for H-N, the mother and for B. I do not, however, find that this was done to control the mother, to punish her or to make her go back to the father. The evidence leads me to conclude, on the balance of probability, that the father genuinely considered that H-N would be better off with him at that time. He was quite wrong, as I have said many times, to retain H-N, as opposed to making an application through court, but I accept that he was motivated by concern for H-N. There is evidence to suggest that the mother’s behaviour at that time was objectively worrying. It is not clear to me why she did not come to collect the boys in December, though she says she had flu when she first returned from New York in mid-December. I do not find, on the balance of probability, that the father’s actions, however much to be deprecated, were motivated to be psychologically abusive, though I am sure they greatly upset the mother.
- 124 Allegation 16. The mother alleges here that upon H-N’s return to the mother, the father reported the mother to Social Services without justification. The father says that the father asked the mother for information and contact with H-N which were refused. The father wrote to Social Services with his concerns.
- 125 I do not find this allegation proven. The father, I find, was worried about H-N after his return to his mother and to England in September 2019 and the mother refused to give him any information about H-N and her emails were, unsurprisingly, hostile. I do not find it unreasonable for the father, therefore, to contact the local authority with his concerns, even though the local authority did not find that his concerns were made out when they investigated. The concerns were that the mother was not meeting the emotional, practical and social interaction needs of the children. He also raised concerns about the mother’s

cannabis use, the children's diet and the mother's mental health and concerns around the mother's previous self-harm.

- 126 The cannabis test the mother has taken in these proceedings is negative and there is no evidence, other than what the father says, that she has ever used cannabis. The other concerns are ones which the father has raised during these proceedings and there is evidence of some of them, such as the mother's mental health not always being stable. In December 2017, the mother had cut her thigh badly. The father believes this was self-inflicted. I do not know. What is agreed, however, is that the mother sewed the wound up herself, and I have seen the picture, which I find alarming. It was in April 2018 when the mother says that the father had said that they had not had hot water for five months and at other times the father and the social worker admitted how cold the house was. It is the case that when the local authority, in 2017, held an ICPC, the father said nothing about his various concerns but he told me, and I accept, that it was more important at that time to be on the mother's side. As I say, I accept that that was his motivation, not that it was the right thing to do. I accept that the father had these other concerns and that raising them in each incident was not done to be psychologically abusive to the mother. The validity of the concerns for the children's welfare is likely to be more of an issue for the welfare part of this case. To put it at its most neutral, these parents had very different ideas about child-rearing and they both think the other parent's approach is wrong.
- 127 Allegation 17. The mother says here that the father has made an application to court for H-N to live with him and has made false allegations that the mother smokes cannabis and prioritises playing on her Xbox over caring for H-N. The father's response to the allegation is that the father has made an application for H-N to live with him in France. The father alleges that the mother smoked cannabis for a long time during their relationship, at times in her bedroom next to H-N's bed.
- 128 I have already said that there is no evidence that the mother has smoked cannabis, other than what the father has said. I am not in a position to form a view as to whether mother was smoking some harmless substance which father has either mistaken for cannabis or presented to this court as cannabis. No questions were asked about this.
- 129 The father has a right to make an application for H-N to live with him in France. That is not abusive in itself. This is the step the father should have taken when, instead, he retained H-N in France. This is not a case where litigation has been used to abuse the other parent. The father, I have no doubt, genuinely wants H-N to live with him and believes that his welfare would best be served by such an outcome.
- 130 As for the Xbox games, there is evidence in the papers of the mother playing this in the small hours but I do not have evidence that she prioritised playing them over caring for H-N.
- 131 I do not find this allegation proven as part of psychological abuse. I have found that the mother has made numerous allegations against the father which are not proven. I think it would be artificial to make a positive finding in respect of the cannabis use against the father in that context.
- 132 The final category of allegations is abusive behaviour and harm caused to H-N. Allegation 18:

“In October 2016 the father caused delay in H-N receiving medical attention following a fall at the father’s home in France which resulted in H-N fracturing his skull. The father removed child proofing measures the mother had put in place, putting H-N at risk, and then refused the mother’s request to take him to hospital, saying that she was overreacting, causing the mother to lose confidence in her instincts as a mother.”

The father says:

“The father denies that he removed child protection measures. He removed one rug from the floor as the mother’s habit was to allow H-N to be naked without a nappy, to prevent H-N from soiling the rug. The father himself had already installed some child-proof measures in his flat and the mother and father installed foam protective mats after the incident. The father and mother sought appropriate medical advice after the mother informed the father of the bump on H-N’s head and that she believed he was well and happy in himself. He was told by H-N’s French GP that there was no need to take H-N to hospital. As H-N’s bump did not go away, the parties agreed together to take him to hospital.”

133 Both parents were responsible for a failure to get H-N properly cared for when he fell and hit his head. The father had more responsibility because the incident happened in France and he is more familiar with how things there work than is the mother and he had a greater ability to get H-N to hospital. I do not accept the mother’s evidence that the father removed child-proofing measures. I do not think the incident caused the mother to lose her confidence in her instincts as a mother.

134 Allegation 19:

“In 2018 the father would leave H-N alone in a dark room crying and banging his head.”

The father said:

“The father allowed H-N to appropriately cry for up to three to five minutes at a time in the bedroom to get to sleep as he did not agree with the mother’s practice of letting H-N watch a device in bed for hours at a time at bedtime. The father did not allow H-N to become overly distressed and does not accept that H-N banged his head on a wall.”

135 This is another example of very different parenting styles. I prefer the father’s evidence, for reasons already given, that he tried to encourage H-N to develop better sleeping routines by leaving him to cry for a few minutes. I do not find that H-N was left for forty-five minutes, as the mother claims, or head-banged or became overly distressed. I find these are all embellishments by the mother.

136 Allegation 20:

“In 2018, the father would lose his temper and shout at H-N, causing him to cry and be frightened.”

The father says:

“The father denies ever losing his temper or shouting at H-N.”

137 I have already discussed this allegation. I do not believe the mother’s account and I believe it is most unlikely that she would, shortly after this, have asked the father to look after H-N and B for at least two weeks if that had been the case. I have seen nothing to make me conclude that the father’s attitude to care of his child is like this.

138 Allegation 21:

“The father retained H-N in France, separating him from his primary caregiver for a period of ten months. Between January 2019 and June 2019 H-N was having video contact with his mother. The father would get angry with H-N when he said he wanted to come home and the father would tell H-N that his mother did not love him.”

In response, the father says:

“By mid-January 2019 the mother demanded getting video contact. The father realistically facilitated the video contact two to three times a week. There was no abuse between the parents except in writing. The mother stopped all contact in June. The father denies making any bad comment about the mother to H-N, who never said he wanted to come home.”

139 It is the case that the father retained H-N but I do not find the rest of this allegation proven and it does not accord with the documentation or any other evidence, other than the mother’s which I do not find reliable.

140 Allegation 22:

“H-N would tell the mother repeatedly that the father hit him and that she was not there and that big people hurt little people.”

In response, the father says:

“The father has never struck or smacked H-N in any way.”

141 I do not find, on the balance of probability, that the father treated H-N in this way. The mother’s own report in early 2019, as I have already said, is different. The father does not strike me as such a man. On the balance of probability, I find that H-N has not said such things to the mother and that the father has not done such things.

### Conclusion

142 Therefore, the admissions which father gave the Court of Appeal in January 2021 stand and, after very careful consideration over five days in court subsequently, I have found only one

further allegation partly proven relating to the delay in getting H-N attended to in hospital when H-N had a skull fracture. I have made various comments about both parents' behaviour over the course of their relationship.

- 143 The father did not seek formal findings against the mother but has raised many concerns about matters which are relevant to H-N's care during these proceedings. There will be a directions hearing next week where I hope to hear the Children's Guardian's proposals as to the way forward. I expect to hear positive proposals about H-N spending time with his father as the case continues. From now on my focus will be on what arrangements will best meet H-N's needs developmentally, educationally, psychologically, emotionally and physically.
- 144 I also want to say that it is not too late even now for there to be an attempt to see if compromises can be reached so that H-N is able to have both parents playing a full part in his life once more.
- 145 That is the judgment of the court.
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**CERTIFICATE**

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Official Court Reporters and Audio Transcribers  
5 New Street Square, London EC4A 3BF  
Tel: 020 7831 5627 Fax: 020 7831 7737  
civil@opus2.digital*

**\*\*This transcript is approved by the Judge\*\***