



NEUTRAL CITATION NUMBER: [2022] EWFC 124 (B)

CASE NO: 0X21P00201

THE FAMILY COURT

SITTING AT OXFORD

HEARD ON 10TH OCTOBER 2022 TO 13TH OCTOBER 2022

JUDGMENT GIVEN ON 18TH OCTOBER 2022

BEFORE HER HONOUR JUDGE OWENS

F

And

M

And

A & B

(Acting through their Children's Guardian, Ruth Alexander)

Representation:

For the Applicant:

Ms Berthelsen, Counsel

For the First Respondent:

Ms Cox, Counsel

**For the Second and Third Respondents, A and B,
acting through their Children's Guardian:**

Mr Mulholland, Counsel

This judgment is being handed down [in private] on 18th October 2022. It consists of 36 pages and has been signed and dated by the judge. The Judge has given permission for the judgment (and any of the facts and matters contained in it) to be published on condition that in any report, no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name, current address or location [including school or work place]. In particular the anonymity of the children and the adult members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court. For the avoidance of doubt, the

strict prohibition on publishing the names and current addresses of the parties and the child will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain.

Introduction, Background and Evidential summary

1. This is a fact-finding hearing to deal with allegations made in the context of Children Act and Family Law Act proceedings. The parties are the two parents, M and F, and the children (A and B) were joined to these proceedings with a CAFCASS Guardian appointed for them on 18th May 2022. This is in fact the second set of proceedings concerning these two children. Previous proceedings took place from June 2019 to 15th June 2020 when a final Child Arrangements Order was made. That order provided for the children to live with M and spend time with F every Tuesday to Wednesday and on alternate weekends from Friday to Monday. Subsequent to that order being made, F applied for enforcement on 3rd September 2020, but this application was dealt with on the papers alone with the court determining that the application *'did not require or justify any further court hearing'*.
2. On 22nd March 2021 F applied on a C100 and C1A for variation to the existing Child Arrangements Order, seeking shared care. The court did not approve the issue of F's statement in support of his C1A. On 25th June 2021 F also applied for a Non-Molestation Order against M. On 6th July 2021 the First Hearing Dispute Resolution Appointment for F's C100 application took place, and the case was timetabled to a Directions Hearing on 20th October 2021. On 21st September 2021 F applied on a C2 seeking a without notice interim order requiring the children to live with him whilst proceedings were ongoing. On 14th October 2021 M applied for a Non-Molestation

Order against F. At the Directions Hearing on 20th October 2021 the court made Non-Molestation Orders against each parent until further order (both orders remain in place to date) and directed a section 37 report from the Local Authority. On 6th December 2021 M applied on a C2 for orders dealing with interim contact. On the same date F applied on a C2 for an ISW to complete the section 37 report instead of the Local Authority. On 20th December 2021 the case came before me. I refused the application by F for an ISW to be directed to complete the section 37 report because, as section 37 makes clear, the direction can only be made to the Local Authority and the court cannot require the Local Authority to employ an ISW to complete such a report, the allocation of resources to complete the required report being purely a matter for the Local Authority. By this point, the Local Authority had been involved with this family through early help, then child in need planning and finally child protection since July 2020. Contact became supervised as result of my decision about the potential risks to the children arising from unsupervised contact with their F and was scheduled to take place for 2 hours each week at a contact centre. The Local Authority sought to complete a psychological assessment of F as part of their work completing the directed section 37 report, however despite initially indicating that he would consent to this F refused to engage with a psychological assessment. A further DRH took place on 2nd February 2022 before District Judge Buckley-Clarke and the case was re-timetabled because the Local Authority had had to allocate a new social worker to complete the section 37 report. The case was also re-allocated to Circuit Judge at this point.

3. The section 37 report was duly received in early May 2022 and a Directions Hearing took place before me on 18th May 2022 at which (with the consent of CAFCASS), the children were joined as parties and a CAFCASS Guardian appointed to represent them.

A further Directions Hearing took place on 21st July 2022 after the Guardian had had an opportunity to read all of the case papers and the question of whether a fact-finding hearing was necessary was revisited with input from the Guardian. By consent of all concerned a fact-finding hearing was directed as necessary and proportionate, and scheduled to take place 10th to 13th October 2022 in person, with a pre-trial review on 27th September 2022 to also deal with any necessary ground rules for the fact-finding hearing. A written statement of evidence setting out the allegations that he was seeking to prove against M was directed from F, followed by written evidence in response from M.

4. I have read the evidence contained in the court Bundle (considerably reduced from its original over 960 pages to just over 500 by dint of the excellent efforts of the advocates involved), and heard evidence from M, F, and W.

Parties' positions

5. F has applied for a variation of the previously made child arrangements order and also seeks a non-molestation order against M. He seeks various findings against M as set out in the attached Appendix A. He denies most of the allegations made against him by M, though he does accept some factual aspects. It is his case that M has purposely set out to isolate him from the parents of the children's classmates, that she has made false allegations concerning his behaviour, and caused the children harm by neglect and abuse.

6. M has applied for a non-molestation order and has indicated that she will be seeking a s91A Children Act 1989 order to prohibit further applications by F at the conclusion of the proceedings. She seeks various findings against F as set out in the attached Appendix B. She denies the allegations made against her by F, save for an acceptance that she used inappropriate behavioural management strategies of showers and going into the garden at one point, strategies which she says she ceased on advice from social services, and which do not constitute harm or abuse in respect of the children. M's case is that F has acted towards her in a way that is coercive and controlling.

7. As is usually the case in fact-finding hearings, the Guardian is neutral with regard to the allegations, but accepts that there is a need to determine the factual matrix which will inform the welfare assessment in due course.

Relevant legal considerations

8. I have reminded myself that the burden of proof is upon the party making an allegation and that they must prove such allegations to the civil standard, ie on balance of probabilities (*Miller v Ministry of Pensions* [1947] 2 ALL ER 372). Applying Re B (Care Proceedings: Standard of Proof) [2008] UKHL 35, [2008] 2 FLR 141, I am clear that there is only one civil standard of proof, and that was proof that the fact in issue more probably occurred than not. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. There is no 'heightened civil standard' and no legal rule that 'the more serious the allegation, the more cogent the evidence needed to prove it'; common sense, not law, requires that in deciding whether it was more likely than not that something had taken place, regard should be had to inherent probabilities. There is no room for a finding that something might have happened. The law operates a binary system in which the only values are 0 and 1. The court when weighing up all

the evidence has to ask itself (for example) did this happen yes or no? Findings of fact must be based on evidence and not on suspicion or speculation (Re A (A child) (Fact finding hearing: Speculation) [2011] ECWA Civ 12). Evidence is also not evaluated and assessed separately, “A Judge in these difficult cases must have regard to the relevant of each piece of evidence to the other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof” (Butler Sloss P in Re T [2004] ECWA (Civ) 556). I have also reminded myself of the need to consider the ‘broad canvas of the evidence’ and that “*the range of facts which may properly be taken into account is infinite*” (H and R (child sexual abuse: standard of proof) [1996] 1 FLR 80).

9. I have taken into consideration the principles outlined in Re H-N and others (children) (domestic abuse: finding of fact hearings) [2021] EWCA Civ 448 with regard to domestic abuse allegations especially those involving coercive control and fact-finding hearings. K v K [2022] EWCA Civ 468 is also relevant, providing authority for the position that, whilst the court will have to look at the wider picture and patterns of behaviour in relation to allegations of coercive control, it is not necessary to determine every subsidiary date-specific factual allegation. I have also had regard to Practice Direction 12J Child Arrangements and Contact Order: Domestic Violence and Harm which provides definitions as follows: *'domestic abuse' includes any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, psychological, physical, sexual, financial, or emotional abuse. Domestic abuse also includes culturally specific forms of abuse including, but not limited to, forced marriage, honour-based violence, dowry-related abuse and transnational marriage abandonment;*

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

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

10. Hayden J in *F v M* [2021] EWFC 4 also commented in relation to the definition of coercive and controlling behaviour that “*Understanding the scope and ambit of the behaviour however, requires a recognition that 'coercion' will usually involve a pattern of acts encompassing, for example, assault, intimidation, humiliation and threats. 'Controlling behaviour' really involves a range of acts designed to render an individual subordinate and to corrode their sense of personal autonomy. Key to both behaviours is an appreciation of a 'pattern' or 'a series of acts', the impact of which must be assessed cumulatively and rarely in isolation.*”

11. In addition, I have reminded myself of the principles outlined in *R v Lucas* in terms of where it is alleged that a witness may be lying that there can be many reasons why someone may lie including shame, humiliation, misplaced loyalty, panic, fear, distress, confusion or emotional pressure, and that just because a witness may lie about one aspect of their evidence it does not necessarily mean that they may be lying about other aspects.

Findings

12. The first allegation pursued by F in this fact-finding hearing is that M purposely set out to isolate F from the parents of the boys’ classmates (which included making false allegations against him). F’s written evidence about this is in his statements at C157 and C242. In summary, what he says is that he noticed friends and parents were reluctant to speak to him, and he told me in his oral evidence that he was isolated, and this was as result of the ‘lies’ that M was spreading about him. However, there is

absolutely no evidence anywhere that any of the friends or parents were specifically told something about F by M that was untrue. M accepted that she had told other parents of the existence of a non-molestation order, but no other details and was very clear that she had only discussed some specifics of the separation with a very small number of friends, one of whom appeared to have been a mutual friend at the point in question. The only other evidence of any kind about this apart from F's own evidence is in the form of a series of WhatsApp messages (C162-C173 for the messages) between him and someone who appears to be the administrator of the WhatsApp group in question. It seems from this person's message that there had been some communication in relation to this between F and the administrator in March 2020 in which the administrator said that M asked if F could be removed and that they had understood a letter from a solicitor was also going to be sent to him about this. By this point, it is not in dispute that there were ongoing Children Act and Family Law Act proceedings before the court and both parents seemed to accept in their evidence to me that it was clear by then it was not a good idea for them to have contact with each other. M told me that this WhatsApp group was not a general parents WhatsApp group but had been specifically set up for the small number of parents of children who went into early self-isolation prior to the national lockdown later that March and, since she was the one having to self-isolate with the children at the time, she was part of the group. It doesn't appear to be disputed that she had given instructions to her solicitors to write to F about not being part of this group, but unfortunately that letter did not arrive. It is simply not clear on balance of probabilities why F believes that he was removed from this WhatsApp group as a deliberate attempt by M to isolate him from necessary support since the purpose of the group would not have been relevant to his circumstances at the point he was removed, and he accepts he remained part of a wider parents WhatsApp

group. The evidence from M about this being a group that was not relevant to his particular circumstances was credible and compelling. The respondent does not have to disprove any allegation made against her, I note, but I did prefer her evidence about this to that of F. It is obviously not her fault that she and the children had to isolate at the time nor her fault that a letter from her solicitor went astray. I question to what extent F would have drawn any benefit from the group whilst the children were not in his care and have also taken judicial notice of the fact that this was a very exceptional time for all concerned arising from the pandemic. In any event, F was restored to the WhatsApp group within a very short space of time after he queried his removal, and this seems to have been a very minor incident with a reasonable explanation on the part of the mother. I will return to the general aspects of the behaviour exhibited by F towards others including professionals at points, but it actually seems more likely than not on the evidence before me that if any friend or parent thought badly of him, that was at least in part due to his own actions at times based on his own admissions. I do not find this allegation proved.

13. Part of the first allegation, and the entirety of the second allegation made by F against M, is that she has made false allegations against him and about his behaviour, including to police and social services. During her cross-examination of him, Ms Cox for M asked him where M had made allegations against him during the early part of 2021, this question arising partly from his explanation in response to an earlier question to the effect that he believed M was making up allegations against him and that justified his numerous complaints to the police and social services especially during this period. F's answer departed considerably from the topic, but he was unable to point to any concrete example beyond her saying at some point that she feared he was misusing drugs. He

accepted that the vast majority of police and social services complaints, especially during the early part of 2021 were from him. I think, though it was a bit difficult to work out because F had a tendency to digress, that what he also tried to say was that somehow when he made reports this was as a result of M manipulating the situation to create that result. I am really at a loss to understand the logic to this, because the police and social services records seem clear that the first contact for allegations came from him in this period and, in fact, for the majority of the records that I have in the bundle. He was also unable to provide any clear evidence of how M manipulated events in the way he was alleging, and I am concerned that the fact that he appears to believe that she has somehow “made events look as if I am the cause” as he told me in his oral evidence, suggests that either F is willfully blind to the facts or is genuinely unable to recognise reality. Either way, it is deeply concerning in terms of what it says about his approach.

14. On looking at the allegation that M made false allegations about drink and drug misuse, the evidence that I have in the bundle and in fact what both parties told me is that during the CAFCASS interviews of the M in preparation of the section 7 report (D304) and during the social work Child and Family Assessment (CAF) (D328) she raised these issues. She told me in her evidence that she was describing her experiences when she lived with F, though it does appear in the CAF at D328 that she also told the social worker about one allegation where she was told by other people that F had been smoking cannabis on 27th May 2021. Subsequent drug tests were negative so there is no independent evidence to substantiate ongoing drug misuse and M herself accepted in her oral evidence to me that she was not alleging ongoing misuse. If M is correct and F did drink and use cannabis during their relationship, and she was told by someone

that he was using cannabis on 27th May 2021, then it would be reasonable for her to raise this, I find. It certainly seems from what F told professionals (D328) that he had used cannabis in the past. To the extent that he had at least used drugs in the past, admitted this, and has at times since behaved erratically and with occasional loss of control (which I will return to later), I find that the concerns expressed about drugs and alcohol by M were reasonably raised and thus not wholly false allegations and this aspect of the allegation is not proved.

15. This allegation also relates to what F says are false allegations by M about his behaviour to police and social services. It is not entirely clear which specific examples he relies upon apart from the drug and alcohol misuse dealt with above. I have therefore looked at the police reports about him that M has made. He accepts that he made a threat about her niece in April 2019 (though he disputes his intention in making the threat and I will return to this when I deal with M's allegations about this and the alleged threat to her later) (E394, E396); he denies making a threat to kill M herself (E394, E396); she reported him for being controlling and saying that she did things incorrectly with the children (E394, E396) and this is a disputed allegation which is one that M pursues against him so I will also return to it later; she reported an incident on 2nd June 2019 at the bus stop when she alleged that he had some sort of altercation with another parent – he accepts being present but denies an altercation (E398, E399); F admitted breaching court undertakings by approaching M on 28th September 2019 (E403, E409-411). As was put to him in cross examination by Ms Cox for M, the vast majority of reports to the police were in fact from F, certainly in the first half of 2021. I also have the evidence of his behaviour during a review child protection conference on 1st December 2021. It doesn't appear to be disputed by F that, as this evidence shows, he was reluctant to

leave the virtual conference despite the conference having ended (having been adjourned in fact at his request), and that “*he became angry, frustrated, and distressed. He found it difficult to contain his emotions and was at time (sic) displaying thoughts that came across as being paranoid*” (D359). He was rude to the social worker, disrespectful to her and in how he referred to M, and accused the social worker of lying, bias and that she was covering up M’s abuse of the children. It is noted that towards the end of what, on any reading, seems to have been a somewhat extraordinary tirade by F, F said that his comments were not personal towards the social worker (D361), though if he genuinely believes that accusing a social worker of lying, covering up abuse and being biased against him were not personal attacks then I really do worry about what he would think were personal attacks. I can appreciate his frustration, as anyone familiar with Family cases can understand, it is very difficult and frustrating for parents involved in the processes. That does not excuse his behaviour towards the social worker on the evidence before me and does give me grounds to believe that it is more likely than not he has exhibited concerning behaviour at times.

16. In this context, M told me that the reason she reported his presence at the bus stop was because she was concerned about his behaviour, from her perspective he had no reason to turn up at the bus stop and she was told by her domestic abuse worker to report any concerning or escalating behaviour after she had reported death threats from him. M was quite frank in her evidence that F did not go up to her, she did not hear what was said by either party, and she simply saw him go up to a mutual friend and reach his arm out. She was told afterwards by this person that F grabbed his collar. She accepted that this incident taken in isolation would not have merited reporting but was very clear that she only reported it as a result of the encouragement to do so that she received from the

domestic abuse service. I find it was not therefore unreasonable for her to report this, at its highest what this does perhaps show is that, as M told me in evidence, if F wonders why the reactions of other people to him may be odd it might be because F at times has a way of approaching things that is quite odd and, if this former mutual friend was right that his collar was grabbed by F (though I don't think I need to make a finding about this), then this could make friends and parents less willing to engage with him. M has clearly not made multiple false accusations about F on the evidence before me and I do not find this allegation proved.

17. The next allegation is that M has neglected the educational needs of the boys. F's evidence about this is mainly in the form of his 12th August 2022 statement at C246-C248 and various exhibits at C261-C266. He also said in his oral evidence that A's schoolwork declined when he was no longer in his care and improved when F was assisting him. It doesn't appear to be in dispute that there were concerns about both boys during 2019 and through to 2021. This overlaps with the period of the previous proceedings and these current proceedings, covers the period in the immediate aftermath of the relationship breaking down and significant changes to the boys' lives as a result. It also encompasses the global pandemic with national lockdowns and children having to be home-schooled. As I have also earlier noted, social services were involved with the family throughout this period too. The majority of items produced by F as his exhibits are pieces of schoolwork rather than school reports, as M pointed out in her evidence to me.

18. The social work evidence in section D and the CAF/CASS section 7 report in the same section all note that the boys are sensitive children who struggle with change (see for example D309). Although F clearly and repeatedly expressed concerns to social

services about issues with schoolwork in the care of M and this is noted in the social work evidence, the other professional evidence does not support a conclusion that the boys were struggling educationally as a result of neglect of their educational needs by their mother. Instead, it shows that children of a young age are not expected to complete every single piece of homework and to spend hours doing it. At D353 in the Child Protection Core Meeting notes from October 2021, it is noted that the school has “*no concerns about the level of homework that are being completed by M. The school are not placing high expectations upon children of A & B’s age around homework. Children this age are expected to only spend a short amount of time on homework, rather than spending hours at a time*”. M told me that her priority at the time was to support the children emotionally rather than force them to complete homework and that she accepted they would have been struggling emotionally as a result of the breakdown of their parents’ relationship and cessation of direct contact with F (part of which was due to his working abroad). In complete contrast, when Ms Cox questioned F, he refused to accept that any child would find parental separation difficult. He also made the somewhat bizarre claim that he was better qualified than M to help the children with their maths and science homework because he was the “third best at maths in his city” whilst at school and apparently a member of some sort of national maths club – bizarre because M is an academic scientist so presumably has above average mathematical and scientific ability herself. The social work evidence in section D confirms that both boys are now doing well educationally, something that M also told me in her evidence. It seems more likely than not that any issues with the boys’ schoolwork were temporary and were not as a result of their educational needs being neglected by M but rather as a result of the significant changes in their lives and the ongoing challenge of being caught

up in significant parental acrimony, and probably also due to the impact of the global pandemic. I do not find this allegation proved.

19. The fourth allegation made by F is that M is unable to adequately supervise the boys resulting in them running towards a busy road. It is not disputed that in May 2020 there was an incident when B ran out of the house naked and ran along the pavement outside his house. M's evidence about this was that B had had a bath at bedtime and she was putting the bin out when B shot past her out the door. It appears to have been at the end of May in mild weather and this is one of a pair of boys that both parents accept can be boisterous and challenging at times. M was immediately aware that B was outside, he seems not to have been outside for very long and came to no harm. F did not in fact do anything about this until October 2020 when he reported it as part of a longer complaint to the police alleging that M was manipulating the children to emotionally abuse him (E419-E420). It therefore was not sufficiently concerning for the father to have done anything about it before October. It seems to me to be simply something that could happen to any parent of a young child (as was put to F by Ms Cox, young children can and do run away at times though I am not sure if F accepted this since he didn't actually answer the question about this). I am not persuaded that this does prove neglect on the part of M as F alleges.

20. The only other incident relied upon by F in this regard relates to a contact handover where both agree that on 5th January 2021 A ran off. Both agree that in fact both children went to run off, but F managed to catch hold of B and that M went in pursuit of A. It is also not disputed that within 15 minutes M had returned with A. During this time F had contacted the police and alleged that M 'made' A run off and the police log

shows that F was extremely distressed and agitated (E423-E424). I don't think that F disputes he was distressed and agitated from his evidence to me, more that he was left in the dark by M while he waited for her to return. I accept that 15 minutes, whilst not long in the scheme of things, could seem like an eternity to an anxious parent, but what is very striking about this is F's reaction and the impact on B who was with him. F seems to have very rapidly blamed M for A running off, not at all acknowledging that by this point handovers had not been smooth sailing for anyone concerned least of all the children. It seems very clear that F's extreme distress and agitation were potentially very frightening for B who also would not have known where his mum or his brother were. I would have expected a reasonable parent to prioritise reassuring B and attempt to conceal their own anxiety to help B. I also would not expect a reasonable parent to automatically leap to the conclusion that somehow M had caused the incident, nor to contact the police as quickly as F did. M gave very credible evidence that she did try to text F via the app to let him know she had found A, but that she was in an area of poor signal. In any event I would have thought that it would have been reasonable for her first priority to be to catch up with A and then persuade him to come back. F's reaction to this incident was not reasonable and exposed B to his strong emotions in a way that could cause him emotional harm, I find. Put bluntly, F put his own needs above those of B and it is deeply concerning that he leapt immediately to blaming M and contacting the police about this and did so in B's presence whilst extremely agitated and upset. It seems clear that A ran off from both M and F during a contact handover and in the context of ongoing conflict. I do not find that this was attributable to M being unable to adequately supervise the children and do not find this allegation proved.

21. The fifth allegation by F is that while in M's care, the children exhibited aggressive behaviour towards other children and each other, including pushing and numerous

biting incidents in the home. He alleges that this was a result of M's parenting. It is not disputed that the boys can be challenging at times, and this is recorded in the social services documents in section D and in the CAFCASS report at D307. However, this seems to have improved at the end of 2021 and into 2022. Professionals (including teachers) seem very clear that both children have been emotionally impacted by the family dispute (see for example D308). It is also noted in the CAFCASS report (again at D308) that the boys had been supported by their maternal grandparents but that they had recently left, leaving the boys with a further loss. As M told me, there can be a number of factors which impact on children's behaviour, and it can often be the case that they don't in fact react until some time later. Her evidence about this was balanced and credible, whereas F in contrast seemed utterly unable to accept that there could be any other reason for the boys' behaviour apart from M's parenting or that it could even in part be due to anything that he had done. I've have already noted that CAFCASS reported that these were sensitive children who struggle with change anyway, and that report goes on to note that this would magnify the emotional impact on them of any changes (D309). The report also acknowledged that A's behaviour could both be a response to parental conflict as well as a reaction to not seeing his F (D309 again). That same report also noted "*some children are emotionally resilient and can take changes of routine and care in their stride. This is not the case with A and B*" (D311).

22. I have also considered allegations 6 and 7 at this point because I think they are linked to the case that F is putting about M's parenting. M accepts that she briefly adopted a wholly inappropriate technique to try to manage A's emotional outbursts in early 2021 (allegation 7), though denies that she did this as a way of inflicting punishment. The first professional evidence about this is in a social work chronology entry at D319 where F sent two emails on 23rd March 2021 alleging that M put the children outside in the cold and attaching a recording of B saying this. The next entry is dated 6th April 2021 and records an email from M acknowledging that she has used cold showers and putting A outside but not as a punishment. At D321 M gave the social worker more detail about this, saying that M used either sending out into the garden as a time out technique in response to emotional outbursts or, when it was too cold or dark to go out in the garden, used the shower on occasions to get them out of the state. The social worker clearly records having a long discussion with M about why this was a harsh and unacceptable parenting approach, and she was advised not to do it again and of

alternative parenting strategies that were appropriate. M's evidence is very clear that she accepted and continues to accept that she should not have done this, but it was not done as a punishment, and that she has not repeated it since she was advised by social services not to do it. I'm therefore somewhat at a loss to understand why F seems to persist in believing that he was not believed about this and that social services took no action. It seems to have been promptly investigated and appropriate advice given to M, who has accepted that she should not have done it and has not apparently repeated the strategy.

23. I also have concerns about F recording B being questioned by him about this, something that he (I think) justifies because he says he was not being taken seriously but which the records show was investigated as soon as he raised it. I will return to concerns about F recording the boys in various forms to support his allegations later in this judgment. In summary, this seems to have been an instance of M adopting inappropriate parenting strategies for a relatively short period and I am satisfied that she stopped as soon as she was advised that this was not appropriate and there is no evidence to show that she continued using this technique.

24. Allegation 6 is that both children sustained physical injuries (bruising and scratches) which were inflicted on them by M, who was unable to handle them safely. It is not disputed that there have been instances when the boys have had various minor injuries and that these have arisen whilst in the care of M. Specifically, these are as follows:

1. 9th February 2020 A has scratches on his face (C131; C190)
2. 2nd May 2021 B has a small scratch or graze on his ankle (C181)
3. 6th September 2021 A has bruises to his ribs (C178-C180)
4. 16th February 2021 B has a scratch to his face (C185).

25. M does not dispute that the boys had these injuries but does dispute that she intentionally caused them. She said that scratches to A's face were caused accidentally when she was struggling to get A into his car seat after swimming. She described him as writhing and that she had to wrestle him into the car seat, and it was whilst trying to pull the car seat belt across him that his face accidentally made contact with her nails

and the injuries were caused. F's evidence is that A told him M did it with her nails and he believes he was lied to initially about the cause in a solicitor's letter to him at C191. Again, it seems as if F recorded A when he questioned him about this, as well as photographing the injuries. A's apparent account of this to F actually says that "*Mummy accidentally scratched me with her fingernails*" he did not say that M hurt him deliberately even on F's own evidence (C191). It is not clear to me if there was some misunderstanding between M and her solicitors about the explanation given to F but in any event what F was given is second hand via the solicitors. In the context of extremely acrimonious conflict between these parents I can see that M would be less likely to volunteer that she accidentally caused the injury to a F who seems at the very least to be prone to leaping to the worst conclusions about her. I don't find it significant that F may not have been given the whole explanation at first in the context of indirect communication and the ongoing conflict between them. I also note that it is not disputed A has suffered injury whilst not in the care of M too – 28th January 2021 when A bumped his head whilst in the care of F, and more recently when he again bumped his head whilst speaking to the Guardian. The evidence is very clear that both boys are very active, boisterous and occasionally suffer accidental injury regardless of who is looking after them, I find. I find it credible that the scratches were accidentally caused in the circumstances that M described, and F has provided no credible evidence to show otherwise.

26. In relation to the small scratch or graze on B's ankle on 2nd May 2021, this is a very minor injury indeed and I am not clear that a reasonable parent would have thought anything untoward of it. Again, the explanation that M gave is credible, namely that she was putting a sock on B and accidentally caught his ankle with her fingernail and F has produced no credible evidence to show otherwise.

27. The 6th September 2021 bruises are accepted by all to be perhaps the greater injuries, but even then, there is no broken skin, and they are limited to an area on the side of his lower torso. Again, M does not dispute that A had these bruises and gave an explanation of them being caused accidentally when A was refusing to go to bed and jumping up and down on top of a bunk bed with B underneath, so she was worried for

the safety of both boys. She accepts she pulled A off of the bunk bed and in so doing he caught his body, and the bruises were caused. The account given by M is credible, both in terms of accidentally causing the bruises and in terms of the difficulty of trying to protect both boys when A was acting out. It is also consistent with the first account from A to F that F himself put in his statement at C250 – “*Mummy pulled me down the ladder*”. F has offered no credible evidence to show that this did not happen as M described and as A himself first described. It is clear that when A was spoken to by the police and social worker about this, he was reluctant to talk about home life with either parent and said very little about the incident beyond saying that he hurt his side on the bunk bed and that he was alone in the room at the time (D342). A child of his age, who has experienced this much parental conflict and who struggles to cope with change is bound to be less likely to be forthcoming when spoken to about this sort of thing, I find. It is not significant that he described being alone at the time it happened as a result.

28. On 16th February 2021 B had a scratch to his face which he told F was caused when he fell over at nursery (C174). F’s evidence is that because he has not seen any accident report form from the nursery, he believes that M scratched him deliberately at home attempting to discipline him. I do not actually have anything from the nursery confirming that there was no accident at the time in question. F also alleges that the fact B did not go into nursery the following day was because M was worried about the nursery’s reaction to the scratch. M told me that the reason B did not go into nursery that day was because it was half term for A, so she had both children at home with her, something that does seem credible and which F has produced no evidence to counter. As before, this is not a terribly significant injury on a young and boisterous child as it looks to simply be a long, thin, red mark on his cheek which has not broken the skin. F has produced no credible evidence to show that it was deliberately inflicted on B by M.

29. I do not therefore find any of allegation 6 proved in relation to any deliberate infliction of injury on the boys by M. I also do not find that allegations 5, 6 or 7 are proved in relation to problems with M’s ability to parent the boys– it is more likely than not that issues with the boys’ behaviour are not due to M’s parenting but rather arise from the

ongoing parental conflict and changes that the boys have had to deal with including the global pandemic, and that any injuries they have suffered are accidental and not due to inappropriate handling by M.

30. The final allegation from F is that M's attitude towards contact resulted in the children experiencing stress and anxiety at contact hand-over, which melted away once she was no longer present. It is a bit difficult to work out exactly what case F is putting about this and why it is relevant to the welfare issues that will fall to be determined in due course. I think that what he says is that any problems with contact hand overs were solely due to M's unreasonable attitude and that removing her from the equation has solved the problem. It is not disputed by either parent at this hearing (though I note F has denied this elsewhere in his evidence and to professionals) that contact between the parents did become difficult and that neither parent wants to come into direct contact with the other now. It is also not disputed by M that she found handovers caused her anxiety and stress, something that she also told professionals about. In the context of the long-standing and fairly extreme acrimony in this case, that is perhaps hardly surprising. What is more surprising is that F does not accept any responsibility for problems with handovers, at points even refusing to acknowledge that there were problems so that he refused to allow the school to help in October 2021 when this was reasonably suggested. He continued to insist on face-to-face handovers involving both parents rather than a third party (C200) whilst simultaneously telling me in this hearing that it is better if he doesn't come into contact with M. I understand that he says this is because he worries about false allegations being made, but even on his case this seems to be simultaneously accepting that there were or might be problems whilst refusing to acknowledge them. I am pretty clear that the evidence from both parties overwhelmingly supports a conclusion that face-to-face handovers involving the parents became problematic for the children and that this would have caused the children stress and anxiety. I am not persuaded that this was solely due to the attitude of M, and I will consider the extent to which she may be justified in feeling any stress or anxiety herself when I look at her allegations about F.

31. I have next considered the allegations made against F by M. The first of these is that F subjected M to coercive and controlling abuse and references a number of specific

alleged incidents in support of this. The first of these is that F has made 12 complaints to the police, none of which had resulted in any action against M, several of which are for minor things such as taking the children to the GP without his knowledge. On a purely factual level, as became clear during his oral evidence to me, F accepts that he has made multiple complaints to the police and some of these were (with the benefit of hindsight) things that should not have been raised with the police. He accepted that alleged breaches of court orders, complaints about M not letting the boys do things or not signing his visa paperwork were not things that should have been raised with the police. He sought to justify his actions at the time by saying that he did not know what could and could not be raised with the police, that he was frustrated at the lack of help and advice especially from social services and that he was at all times simply worried about his children. It was put to him by Ms Cox that he had had legal representation and therefore advice in the previous proceedings, but he persisted in saying that he did not know that the police were not able to help with breaches of the sort of court orders involved.

32. At E425 in relation to the 5th January 2021 incident it is clearly noted that the police told him that this sort of thing may be something for him to raise with his solicitor and to take back to court. At E429 he was told by the police on 4th February 2021 that the order in place is not police enforceable, something that was repeated on 10th February 2021 when he contacted the police about his belief that M had taken the children to the doctors without contacting him (E430). He was also clearly told by the police on 29th May 2021 that disputes about property were civil matters rather than matters for the police (E431). Based on this evidence, it should have been very clear to F by early 2021 that the police were not the appropriate agency to contact about breaches in relation to court orders. It is also clear from the police evidence in section E that he raised many extremely petty complaints (M not allowing the boys to ride their bikes E420; M not signing his visa paperwork E421; M breaching the Child Arrangements Order by picking the children up from school E429; M taking the children to the doctors and not contacting him and getting the children to lie about being scared of him E430). It is equally clear from many of the complaints that he made alleging physical or emotional abuse by M that the police made the appropriate referrals to social services and MASH. F has not clearly articulated what help and advice he thought he should have received, and, in fact, what is striking about both the police and social work

evidence is just how much professional time and resource was taken up by the frequent and sometimes voluminous communications from this father.

33. The next specific allegation by M is that F has sent numerous emails to the social workers involved in the case criticising M and making allegations against her, none of which have been sustained by the professionals investigating them. One email was so concerning that the social worker reported it to the police. Again, on a purely factual level it does not appear that F disputes he has sent numerous emails to the social workers in which he made allegations and criticised M, nor that virtually all of his concerns have not been sustained by the professionals investigating them. It seems as if F's case in response to this is that what he was doing was reasonable in the context of someone who lacked appropriate advice and who was simply concerned about his children. I have noted above that it is not clear what advice he was lacking, and I have also noted the volume of communications from him. The social work evidence clearly shows that he sent multiple emails, often with multiple attachments and he does not dispute this. Having read the content of those emails where they are contained within the bundle, as many of the professionals noted, F was extremely negative about M in them. During the CAF it was noted that so many allegations had been made by F in the course of the assessment that *"it is impossible to record them all in this assessment. Your dad has excessively sent me emails, which are highly critical of your mum, trying to point scoring (sic) at your mum's expense, and showing high levels of hostility towards your mum"* (D325). It also seems clear from F's evidence that he accepts he sent an email to the social worker which she reported to the police.

34. The next specific allegation is that F will threaten to make these complaints if M does not meet his demands, knowing this causes her anxiety. Even if he did not directly threaten M with this, the pattern of complaints with such high frequency and demonstrating such a negative view of M is extremely concerning, I find. There is also the aspect of the nature of his complaints and derogatory language in relation to M, the next specific allegation and these being linked because of their likely impact on M, I find. M's allegation is that F uses highly critical language about her, e.g. repeatedly claiming that she is lying, abusing the children and defaming or vilifying him, using terms such as 'narcissist' and making misogynistic references to 'Ambers' and female domestic abuse victims and has asked the social worker to refer to M as 'your mum is

a passive aggressive narcissist'. Again, on a purely factual basis F does not dispute that he has used this sort of language about M, but it seems as if he seeks to excuse it on the basis of his frustration, distress and fears about not being taken seriously by professionals. He also tried to say during his oral evidence to me that various psychologists had confirmed this about M, but there is absolutely no expert evidence about this before the Court and it would appear from what he said to be either something he has found online or in speaking to psychologists himself rather than any reliable assessment. I would note that using this sort of language is not something a forensic psychologist would do in my experience and falls squarely into the sort of concerning negativity about women that was highlighted in H v N. If either boy were to be exposed to these sorts of views it risks inculcating the sort of values that involve treating women as inferior to men. Whilst F accepts that he made the comments in question, he has not shown any real remorse or insight into their likely impact on M and thus potential indirect impact on the boys.

35. This behaviour by F would be bound to cause M anxiety because any reasonable person would be caused anxiety if exposed to such a sustained barrage of complaint and criticism via professionals, I find. Any reasonable person would also have known that this would be the result of their actions so either F is unable to understand this or knew and continued anyway. Either way, it is potentially equally concerning and a matter that will need to be explored in the psychological assessment of him. There is a clear difference between raising legitimate welfare concerns about the boys in a way that is reasonable and proportionate, and what this father did. The volume of complaint and criticism, often about petty things or in the face of reassurances from police and social services that his fears were groundless, is truly striking and concerning. I do find that he knew that his complaints about her would be bound to cause her anxiety and that he did so as part of trying to force her to meet his demands, especially with regard to trying to prove his case that he was the better parent, and that the boys should be living with him (as he has set out in his written evidence and to social services).
36. The next two specific allegations by M relate to inappropriate messages from F, namely that F has sent highly inappropriate emails and messages to other parents, which seek to humiliate M and that F sends repeated inappropriate messages via the Family Wizard app to M. As was submitted by Ms Berthelsen there is only evidence of one

inappropriate email sent by F to other parents on 20th July 2020. It seemed as if he accepted in his evidence to me that he should not have sent that email, but it wasn't clear why he thought it was not appropriate to have sent it. It is not disputed that he sent it to the parents at the boys' school, though initially seems to have omitted M who found out about it from other parents. F struggled to accept that this may have caused M humiliation when questioned about this by Ms Cox, instead digressing into his being the one who had been subjected to abuse and false allegations and trying to say that he was simply raising awareness about the issues mentioned in the email. Having read that email (C213-C215), it is hard to see how any reasonable person would have thought it appropriate to send such an email to other parents. It is a barely coherent rant, covering a range of apparently unrelated topics including an invitation to a birthday party for A, trying to sell art prints to those on the list and inviting them to employ him as a painter and about half of it is about Amber Heard and Johnny Depp and "*covert passive aggressive narcissists*". It contains no coherent explanation for the parts that don't relate to the birthday party being sent (let alone the one that F claimed lay behind sending those parts) and specifically states that when he starts to talk about Amber Heard and Johnny Depp this is "*completely out of context, has nothing to do with anything of anything*" (C214) but goes on to clearly link it to his last year which would encompass the breakdown of the relationship. *It also refers to "4 people here, who got involved into something, they should not have been, + nursery stuff lying to me, + 3 school teachers behaving weird towards me"* (C215). Understandably given the content, as M told me, several parents were perplexed about why this strange email had been sent to them, thought it was referring to M and concerned about that to the extent that they contacted M about it and forwarded the email to her. I would also note that it is a bit ironic that an email which refers to passive aggression was sent to other parents rather than direct to M herself. It is doubly ironic that in this email F reveals deeply personal details about the breakdown of the parents' relationship, thereby doing precisely what he accused M of doing in March 2020. As I noted earlier in this judgment, F behaving like this might well have led some parents to want to have less to do with him.

37. This is the context against which I have also considered the allegation that F sent M inappropriate messages via the My Family Wizard app. M's written evidence about this starts at C139 of statement dated 30th April 2020. It details F becoming demanding

in the communication and sending lots of messages in short periods, “usually critical of me and controlling and scolding in their tone. The respondent has repeatedly demanded justifications or explanations of things I have said or helped the boys with – for example stating “Please think about if your behaviour is responsible”; or “You still missed to explain to me, why you do not provide the school bag to me (sic)”. He has been critical of the work I have done with A’s home-schooling (which his teacher has been full of praise for), and makes comments obviously designed to hurt and undermine me, such as “you obviously have big trouble to motivate A to write, even in English”. She goes on to describe how she felt more and more insecure as a result of this, as well as pressurised and like she was constantly under review, believing that this was gaslighting. F’s case seems to be that he doesn’t dispute sending the messages, but his reason for doing so was not malign and he had good justification for querying what M was doing about the boys’ education, for example, and that his being a national of a European country means he is more direct. It seems to me as if the constant criticism of M and her parenting does fall squarely into the type of behaviour that is capable of amounting to both coercive and controlling behaviour within the definitions set out in PD12J, F v M and H v N. It is clearly belittling and humiliating to M, caused her much anxiety and meant that she was constantly placed in the position of having to either account to F or professionals. It goes beyond reasonable communication between separated parents and far beyond being simply direct or less nuanced in communications because of translation.

38. The key aspect of concern in this case that I am clear about on the evidence before me, including F’s own lack of apparent acknowledgement of the likely impact on M and the boys of his behaviour, is that he was doing this either as an attempt to make M parent the boys in a way that he thought was best or ultimately to bolster his case that the children would be better living with him. The F v M definition refers to “a range of acts designed to render an individual subordinate and to corrode their sense of personal autonomy” and I find that F was doing precisely this by constantly criticising and humiliating M. This would be bound to corrode her sense of personal autonomy in relation to parenting decisions, but what is perhaps less common about this is that it is not accompanied by some of the other coercive and controlling aspects courts sometimes see, for example financial control, control over what a partner wears and control over who they see. M set out in her written evidence allegations of financial

control but has not pursued them during this hearing in the interests of proportionality so I have not regarded those. What is significant in light of the allegations that have formed part of this hearing is that these are parents who separated in early 2019 after a comparatively short period of time living together, so the scope for other forms of controlling behaviour normally seen whilst parties live together would have been limited after that point because of their separation.

39. This finding is also linked to the allegation that F seeks to undermine M's parenting at every turn, from the approach to A's soiling difficulties to who packs the best lunch box and A's haircut and clothes. Again, F does not dispute that he has, as is noted in the written evidence including that of social services, taken issue with the way in which M approached A's soiling difficulties, what she was providing for lunch and A's haircut. His evidence about the soiling issues was that they did not have any physical cause as they were solely psychological in origin. He also took issue with the paediatric advice about this, based on what he alleges was M's misleading information provided to the consultant and that he was not involved in the appointment with the consultant.

40. Health records noted in social services documents in section D indicate that the GP saw A for a two-year review in September 2016 and noted soft and loose stools most of the time and that support was given by health visitors with regard to toilet training in 2018 (D323). School records also noted that A was apparently suffering from toddler diarrhoea in April 2021, and that soiling incidents happened at both ends of the week and regardless of whether they had been in the care of M or F. This was followed by a paediatrician appointment on 11th June 2021. The information from that appointment relayed to social services via healthcare records was that advice was given around changes in diet and behaviour modifications such as making toilet time more pleasurable, and the paediatrician hoped this would address soiling but if in the future A developed concerning behaviours, they would recommend a CAMHS referral through the GP (D323). It is clear from the CAF that F immediately took issue with what was being reported about A's soiling issues, both in terms of when they may have started and whether they were potentially physical or psychological in origin. He also told me that he was not allowed to participate in the appointment and did not know who the paediatrician was. On that latter point, he clearly was told in the CAF in June 2021

who the paediatrician was, and M also gave credible and compelling evidence that she shared the paediatrician's report with F. Given the acrimony between the parents, I cannot see that it would have been appropriate for F to have attended the appointment with M, and as A was living with M at the point that the appointment took place M would have been better placed to provide up to date information about A's toileting and diet. I am afraid that what did seem clear from F's evidence about this was a determination to assume the worst in relation to what M may have told the paediatrician (which also rather ignores the fact that the paediatrician would also have spoken to A in the appointment), and it was also plain that F simply believed he knew better about whether or not A should have less fruit in his diet. As noted in the social work records at D353 the social worker advised F that he could contact the paediatrician if he was concerned about the advice, but it seems F did not do this and instead just refused to change A's diet. Subsequent evidence seems to show that soiling is no longer an issue, and I did find the evidence from M credible that simply implementing what the paediatrician advised was all that was required.

41. On the issues about who packed the best lunchbox and whether F criticised the way in which M had A's haircut, again F does not dispute that he raised these issues. I think from his oral evidence to me that what he was trying to do was to show that M was neglecting the boy's diets because he made several references to them losing weight. However, the medical and professional evidence in section D does not support a finding that there was any valid concern about either the boys' diets or their weight. On balance, it seems to be further evidence of F seeking to undermine M's parenting of the boys and to show that he was the better parent. It was very striking that M told me she did not regard it as a competition between her and M as to who parented better. Sadly, F's evidence, in writing, to professionals and during this hearing, seemed unduly focussed on showing that he was the better parent, and it seems clear that he does regard it as a competition between him and M.

42. The next allegation by M against F that I have considered is that both the children's nanny and former child-minder found F's behaviour so difficult that they refused to facilitate handovers. M's written evidence about this is at C279 and she was not actually challenged about this nor does F refute this in his written statements. F

admitted that he was regularly filming contact handovers at one point, and this alone would be off-putting for anyone tasked with trying to facilitate contact handovers. It does seem more likely than not that it was F's behaviour that therefore led to the nanny and child-minder refusing to continue to facilitate handovers.

43. F's evidence about why he filmed handovers (and in fact other events which I will return to shortly) was that he was anxious to protect himself from false allegations by M. It is very striking that he has also taken lots of photographs of the boys when he has seen injuries on them. He was asked by Mr Mulholland for the Guardian what he told the boys when he was taking these photographs and F failed to really answer the question, despite being asked to more than once, simply suggesting that he may have made it some sort of game. He does seem to have developed a habit of photographing any injuries which in turn has probably led the boys to expect this. It is notable that even during supervised contact he has sought to question the boys about injuries – for example as noted in the contact session report from 8th September 2022 (F479). He is also recorded at various points in the social work records asking for the boys to be spoken to about his allegations that M was abusing them emotionally and physically. He was also unable to accept when questioned by Mr Mulholland, that whilst he might not have wanted M to be arrested when he made complaints to the police, this risked the police going to speak to M and possibly also the boys and that this might be frightening for M and the boys. I was left with the clear impression that he really did not see anything wrong in his actions and find that he has consistently prioritised his need to gather evidence to support his case against M over the needs of the boys.

44. In the same vein, it is very clear that he took the boys to see the GP on 10th December 2021 because he said he was concerned about neglect of their hygiene and in particular hygiene of their genitals by M. This resulted in the boys having to be subjected to an intimate examination, but no evidence of neglect was found (D362 and D365). It was put to M by Ms Berthelsen that it would be reasonable for F to take the boys to see the GP if he had legitimate concerns about their health. M agreed with this, but the evidence shows that there were no concerns identified by the GP, so I am somewhat at a loss to understand how F believed that an intimate physical examination was in the boys' best interests. Again, it seems to be clear evidence of him putting his need to gather evidence against M before the needs of the boys. In fact, when B was spoken to

about this by the social worker (D365) B is noted to have said “*my head told me so*” “*but I don’t think it is right*” so it is clear that this did make B confused and uncomfortable.

45. M’s final written allegations (g and k) relate to F’s conduct of the litigation and financial impact upon her of his conduct. It alleges that he does not pay maintenance, though I have no real evidence about income and outgoings to be able to assess whether he should be paying maintenance or not and in any event maintenance issues are rarely a matter that falls to be considered in relation to child arrangements. It is not really relevant to the issues that I have to determine in this case, unlike the conduct of this litigation. F clearly accepts that he has made various applications including an application for enforcement of child arrangements that was dismissed on the papers as wholly unnecessary. That application arose because M had the opportunity to take the boys on a short notice holiday to center parcs and this meant F had less notice of the proposed holiday than had previously been set out in court orders. At no point does it appear that F considered the potential benefit to the boys of going on this holiday (which would have been shortly after the first lockdown ended in the summer of 2020), and it seems to be worrying evidence of F again putting his own needs above those of the boys. It is not at all clear what F hoped to achieve by making this application apart from stopping the boys from having a holiday and their contact with F being altered to reflect that. Similarly, his application on 21st September 2021 for the court to make an order without notice to M for the children to live with him, at the point that proceedings had been already under way for six months and where the Local Authority were involved with this family, is difficult to understand and again seems geared towards meeting his needs rather those of the boys, I find. When combined with his marked tendency to try to gather evidence to support his case against M, including reporting things unnecessarily to the police (E429), repeatedly filming and photographing the boys and sending numerous emails to social services and MASH, this does show a worrying pattern of him seeking gain litigational advantage over M in a way that is potentially very harmful to the boys.

46. Whilst considering him filming inappropriately and evidence gathering, I think it is appropriate to deal with the incident at the bowling alley on 4th September 2021. A

significant proportion of this hearing has been concerned with hearing evidence about this, including hearing from W as M's witness. F accepts that he went to the bowling alley despite being asked not to by M. It is not disputed that the occasion was a birthday party for two boys in A's class, but the WhatsApp message went to all parents of the class group including F and that younger children were welcome to attend. It is also not disputed that F was initially outside the venue when M arrived with the boys, and she tried to just go past him into the venue. F says that he had some presents for the boys to give to the birthday boys and M did not dispute this. F also accepts that he filmed M holding B and continued to do so after being asked not to by W. The dispute is really how long he filmed for, whether he was making comments whilst filming and if the comments were of a derogatory nature towards M, whether he was behaving in a way that was not putting the boys' best interests first and whether or not he was pushed by W when she tried to stop him filming. F's evidence about this was brief and not covered at all in his written statements. He denied any inappropriate behaviour when spoken to by the police after the event and sought to put the blame on M instead. He also sent what seems to be an unnecessarily aggressive letter to W on 17th September 2021 threatening her with police or court action (C302). M accepted that she did not see much of what W did as she was focussed on trying to calm B down. Both M and W gave very credible evidence about B, who was only 3 at the time, being simply overwhelmed by the noise of the venue and needing to be taken somewhere quiet to calm down and adjust. F did not dispute this aspect, but he worryingly did not seem to have considered that even filming in the way that he accepted he did would not have helped with this. However, I found W more credible in her evidence about this and thus find it more likely than not that F filmed M and B and whilst doing so was making some sort of commentary that included derogatory remarks about M. In so doing, I am satisfied that he put his need to gather evidence above B's needs. I also found W more credible in her description of simply putting her arm out to try to stop F filming in these circumstances, and that any contact between her arm and F was thus accidental and she did not shove F as he alleged.

47. This incident provides concerning evidence about F choosing to be present in circumstances where someone who was putting the interests of the boys first might have chosen not to attend. By this point handovers have clearly become problematic, and I have already noted that all professionals are extremely concerned about the impact

of the ongoing acrimony on the boys. This was an occasion scheduled when the boys were due to be with M rather than F and, although it did end up with each parent bowling with one of the boys, as W told me the atmosphere was strained and the boys must have been aware of this. In the same vein, it seems as if F at times prioritised his need to be present in the vicinity over the needs of the boys to avoid parental conflict. The incidents which support this finding (and which are not disputed by F in fact) are his breaching the court undertaking on 28th September 2019, taking a painting job two doors down from M's home in April 2020 just after a non-molestation order preventing this ended, and when he attended M's home whilst his belongings were removed by a removal company and despite several requests to him not to do so.

48. Although this was not specified in the summary of specific allegations relied upon by M but is in the same vein as those exhibiting concerning behaviour from F and his potential inability to put the needs of the boys above his own, I have also considered the incidents on 5th May 2021 when F sent the boys home with a package of faeces soiled clothing in a bag, and the incident which involved the police and paramedics when A bumped his head whilst in the care of F on 28th January 2021. Both of these were covered in oral evidence to me during this hearing as well as forming part of the written evidence.

49. In relation to the faeces soiled clothing, F accepts that he did this, and he told me he did so because he was "angry" and accepted that it was "childish". He denied that either child was aware of him putting the package into B's bag, though he clearly had not thought about the possibility of them finding it or becoming aware of it when M unpacked the bag. He denied that if the boys had known about it or found out that they might have been upset or humiliated, saying that A was regularly soiling in front of the school in any event. I took him to mean that it would not therefore be any more distressing or humiliating for A as a result, which is a rather extraordinary thing for a parent to think. It was not only childish but designed to upset and potentially humiliate M and thus in turn posed a real risk to the boys who could be emotionally harmed by this, I find.

50. In relation to the incident on 28th January 2021, this is odd for several reasons. It seems to be agreed that A did have a bump and that it happened whilst A was in F's care and that F contacted paramedics as a result. From what F told the paramedics about the bump, they advised that A should go to A&E. However, after his first call to the paramedics for some reason F could not then be contacted so they called M, who also could not contact F, so she went to F's home. None of this is disputed, though F has not provided any explanation for his being uncontactable at this point. F told the police that he could not take A himself because he was awaiting the results of a covid test (E427). F then refused to hand over A until a MASH worker attended, so oddly adding delay to A being seen by medical professionals which is inconsistent with his evidence that he was so concerned about A's injury that he thought A needed to go to hospital. A MASH worker did attend, and A was handed over to M, and when M examined the injury, she decided that it was not as bad as F thought and rang 111 and then the GP. The GP examined images of the wound and advised that it was not necessary for A to go to A&E. M then notified F of this, at which point F sent her a message threatening to phone the police if she did not take him to A&E. F then reported her to the police for not taking A to A&E. At this point, even on F's account, no medical professional apart from the GP has seen the injury and the GP's assessment is that it is not necessary to take A to A&E. As I have noted, I have absolutely no explanation from F for his being uncontactable by either the paramedics or M, and no explanation as to why he didn't take A to hospital and let M know that was what he was doing. He delayed A receiving medical attention and especially in insisting that they wait for a MASH worker before handing A over to M because his primary focus was on preventing any allegations being made about him during handover. It is not clear if the paramedics would still have advised that A needed to go to hospital if they had seen the injury, and clearly the police and social services were not subsequently concerned that M should have taken A to A&E as they did not take any further action. A also seems to have recovered fully without the need for further intervention on F's own account.

51. Finally, I have the other three odd incidents where F is alleged to have made threats to kill. One of these, in relation to M's niece in April 2019 is not actually disputed by F though he disputes that he intended the threat. It was still a deeply unpleasant and frightening thing for M to have received, I find. He denies the one that M says he made against her in March 2019, and I am not entirely clear whether he accepts that repeating

something similar in an email at the end of May 2021 to the former allocated social worker was worrying and threatening causing her to report this to the police. F doesn't seem to dispute that he may have said something to M about a car accident in March 2019, but he thinks this was after he noticed that she had a problem with her car tyres, and she has confused this. However, it is striking that what he accepts he said about her niece and also wrote in his email to the social worker about people unfortunately having car accidents is very similar. He is not unintelligent, and it is stretching credibility to accept that he did not know that making these comments in the circumstances of this case would be bound to be concerning at the very least. It also appears that, at times, he has allowed his frustrations to get the better of him and to prompt him to act impulsively, especially when he was extremely tired as he told me in his oral evidence. In 2017 he accepts that this resulted in physical violence when he struck his hand on a staircase and broke it, and the faeces soiled clothing in May 2021, the continual complaints to the police and at times appearing angry and distressed as noted by police, the school and social workers all point to someone who has been unable to control his emotions at times. It therefore seems more likely than not that he would also have made the threats that M alleged he made and should have been aware that even if he did not intend them to be carried out or taken seriously, they would cause anxiety, distress and even fear on the part of the recipient.

52. In light of my findings above, I am satisfied that F has exposed the children to emotional harm as a result of his behaviour.

Conclusions

53. The saddest part of this case is that at its heart are two little boys who clearly love both of their parents. Aside from the concerns about F at times inappropriately questioning the boys during supervised contact, in the main contact with F is clearly something that the boys both enjoy. I would urge F to reflect upon his actions and my findings about them and, if he is able to accept them, to think about how he needs to do things differently in future.



18th October 2022

APPENDIX A

ALLEGATIONS BY F

1. M purposely set out to isolate F from the parents of the boys' classmates (which included making false allegations against him);
2. M made false allegations to police and social services concerning F's behaviour;
3. M neglected the boys' educational needs;
4. M was unable to adequately supervise the boys, resulting them running towards a busy road;
5. While in M's care, the children exhibited aggressive behaviour towards other children and each other, including pushing and numerous biting incidents in the home. This was a result of M's parenting;
6. Both children sustained physical injuries (bruising and scratches) which were inflicted on them by M, who was unable to handle them safely;
7. M disciplined A by keeping him outside in the garden in the cold and giving him cold showers;
8. M's attitude towards contact resulted in the children experiencing stress and anxiety at contact hand-over, which melted away once she was no longer present.

APPENDIX B

ALLEGATIONS BY M

54. That F has behaved in an abusive matter towards her and that his behaviour fits the description of coercive and controlling behaviour, specific examples of which are:
- a. F has made 12 complaints to the police, none of which had resulted in any action against M, several of which are for minor things such as taking the children to the GP without his knowledge;

- b. F has sent numerous emails to the social workers involved in the case criticising M and making allegations against her, none of which have been sustained by the professionals investigating them. One email was so concerning that the social worker reported it to the police;
- c. F will threaten to make these complaints if M does not meet his demands, knowing this causes her anxiety;
- d. F has sent highly inappropriate emails and messages to other parents, which seek to humiliate M.
- e. F sends repeated inappropriate messages via the Family Wizard app to M;
- f. F uses highly critical language about M , e.g. repeatedly claiming that she is lying, abusing the children and defaming or vilifying him, using terms such as ‘narcissist’ and making misogynistic references to ‘Ambers’ and female domestic abuse victims and has asked the social worker to refer to M as ‘your mum is a passive aggressive narcissist’;
- g. F has made repeated court application, including one so unmeritorious that it was struck out on the papers;
- h. F continued to film M and the children at every handover whilst it was unsupervised;
- i. F seeks to undermine M’s parenting at every turn, from the approach to A’s soiling difficulties to who packs the best lunch box and A’s haircut and clothes;
- j. Both the children’s nanny and previous childminder found F so difficult that they are no longer willing to supervise handovers;
- k. F continues to pay no child maintenance and his repeated litigation places M under additional financial strain.

55. That the children have been exposed to emotional harm as a result of F’s behaviour.

