

**IN THE FAMILY COURT AT MANCHESTER**

Date: 30 April 2024  
[2024] EWFC 124 (B)

**Before:**

**DISTRICT JUDGE F. HAMMOND**

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**Between:**

**A**

**Applicant**

**- and -**

**B**

**Respondent**

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Hearing dates: 16 April 2024 – 19 April 2024  
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**JUDGMENT**

This judgment was delivered in writing on 30 April 2024, judgment having been reserved at the conclusion of the four-day finding of fact hearing.

1. This case concerns the following children:
  - C, a boy, now aged 8
  - D, a boy, now aged 7
  - E, a boy, now aged 4
  
2. This is my judgment in a Finding of Fact hearing in private law children proceedings involving these children and a final hearing in respect of an application for a non-molestation order, that took place from 16 to 19 April 2024. I am handing down this judgment in writing on 30 April 2024 having reserved judgment at the end of the substantive hearing.
  
3. On 18 April 2023 the mother of the children, A, applied for a ‘lives with’ order in respect of the children, a no contact order in respect of the father of the children, B, and a

prohibited steps order preventing the father from removing the children from her care and from the UK. On the same date she also applied for a non-molestation order.

4. In this judgment I shall refer to A as ‘the Mother’ and B as ‘the Father’.
5. At the FHDRA hearing on 07 September 2023 before me, I permitted the Father to make an oral application in the face of the court for a child arrangements order. No interim orders have been made in either set of proceedings which have now been linked, with the exception of a prohibited steps order preventing the Father from removing the children from the Mother’s care or from England and Wales, which was made on an urgent basis by DDJ Reynolds on 26 April 2023. That order remains in force but was not included in the bundle for this hearing.
6. On 07 September 2023 I had directed that a finding of fact hearing was necessary and that the finding of fact hearing should be the final hearing in the non-molestation order proceedings. I listed the matter for a pre-trial review on 30 November 2023. At that hearing I made further directions and listed the matter for this hearing. At the outset of this hearing, I was satisfied that it remained appropriate to conduct a Finding of Fact hearing.
7. It is some time since the Father has seen the children. The parties appear to agree that he last saw them in December 2021.
8. At the Pre-Trial Review I directed that my primary focus would be considering the Mother’s allegations, but that the Father’s evidence regarding the Mother would be relevant to my assessment of her credibility. I would also be considering his allegations of abuse of the children by the Mother. I determined that I would not be considering each of the Mother’s allegations specifically, but instead that I would be looking at her allegations regarding the relationship in the round.
9. Unlike the majority of private law hearings that I undertake, I have had the benefit of legal representation for both parties. I cannot state clearly enough my view that legal representation of all parties in private law family cases saves substantial court time and cost. It frees up more time for other cases, resulting in a more efficient system, providing

greater access to justice for desperate families who are having to wait far too long to access the courts. The issues encountered with failed disclosure have, in this case, been resolved swiftly and economically through co-operation between the lawyers, and by the lawyers making timely and focussed applications to court, unlike in those cases where one or more of the parties are unrepresented.

10. I sit at the coal face of family justice. Huge numbers of private law family litigants are now unrepresented because of the restriction in the availability of legal aid for these cases. In my caseload, where at least one party is unrepresented, it takes on average up to four or five hearings over the course of around 18 months or more to have a finding of fact hearing ready to proceed. In many cases, one of those parties is having no contact with their children during that time. In this case, it has taken only two hearings and around nine months for the hearing to be setup and concluded, notwithstanding the substantial delays for police disclosure presently plaguing the system in this geographical area. That is still far too long, but it is substantially quicker than those cases involving unrepresented parties. The additional cost in terms of time, judicial availability and financial cost to the court service and the legal system caused by unrepresented parties, together with the obvious inequality of arms that results from one side, usually the alleged perpetrator, being unrepresented cannot be understated. The delay is almost universally harmful to the children and adults involved in these cases.
11. At this hearing the Applicant Mother was represented by Ms Ellison of counsel and the Father was represented by Mr Iqbal of counsel. Both advocates were extremely helpful to me in the way in which they conducted the hearing and could not have done any more for their respective clients.
12. The directions made by me had been complied with save in two respects. The first was that some videos disclosed by the Father and some texts in the bundle had not been translated, and the second was that the Mother had not disclosed her GP records. The lack of translations was not an issue, as each party effectively agreed the translation put to them by the other side, and where there was any potential issue the Court interpreter was able to help.
13. As for the missing GP records, no explanation was provided as to why they were not available. They were relevant, as the Mother had said in her Scott Schedule that she had

not told the police about some of her allegations of sexual assault by the Father, but she had told her GP. Neither party sought to adjourn the hearing to obtain the records and during the hearing the records from her Manchester practice were obtained and disclosed.

14. An earlier order of DDJ Reynolds to include the statements from a 2015 application for a non-molestation order application had also not been actioned by the Court, but neither party sought further delay to attempt to obtain them.
15. At the FHDRA it was recorded that the Father was facing an impending prosecution for raping the Mother. There has still been no progress in respect of any such prosecution. It would appear that no charging decision has yet been made. During this hearing it became clear that there had not been full police disclosure in respect of her allegations of rape. Given the continuing police investigation, and the nature of some of the police documents disclosed by the parties, there were obviously witness statements in existence that the police had not disclosed, which the parties had not picked up on. I was concerned that it would not be appropriate for me to make findings in respect of the Mother's allegations of rape without the full police disclosure. I will return to this later.
16. The Mother's allegations can be found in a '*Schedule of Findings Sought*' that starts at D171. As I indicated previously, I would not be making findings in respect of each, and every, allegation made by the Mother. The Respondent's allegations can be found in a Scott Schedule at D165, the allegations regarding abuse to the children is entry number 7 in his schedule.
17. At a ground-rules hearing I had determined that the Mother required special measures in accordance with FPR 3A and FPR PD3AA by way of screens and a separate waiting area. Those measures were in effect throughout the hearing.
18. There was no attendance by an interpreter for the Father on the first day of the hearing despite an order directing that one be arranged. Mr Iqbal was content that the Father could proceed appropriately in English having had the benefit of a conference with him. An interpreter arrived on day 2 and was present for the rest of the hearing. In the end, her services were required for the Father's evidence.

## The Law

19. The non-molestation order application falls to be considered under Part IV of the Family Law Act 1996.
20. Non-molestation orders are defined in section 42 as an order containing either or both of the following provisions –
  - a. prohibiting a person (“the respondent”) from molesting another person who is associated with the respondent; and/or
  - b. prohibiting a respondent from molesting a relevant child.
21. There is no statutory definition of “molestation”, and it covers a wide range of behaviour including e.g. using or threatening violence, shouting, nuisance telephone calls, texts and social networking site postings, smashing furniture, etc.
22. Subsection (5) sets out the criteria to be satisfied in making such an order. I must have regard to all the circumstances including the need to secure the health, safety and well-being of the applicant or any relevant child. For these purposes, “health” includes both physical and mental health.
23. The order can be for a fixed period of time or expressed to be until further order and may be expressed so as to refer to molestation in general or to particular acts or both.
24. There are three matters which must be satisfied before granting a non-molestation order:
  - a. there must be evidence of molestation;
  - b. the applicant or child must need protection; and
  - c. the applicant must satisfy the court on the balance of probabilities that an order is needed to control the respondent’s behaviour.
25. The findings of fact that I am to consider are relevant to both the Children Act proceedings and the Non-Molestation Order proceedings. Where findings of fact are concerned, in the Family Court the person making an allegation has to prove it on the balance of probabilities. I have to consider what is more likely to have happened than not.
26. Findings of Fact must be based on evidence, including inferences that can properly be drawn from the evidence, and not on suspicion or speculation.

27. I give myself a Lucas direction, drawn from the criminal case R v Lucas [1981] QB 720. People lie, and they lie for various reasons. They can lie through shame, humiliation, misplaced loyalty, panic, fear, distress, confusion or emotional pressure, however because they lie about one thing does not mean that they have lied about others.
28. I have reminded myself that memory can be unreliable. There are all sorts of reasons why people can appear to remember things that have not occurred. It is my job to scrutinise all of the available evidence to determine what I believe is likely to have happened. The passage of time and discussion of evidence between parties and witnesses can lead to memory creep and the development of ‘memories’ of events that did not actually occur.
29. Whilst it is often said that the assessment of the demeanour of a witness is an important tool for a judge, it too can be unreliable. There can be many reasons why demeanour can be misleading. These can include anxiety, health issues, different cultural or societal norms and numerous other factors. I need to take care when placing weight on a witness’s demeanour whilst giving evidence.
30. It is important to avoid the stereotypical images of how alleged victims or perpetrators are supposed to have behaved at the time of the events complained of or during their evidence. The Court must consider all of the matters in the round and judge the evidence on its merits. I am to look at the explanations given for matters that might otherwise strike me as being unusual and assess those explanations. There are many reasons why victims of abuse would not have reported that abuse at the time. Whilst a failure to report could be because the events complained of did not happen, it could also be because the victim was scared of the consequences should they report the abuse, or because they felt trapped and unable to seek help.
31. It is unusual for domestic abuse to occur in a vacuum. It often occurs during arguments or where there are heightened tensions on both sides. What is important in determining whether behaviour is abusive is to consider the balance of power in the relationship, and the actions of the party who may be perceived to have more power, whether that is physical, psychological or emotional power.

32. There are cultural issues of relevance in this case. The Mother was born and brought up in England. She is a British Pakistani and English is her first language. The Father is Pakistani, and he has recently obtained leave to remain in the United Kingdom having come to the UK in 2010, although his long-term status here is still dependent upon a persisting relationship with his children. It is not unusual in the British Pakistani community for women to tolerate abuse and for marital disputes to be settled within the family or with the assistance of elders in the community. It is also common for a wife's family to put pressure on the wife to remain in an abusive marriage.

33. I am also aware that it is generally known within the community that making allegations of abuse against another parent can result in the Court preventing that parent from seeing their children. Where immigration status is dependent on a relationship with a spouse or a child, that status can form the basis for threats from either party to the marriage, either by using the immigration status against the party whose position in the UK is not secure, or to threaten and coerce the UK citizen to remain in the relationship or not to make allegations to the authorities which could prejudice that status. I have had these factors in mind when reaching the findings that I will go on to make.

34. In this case there is an allegation that the Father was guilty of controlling and coercive behaviour towards the Mother.

35. In the Domestic Abuse Act 2021, as set out in Practice Direction 12J of the Family Procedure Rules, 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..."*

36. Controlling behaviour is defined as *"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"*.

37. Coercive behaviour is defined as “*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*”.

38. I am satisfied that my decision to look at this relationship in the round, and not to confine myself to discrete allegations in a Scott Schedule, meets the requirements of those higher court authorities such as Re H-N and Others (children) (domestic abuse: finding of fact hearings) [2021] EWCA Civ 448.

39. Findings are binary. Once they are made, the subject of the findings has either happened or has not happened.

#### Evidence

40. The bundle before the Court was 719 pages long. There were five videos exhibited to the Father’s evidence via hyperlinks which I watched in full prior to the finding of fact hearing commencing. No objection to the admissibility of the video evidence has been raised at any point during proceedings. I also admitted into evidence the additional GP records obtained and disclosed by the Mother during proceedings, sent to me by her solicitors in an email dated 17 April 2024 at 11.04am.

41. I heard evidence from the Mother and her brother, G. I also heard from the Father and his brother, H.

42. I do not intend to rehearse the evidence that I heard over the course of the hearing. Instead, I will analyse the key aspects of the oral and written evidence in my assessment of the witnesses and in my findings.

#### The Mother

43. The Mother gave evidence on days one and two. She amended her evidence at D196, paragraph e, stating that when the Father threatened her by saying that ‘*he will free her*’ she thought he meant that he would divorce her, rather than what was put in the



statement, which was that *'he would end her life'*. Her explanation as to how the original account got into her statement was that she had told her solicitors various accounts of the Father threatening to divorce her and kill her and they must have got confused and included a threat to kill at the wrong point. That does not explain why she signed the statement of truth and seems an unlikely error for the solicitor to have made.

44. She was not a sophisticated witness. She described longstanding physical and mental health issues. She has a diagnosis of fibromyalgia and described being in regular pain. I did not find her to be an impressive witness. There was a lot of evasion and inconsistency in her evidence.
45. In her evidence in chief, she was asked to comment on the videos that the Father had disclosed. As far as the first video is concerned, she said that the argument that took place was staged by him because the Father knew that if he left all his plates around the living area it would irritate and anger her. She said that she couldn't take it anymore as he would not help her out; she was unwell and pregnant and had to do all the household tasks and the bills and all the other chores and so she snapped. He had been doing it for two years. She said that the recording was selective, that he did not record his own behaviours and that she shouted and swore at him, but he did the same to her off camera.
46. In the second video her parents are present. She said that the comments in the video were not targeted at the Father. She said that she was not taking sides, but the Father started an argument.
47. She said that the videos had been planted to make her *'look mental'*. They had been staged. The Father and his brother would pick topics that antagonised her and would target her sanity and her character and would press it over and over until she snapped.
48. In cross-examination, she was asked about video number 4, which I shall refer to as *'the washing machine video'*. It shows the three boys posing within the drum of a washing machine, and apparently being encouraged to do so by the Mother, who was taking the video.
49. She denied that she was encouraging the children to enter the washing machine. She said that she was stopping them enter the washing machine and that she did not approve of it.

This was plainly not true. She was extremely evasive when asked about this video. Instead of admitting that she was enjoying the children getting into the washing machine and that she was encouraging the children to stay in, or get in again, which is plainly what the video shows, she sought to suggest that she was not supportive of the children getting in. She resorted to the same criticism that she makes of the Father's videos which is that it did not show the full story because it did not show when she was trying to stop them entering the washing machine, even though she was the author of the video.

50. Having regard to my earlier Lucas direction there are obvious reasons why she might be ashamed to admit that she was enjoying and encouraging dangerous behaviours during Children Act proceedings, but the fact that she did not tell me the truth about that video causes me to be concerned about the truth or the accuracy of the evidence that she was giving me. If she is capable of revising history that has been captured in a video that she took herself and that has been provided to the Court, then I ask myself what other events has she revised?
51. Even though the questions about this video were fairly gently put, the Mother became animated about them. Whilst it is important to recognise that being asked questions in Court is artificial and highly stressful, her demeanour in answering these questions suggested to me that it may not take much to cause her to become upset and annoyed, contrary to her evidence that it took repeated riling before she snapped.
52. She stated that she did not know how the Father accessed this video, and that it must be because he had access to her hard drives and backed up her phones. She said that she had put this in her statements although it does not appear to be recorded in any of them.
53. Video number 3 was put to her. She could be seen holding C unrestrained in the back of a car whilst she was facetimeing the Father. Her brother was driving the car. She said that C was not in a car seat because he has a condition called hypospadias which caused discomfort in his genital area. She was trying to settle him down. She denied that she would commonly travel with the children unrestrained in that way.
54. Mr Iqbal asked her about video number 1 taken in 2016. She accepted that she was aggressive and was shouting at the Father. She said he had already antagonised her. She agreed that she called him a nasty sick man. She also accepted that she called him a son

of a bitch, rascal and mother fucker. She agreed that she told the Father in the video that C was not his son, he was hers as she had brought him up. She said that he was targeting her family members. She agreed that there was a history of verbal abuse perpetrated towards her by her own father historically. C was in her arms during this video and the Father can be heard asking her to calm down and to think about the child.

55. In response to questions about video number 2 she accepted that this video showed her having a heated argument with the Father in front of her family with C in her arms. She said that the Father didn't stop, and her sister-in-law became involved. She said the Father grabbed C and he pushed her sister-in-law. All this happened before the video started. She accepted that she might have told her father to get the Father to stop recording after which her father told him to stop recording. The Father told her to watch C as he was being hurt.
56. She accepted that video number 5 sees her running down the stairs trying to snatch the Father's phone. She said she believed he was going to call the police or social services as he was walking away and making threats. She said that she should be entitled to find out what he is up to when he is videoing her and making threats.
57. She was asked about how they came to be married. She said that her ex-partner had suggested that she should have a '*paper marriage*' with the Father. By this she meant a marriage for immigration purposes only. She said that she would not have anything to do with this and she confronted her ex-partner who had suggested that she should do this. She was heartbroken at breaking up with her ex. She said that she understood that the Father wanted a '*paper marriage*' but that on her side it was a genuine marriage. She said that she chose to marry someone who wanted to enter into a sham marriage because he convinced her that he wanted a genuine marriage, but shortly after the marriage he told her that he had only married her for the visa.
58. She said that she believed that he really wanted to marry her when they entered into a nikkah in February 2014, but she now believes that he only married her for a visa. When it was put to her that if that was right, he would not have needed to have had a child, as the marriage would entitle him to the visa, her response was that he was trying to make the marriage work.

59. Mr Iqbal then put to her that they had three children together which would be entirely unnecessary if he only wanted a paper marriage which is what she now believes and asserts.
60. Mr Iqbal asked her why she had no corroborative evidence from friends and family about him preventing her from socialising and she said she did not need her family and friends to provide that. She said that she could not provide the messages she described him sending when she was out socialising because the phones she had then were now broken.
61. She was asked about her evidence that he had backed up her phone messages, photos and videos and had taken her phone away and why, if that was true, it was not mentioned in any of the social services assessments that were in the bundle. Her explanation was unconvincing. She gave long answers about what he was supposed to have done- deleted messages, blocked contacts etc. but it appears that this was not an account that was given to social services, with the exception that on one occasion they were told he had taken her phone.
62. The Mother makes allegations about the Father restricting what she could wear. She said that it had been happening from early in the relationship but that she did not tell social services until 2017. An assessment report from 2015 at F1 was put to her and Mr Iqbal asked why she did not mention these behaviours at that time. She said that she did give her version of events, but it was not recorded in the assessment. Even in 2019 when she was making a number of allegations against the Father which are recorded at F31, it was put to her that there was no suggestion that he restricted what she wore. She said that she reported a lot, and she is shocked that there is no mention of it. Her evidence as to when he started restricting what she wore was vague. When pressed she seemed to only point to what she was wearing when the hockey stick incident occurred in 2015, when she was wearing a tracksuit. That incident is referenced at F1.
63. At F29 it was recorded by social services in November 2019 that the Mother was denying physical or emotional abuse. She said that there was no physical abuse at that time but there was a lot of verbal abuse. She did not say then that this was a retraction forced on her by the Father. She later went on to say that he was begging her to save him and not to tell the truth. At this point in her evidence, she got very emotional. It was very difficult for me to follow this evidence. The Assessment from 2019 shows that the social workers

were not clear on whether the Mother was retracting allegations previously made to the Health Visitor due to pressure from the Father or if she had been exaggerating to the Health Visitor.

64. She was asked about the DASH questionnaire at H40. That was completed in January 2022. She denied in her answers that the Father had ever threatened to kill her or someone else. On her own evidence the DASH questionnaire is inaccurate. She says that this was because things happened quickly, she was having a breakdown having fled and having been through so much trauma. She accepts that she failed to mention strangling which she says took place in 2015 in the hockey stick incident. She says that it is inaccurate to say that there was only one previous threat to sort her out which is what is recorded.
65. It is difficult to understand why this questionnaire would be so inaccurate, notwithstanding her state of mind. She was being asked to document the abuse that she had been subjected to once she was free of the Father.
66. When she was asked about what concerned her during her trip to Pakistan without the Father in 2019, she gave a long answer about how she was mistreated by his family. She was offered multiple opportunities to talk of any other concerns, but she did not mention the allegation that he had guns there, which she told the Cafcass FCA during safeguarding.
67. She was asked about the specifics of her coercive behaviour allegations. She said he waved his fist regularly at her and he would hit her in her right arm which he knew was her bad arm. He had strangled her. She said that she was distraught that these allegations had not been recorded in any of the social services assessments as she had definitely told them about it. When it was put to her that she did not mention strangulation or threats to kill in the DASH Questionnaires in 2020 and 2022 she said that she was under pressure from the Father and her family as they wanted her to reconcile with him. She became emotional again and told me that she did not feel that she had a voice.
68. She was asked a number of questions about her allegations of financial abuse. Prior to those questions being asked the Court was told that the allegation was not being pursued. I suspect that the reason that it was not pursued was because it was an allegation that could not succeed. The messages disclosed by the Father contradict her evidence. They

show the Father being asked to bring shopping and food to the house. They show the Father's brother being asked to do the same and to transfer money to the Mother for her rent and to her friend when she needed money as the Mother did not have it. She knew that the Father did not have permission to work in the UK.

69. The messages suggest that she was able to make decisions for herself about where she would go and who she would see. At D88 she can be seen telling the Father's brother, H, that she was intending to go to Manchester for a few weeks to see her family because she was tired.

70. It appears to me that the Mother has exaggerated her allegations surrounding their financial relationship and her ability to socialise. She has revised history. When the marriage broke down she has sought to paint the Father in the most negative light possible.

71. The Mother agreed that the following contacts had taken place post-separation:

- a. 10 December 2021: E was dropped off with the Father's brother to see the Father;
- b. 11 December 2021: The Father collected D from the Mother and took him to karate;
- c. 15 December 2021: The Father came to the Mother's house and picked up C and D and they were with him for the rest of the day;
- d. Between 15 and 28 December 2021 there were telephone calls;
- e. On 28 December 2021 there was a video call between the Father and the children.

72. She accepted that she told the police that there was telephone contact only and could not say why she told them that. She said that she remembered telling the Cafcass FCA that there was face to face contact and she gave her the reasons why she stopped it. She was asked whether the reasons given at D194 for preventing contact were correct, namely that he might abduct and abuse the children. She said that was correct.

73. The Mother quite obviously has issues regulating her emotions. The videos I have seen may well have been recorded at a time when she had been pushed emotionally, but she is

seen to be unable to prevent herself from losing control and becoming extremely abusive towards the Father whilst in the presence of her children, and in two instances whilst she is holding her child. What I take from the videos is that she is not a subdued person who bent to the Father's will, but instead, as some of the documents suggest, she was capable of engaging fully in disputes between the parties.

74. I am also concerned at her decision making around the children. The washing machine video shows her enjoying a situation that is clearly dangerous for the children. The Facetime video with C unrestrained in the car also shows her exposing her child to a dangerous situation. She could have asked for the car to be pulled over if he was uncomfortable- it is not safe for him to be transported in that way. However, these are issues for the welfare assessment which will follow.

## G

75. G is the Mother's brother. He started off by saying that he had read snippets from his sister's statements before going on to say that he had read them all.

76. He told me that he had not been witness to any of the behaviour complained of by his sister. His knowledge of the relationship came from what he had been told by her and other family members. He knew nothing of sexual allegations until recently and nothing about attempts to strangle her. He can only give evidence in respect of one occasion where he witnessed the Father being aggressive, and that is the incident described at paragraph 13 of his statement where he says that the Father called him and was shouting at him down the phone with an aggressive tone, shouting and threatening him, saying "*who the hell do you think you are...? I'll see to you*" following which he started speaking badly about G's wife and shouting abuse.

77. His evidence of direct contact with the Father is at paragraph 9 and he describes the Father as apologising and coming across as quiet.

78. The impression that he gave me was that there was no love lost between the families and that he and other family members would have to come and pick up the pieces when there were arguments between the Mother and the Father. He was of little help to me in determining how those arguments started and who played what role in the arguments as

he will undoubtedly have been influenced, either consciously or subconsciously, by his family loyalties. He certainly does not appear to have given consideration to the role his sister played in any arguments in his statement. In his third hand description of the events caught on video in video number 2 he does not acknowledge his sister's behaviour caught on camera.

### The Father

79. The Father gave evidence on days two and three. He had requested an interpreter and one was present when he was giving his evidence. He wanted to give evidence in English with the interpreter present to help him with any difficulties that he encountered understanding what he was being asked, or in relation to what he was trying to say, but this was not sustainable. His grasp of English initially seemed good, but as soon as cross-examination started he went blank and took a considerable while to answer the questions being put to him. It was agreed that the interpreter was to be used to ensure that there were no language issues preventing him from answering the questions and from that point onwards all questions and answers were interpreted.
80. Even in Urdu, however, there were a number of long pauses from him before he answered certain questions. He was, however, very mild mannered during his evidence. There were no signs of the aggressive personality that the Mother describes. Of course, it will have been plain to him that losing his cool whilst giving evidence could be disastrous for him, but he was the subject of robust cross-examination by Miss Ellison.
81. He stood by his statement at D18 where he described himself as a good husband, a devoted father who practices open communication and who has always treated his wife with respect and honesty. A number of documents were put to him. At F61 social services had recorded that he told the social worker that he had shouted and said mean things to the Mother.
82. Miss Ellison put the final paragraph of F27 to him. In that paragraph he told the social worker that his wife is always good to him and she helped him a lot. He was asked if that was true. He said that was not always the case. He did not agree with the analysis of the



2020 Child and Family Assessment that C must have witnessed the Father being abusive to the Mother given what he had told the nursery workers.

83. When he was asked who he made the videos for he said that they were for himself, to remind himself what he was going through. This was an unconvincing answer. Later in response to questions from me he suggested that the 2016 video was the first video he had taken, and it was a spur of the moment decision to start recording once it became clear that the Mother was not going to calm down and extricate C from the situation as he was requesting.
84. When the contents of his discussions with the social workers in the child and family assessments were put to him, he sought to distance himself from any admissions that were recorded, stating that there must have been misunderstandings, possibly due to the language barrier.
85. I found the Father to be a consistent witness although I am not convinced that he was acknowledging the full extent of his contributions to the arguments he had with the Mother, and I found him evasive in his attempts to resile from comments he made to the social workers.

## H

86. H is the Paternal Uncle. A lot of his evidence related to allegations not put to the Mother. He was cross-examined over a short period of time, and the thrust of the cross-examination was that he was biased, and his evidence favoured the Father.
87. He was considered in his evidence, even when facing hostile questioning.
88. The impression I formed from his oral evidence and his messages contained in the bundle was that he was respectful of the Mother, even though her found her behaviours to be troubling. He gave some examples of direct experiences from her where she had behaved erratically, and I accept that he was telling me the truth.
89. There were several allegations that he makes in his statement about the Mother's care of the children. I did not allow cross-examination in respect of those allegations as they had

not been put to the Mother. I made it clear that I would not be making any findings in respect of allegations not put to the Mother.

## **Findings**

90. It seems to me that from the allegations relied upon by the parties the primary allegations that were to be considered are as follows:

### The Mother's Allegations

- (1) The Father was controlling and coercive throughout the marriage;
- (2) The Father was frequently violent and verbally abusive towards the Mother;
- (3) The Father was financially abusive towards the Mother throughout the marriage;
- (4) The Father sexually abused the Mother throughout the marriage by forcing her to have sex with him, by forcefully placing her head and mouth on his genitals and by threatening her with rape;
- (5) The Father would gaslight the Mother by attempting to convince her and others that she was mentally unwell;
- (6) The Father harmed the children by being aggressive and violent in their presence, by pinning C to the bed in May 2021 and by twisting D's ear.

### The Father's Allegation

- (7) The Mother and her family, between 2015 – date, have exhibited aggressive behaviour, raised their voices and have physically punished the children.

91. During the hearing the Mother stated that she no longer pursued her allegations of financial abuse and the parties agreed that the Court did not need to make findings in respect of the Mother's sexual abuse allegations.

92. I have previously explained the problems relating to police disclosure around the sexual abuse allegations. I informed the parties that I could not safely determine them in the absence of the full police disclosure. In questions from me to the Mother it became apparent that those allegations did not form the basis upon which she was opposed to arrangements between the children and the Father. The key concerns that she holds relate to his alleged abuse towards her in front of the children, his behaviour towards the

children and the risk of his absconding with the children. I formed the view that it would be disproportionate to adjourn the hearing to obtain further disclosure which could take months to obtain when those allegations are not central to the likely welfare considerations. Neither party sought to argue otherwise, and they agreed that the Court need not make findings on those allegations.

93. Allegations of controlling and coercive behaviour require me to consider the relationship in the round. I need to form a holistic view as to what happened in this relationship.
94. There have been multiple reports of abuse by the Mother, many of which she has later recanted or minimised. The 2015 Child and Family Assessment (CAFA) sees an account provided by the parents in respect of the hockey stick incident that is noticeably different to the account given by the Mother to the health visitor referred to in the CAFA which suggested that the Father was the aggressor. The Mother's case now in relation to that incident is that she was the victim of an attack by the Father where he strangled her and threatened to kill her, so she retaliated by hitting him with a hockey stick. She told her health visitor and the police and applied for a non-molestation order. Ultimately, she says that she withdrew the non-molestation order application under pressure and minimised the incident to the social workers. The Father's case is that the Mother attacked him. I will return to this when analysing the police disclosure.
95. In the 2019 CAFA the parents presented a substantially different version to social workers than the account given by the Mother to the midwife where she described longstanding controlling and coercive behaviour by the Father. She told the social workers it was not as serious as the midwives were suggesting.
96. The medical records disclosed during the hearing record that she had fled an abusive relationship to live in temporary accommodation in Manchester with her children.
97. That evidence is suggestive of the classic behaviour from a woman in an abusive relationship. I have to decide if she is making her reports then retracting them because either:
  - i. she is a genuine victim of abuse who has come under pressure from the Father and/or their families;
  - ii. she was trying to get the Father into trouble and then thought better of it;

- iii. she has psychological difficulties that cause her to perceive behaviours that were not occurring;
- iv. she perceives abuse from behaviours that were not abusive;
- v. she reports her perception of abuse in a relationship where, in fact, abuse flowed both ways, or
- vi. for some other reason.

98. There are several pieces of evidence that cause me real concern about the Mother's evidence. There are many inconsistencies between the documents and her oral evidence. In a number of documents, for example the DASH questionnaires, she disclosed abuse to the police but disclosed nowhere near the extent of the allegations that she now presents. Her behaviour captured in the Father's videos is concerning and her inability to accept her actions in the washing machine video undoubtedly affects the reliability I can place on other aspects of her evidence.

99. I have a number of concerns about the Father's evidence and his refusal to accept matters he plainly told the social workers.

100. The impression I get is that there were occasions where the Mother will have been dysregulated and was abusive and aggressive towards the Father. The third-party evidence suggests that the Father admitted poor behaviour towards the Mother to the social workers during the CAFA's. I must consider whether the relationship involved arguments and disputes between equals or whether there was an imbalance of power. In order to determine that I will have to interrogate the documents.

101. In April 2020 at H16 the Mother told the police that the Father was emotionally abusive to her. The call log at H13 sees her telling them that he was not physically abusive but that he was mentally, verbally and emotionally abusive. This report was made a couple of days after he had reported her to the police for attacking him. She complained that he was being emotionally abusive, and she was worried he would take the children away. If he had been repeatedly physically abusive throughout the relationship it is difficult to understand why she would not have disclosed that to the police. At H19 she was not holding back, yet she denied physical abuse. In a DASH Questionnaire completed at that time there is further evidence that she was complaining of emotional abuse and not physical abuse. Unfortunately, no police disclosure has been received in

respect of the hockey stick incident although there are questions as to the extent of police involvement at that time.

102. It is agreed by the parties that there was police involvement relating to the hockey stick incident in 2015. The attendance at the police is referenced at H38 which is a post-separation police log where a crime number for 13/11/15 records the Mother having been accused of ABH. Social Services also make reference to the Mother having been the perpetrator in that incident at F31 however it is not clear where that information came from. There is further reference in a SCARF at H54 following a complaint by the Father to the police of verbal and emotional abuse by the Mother in April 2020 to there having been *'one domestic incident in 2015 where A hit B with a hockey stick'*.
103. At H32 there was a complaint to the police post-separation on 18 December 2021 that there had been a lot of domestic violence and abuse towards her and the children. This was at a time where she was permitting the Father to have direct contact with the children. Her primary complaints at that time appeared to relate to threats to take the children away and harassment from family members.
104. In January 2022 the Mother told the police of previous violence between them in a DASH Questionnaire after reporting the Father and his family for harassment. The Mother was worried that the Father might take the children to Pakistan and the Questionnaire records her stating that he had 'once' made a threat to sort her out, there had been no instances of strangling and no threats to kill. That is inconsistent with her account that he had strangled her before she defended herself with the hockey stick and that he had made multiple threats to kill her.
105. On 16 April 2020 the Father contacted the police to tell them that the Mother was out of control, shouting and screaming at him, and she had hit him before with a hockey stick. That allegation was made a couple of days before the Mother reported the Father for being emotionally abusive.
106. There are four CAFA's in the bundle. The 2015 CAFA at F1 records the social workers being impressed by the parents' approach to the hockey stick incident. They had shared responsibility for it and suggested it was not a significant incident, despite the police having been called and the Mother having applied for a non-molestation order. It

was plain that she had given an account, similar to the account that she now gives about that incident, to her health visitor.

107. The 2019 CAFA resulted from a referral from the midwife after the Mother had complained of controlling and coercive behaviour. She described her family telling her not to cause trouble and emotional, physical, financial and sexual abuse. She was concerned about him taking the children and that he repeatedly called her mental. By the time social workers became involved the parents were both denying physical abuse and the Mother was describing that the relationship had improved
108. The 2020 CAFA followed the cross complaints to the police in April 2020. As part of the assessment direct work was completed with C and D together with observational work. There was direct input between the parents and two social workers, Heather and Milly.
109. The nursery had recorded C telling his nursery on 03 June 2020 that he had fallen over when mummy and daddy were fighting. Nursery were also reporting C telling them that he had to '*look after mummy*' and that '*daddy was not being nice*'. C was not presenting as emotional at nursery although he looked like he had the world on his shoulders.
110. C told the social worker that '*sometimes he tells papa off for not being nice to mummy*'. He told her that the Father '*shouts at mummy*'. The social worker recorded that the Father was quick to speak negatively about the Mother.
111. The impression that Heather had was that this was most likely not a classic perpetrator-victim relationship, notwithstanding the Mother's characterisation of the relationship.
112. The 2022 CAFA resulted from a report from the Mother to the school that D had not done his homework because she is suffering from DV and the Father wants to take the children to Pakistan. This is a peculiarly-timed report. At this point the marriage was over and the Mother had stopped the Father's face to face contact with the children. At around the same time she was telling the police that he had not been having face to face contact with the children since the separation. There was a report that both children had been

exposed to domestic violence but no suggestion that they had been direct victims themselves.

113. The children told the social worker that they did not want their father to come home as he would fight their mother. Somewhat concerningly, they reported that he did not help his mother around the home, and he did not play with them despite photographic evidence in the bundle to the contrary. In that assessment she told the social worker that her decision to stop contact with the children was because of changes in behaviour exhibited by D, which is a different reason to the explanations in her statements and to me.
114. I do not find that the Father was guilty of controlling and coercive behaviour within this relationship. I find that it was a tempestuous relationship and that there were occasions where both parties would go too far. That is the impression that Heather, the social worker, got in 2020. There is video footage in the bundle of the Mother behaving in a dysregulated way with a child in her arms screaming awful abuse at the Father. She does not know that she is being filmed at the time. I can accept that the Father's behaviour had irritated her, but she was out of control and her behaviour was not proportionate.
115. The question was asked on her behalf as to why the Father was recording her. There could be a number of answers to that question. He could have been doing it to collect evidence for a domestic abuse marriage exemption visa application, he could have been doing it to guard against any allegations that he was the abuser, such as has occurred during these proceedings, but if it was a plan, then he must have known that the Mother would be prone to acting in this extreme way. The alternative is that he managed to surreptitiously activate his phone on a rare occasion when the Mother became extremely enraged.
116. I find that he recorded the Mother because he knew that this was how she would behave when enraged and he wanted evidence of it. Whether he left his plates out on purpose or not, even if this was a culmination of behaviours designed to antagonise the Mother, her response was extreme and aggressive at a time where she was holding their child.

117. The Father told me that he did nothing wrong in the relationship. There is nothing that he said or did that he regrets, apart from not having a greater understanding of how depression can cause someone to act, such that he could have developed better methods of dealing with her depressive dysregulated episodes.
118. That does not accord with what the social workers heard from him. He gave no plausible explanation as to why the social workers would have recorded inaccurate information. He sought to suggest that reference to his being verbally abusive was where he had chided her many years earlier after she tried to commit suicide. When F62 was put to him, and in particular, his admission that he slept in late because he got out of routine and wasn't working, he responded by saying his lack of sleep was caused by the Mother receiving phone calls through the night. His repeated attempts to whitewash the accounts he had given to the social workers was unconvincing and struck me as an attempt to paint himself in a favourable light at the expense of the Mother, rather than a genuine attempt to recall what was happening during the relationship.
119. I find that these parents were verbally aggressive and abusive towards each other and that they would physically push each other. It seems likely that C saw this happen and saw how upset the Mother became during these interactions which is why he said that he has to look after her and why he said that his daddy was not being nice.
120. I find that the Mother left because it became clear to her that the marriage was over. She wanted nothing more to do with the Father and, despite initially permitting him to see the children, she was worried that he would remove them from her care and paint her in a bad light with the videos he has of her. She decided to head away from him, preventing him from spending time with the children and she headed to Manchester where her family lived.
121. I will now deal with each of the specific allegations I have identified, reminding myself that I had not required each of the Mother's allegations to be proved individually:

### **Specific Findings**

#### **Controlling and coercive behaviour allegations**



122. In order to consider these allegations, I must return to the definitions of controlling and coercive behaviours. Controlling behaviour requires “*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*”. Coercive behaviour requires “*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*”.

123. I do not find the Mother’s allegation of controlling behaviour at D172 made out. Her decision not to proceed with her allegations of financial control impacts upon my view of this allegation. I do not find that she was socially isolated by the Respondent. It is naturally isolating to live away from your extended family with young children. A large period of the time that forms the subject of her complaints was during lockdown which was isolating in any event. The Father was in the UK, dependent upon his visa applications being successful with a limited support network. Her text message to H in the bundle at D88, telling him that she is going to go back to Manchester for a few weeks to rest is telling. She has no fear in telling him that. This is a number of years into the marriage and both the older children had been born. If the Father and his brother were intent on isolating her then this message tells a different story.

124. I prefer the Father’s evidence over his immigration status. The Mother’s account that she married a man who had told her that he wanted a paper marriage because she now believed that he wanted a genuine marriage is difficult to accept. Her account that he then told her that he only wanted her for the visa is undermined by the fact that they consensually had three children together. At no point has she suggested that she got pregnant under coercion from him, and when she was asked about why he would have more children with her if he only needed one to secure his status, she suggested that he was trying to make the marriage work.

125. I note that there is a history here with the Father having been found by the Home Office to have falsified his English Language tests. That coupled with the Mother’s evidence that she had originally been asked to take part in a paper marriage causes me

concern, but the evidence does not lead me to find that the Father has simply sought to use this mother and the children for immigration purposes.

126. As far as coercive behaviour is concerned, I do not find that the Father has sought to use abuse to harm, punish or frighten the Mother. The videos suggest to me that she is not frightened of him, and I have found that the abuse and physicality used by the parties was present on both sides. I have little doubt that the Mother became distressed and upset as a result of the Father's behaviours, but I do not find that he behaved in such a way as to cross the threshold into criminally abusive behaviours.

127. There is a notable lack of evidence from the Mother supporting her allegations. She has produced none of the messages that she claims he would send her in order to control her. She tells me that her devices were broken but most devices now back up to a cloud. This is most likely the reason that she tells me that the Father used to go into her accounts and delete things. She has produced one message where he used the word 'bitch' towards her, but his explanation was that this was usage of the word in the modern pop-culture sense appears to be more likely than her evidence that it was used abusively given the lack of any outraged or upset response to the message on her part. The evidence suggests that she is not afraid to voice her feeling towards him.

128. **This allegation is not proven.**

### **Violence and abuse towards the Mother**

129. The Mother states that the Father was verbally abusive towards her, calling her 'a whore', 'a prostitute' and 'a fucking bitch'. She said he would call her 'ugly' and 'fat' and that he would do this in front of her family and friends.

130. She did not call any live evidence to support this allegation. Her friend, J, was unable to give evidence so it is difficult for me to give her statement any weight, however that statement singly fails to provide any clear instances of the Father abusing the Mother in her presence. She appears to be giving evidence of matters that she was told by the Mother, and gives no direct evidence of any verbal abuse as alleged by the Mother. The Mother's brother gave evidence before me, and he too was unable to point to any direct

instances of abuse by the Father towards the Mother in his presence, stating that whenever he saw him, he was quiet and apologetic. I do not see that being apologetic to your brother-in-law is an admission of abuse, it can equally be an admission that arguments in which he participated had got out of hand.

131. I can accept that there were heated arguments and that unacceptable things may have been said on both sides. Indeed, I have video evidence of the Mother using awful abuse towards the Father. I cannot find on the balance of probabilities that the Father routinely verbally abused the Mother on the evidence before me. I am satisfied that he would have verbally abused her during their most tempestuous arguments, but he did not do so in a dominant way and the Mother was likely not cowed by his abuse.

132. As far as physical abuse is concerned the Mother alleges daily attempts to push her, grab her neck, strangle her and punch her, causing her bruising. There is no corroborative evidence of bruising at all, from friends, family, GP records or the police or social services. She describes being strangled, and having the Father threaten to kill her in the hockey stick incident in 2015. In DASH Questionnaires subsequent to 2015 she denies any previous attempt to strangle. That is surprising given her evidence that it was daily and that a serious instance of it occurred in 2015. She frequently denied threats to kill in the documents which does not sit with her evidence to me that this happened more than once.

133. In relation to the hockey stick incident the police and social services documentation appears to record that she was the aggressor. I do not know what she told the court in her non-molestation application, however that application was withdrawn. I do not know what she told the health visitor at the time because there is no written evidence from her. I could well have found that the minimisation of these events to social services and the police and the withdrawing of the non-molestation application were as a result of pressure from the Father or her family, however I am unable to do so as I did not find her to be a compelling consistent witness. I find it more likely that this was an incident in which both parties were aggressive and, in fact, both parties were hurt during the confrontation that took place. Whilst the Mother contacted the police, and they advised her to apply to the Court for protection, it is difficult for me to understand why they record her as the perpetrator if they received a clear account from her that he was abusive towards her.

134. I suspect, and I find, that the persistent physical abuse that she describes are pushes from the Father or attempts from him to get her out of his space as she behaves in the way that he has demonstrated in the videos that he has provided, as opposed to an attempt to cause her harm or overpower her during confrontations. There will have been times when he did hurt her or overpower her during these arguments however, I find that it is just as likely that he was emotionally and psychologically overpowered by the Mother.

135. I prefer his evidence in respect of this allegation as he has been more consistent. The documents support his account more than Mother's, although I have found that there was more physicality and aggression on his part than he is prepared to admit. I do not find that he was routinely physically abusive to the Mother. When he used aggression, it was largely designed to defend himself from her.

136. **This allegation is not proven.**

### **Gaslighting**

137. The Mother states that the Father has repeatedly referred to her as '*being mental*'. There is an instance of this captured on video number 1 where each of them is calling the other one 'crazy' in Urdu. I accept that the Mother has had a number of difficulties with her mental health. She appears to accept H's evidence (repeated by the Father in his oral evidence) of her running around, in an agitated and upset state, on the roads in the early days of the relationship, although her account to me is that she was not running, she was walking. This occurred after an argument with her ex-boyfriend. The videos that I have seen show the Mother acting in an uncontrolled fashion.

138. I can accept that the behaviours displayed by the Mother can be concerning and that the Father has formed a genuine view that she suffers from intrusive mental health problems, albeit that is not a view that is supported by her medical records which show no current mental health interventions. I do not find that he is seeking to blame everything on her mental health without foundation, or that he is attempting to get her to believe that she is unwell when she is not. I do not find that he has been recording her in a selective way in order to present a false picture of her to professionals.

139. **I find this allegation not proven.**

#### **Violence and Aggression by the Father towards the children**

140. The Mother's allegations can be found at D195. She claimed that the Father was violent and aggressive in front of the children. He physically abused the children, in particular, C. On one occasion he took him to the bedroom and pinned him to the bed before closing the door and hitting him. When she attempted to intervene, he threatened her. On another occasion she alleges that he twisted D's ear. The Mother gives no dates when these events were alleged to have occurred.

141. It does not appear that these allegations were ever mentioned to any of the social workers involved with the family. They do not appear to be reflected in the accounts given by the children to the social workers who do not complain of any physical abuse towards them by the Father. There is an oblique reference at F88 after separation to C saying that now they live alone with their mother "*no one comes home to fight with their mother, or them or their baby brother*", but it is not at all clear what he means by this. Both the older children tell the social worker that they do not want their father to come back to the home as he will fight with their mother. This is where they were complaining that the Father does not help their mother when at home and that he does not play with them.

142. I do not accept the Mother's evidence that the Father was violent and abusive to the children. I prefer the Father's evidence over the extent of the marital disputes. I have not found the Mother to be a compelling witness. I suspect that the children have regularly seen arguments between the parents, with incidents such as that captured by the Father in video number 1 being commonplace. I remind myself that during that video the Mother could be seen holding C whilst carrying out a sustained period of verbal abuse towards the Father.

143. **I find this allegation not proven, although my findings are made without the benefit of specific accounts from the children.**

## **Abuse by the Mother towards the children**

144. This is not an allegation that is likely to be central to the welfare assessment in my judgment. I understand that the Father purses a ‘lives with’ application but the evidence is not currently suggestive of significant concerns regarding the Mother’s care of the children. There are likely to be sources available to the welfare assessor that are not available to me and any concerns can be picked up during the welfare assessment.
145. As far as the allegation that I have said that I would consider is concerned, the Father states in his schedule at D170 that “*Numerous incidents have occurred where A, the applicant, and her family exhibited aggressive behaviour, raised their voices, and engaged in physical punishment of the children, raising serious concerns about the children's safety*”. He relies on paragraphs 48 – 64 of his statement of 12 October 2023.
146. The majority of these allegations were not put to the Mother to hear her account, so I cannot find that they occurred. I am entitled to find that they are not pursued. The order listing this hearing made it clear that the Mother’s allegations of controlling and coercive behaviour meant that her allegations would not have to be proved individually, however it was clearly specified that the Father’s allegation must be proved.
147. From what I have seen it is likely that the Mother exposed the children to her dysregulation and anger when she became exasperated at the Father. The videos show no attempts by her to remove the children from her agitated behaviours. I cannot, however, describe that as abuse and I have heard no evidence that can cause me to find that the Father has made out any specific allegations of abuse. Certainly, travelling in a car with an unrestrained child in the car, whilst dangerous, is not what I would class as abusive. The same applies to the washing machine video.
148. There is no concern in the social work documentation about the Mother’s care of the children. Had the Father held genuine concerns about the Mother harming the children I am satisfied that he would have informed the social workers, the school or the police. I do not accept his evidence that he did not know how to report incidents. His evidence is that he reported a video that he considered harmful to the police, and he had numerous

contacts with social workers who were exploring the safety of the children in the household.

149. I accept that the children became caught up in disputes between the parents, but I stop short of finding that the Mother was directly abusive to them.

150. I made it clear that I would not be making any findings during this hearing about the behaviour of the Mother's wider family towards the children. That behaviour is the subject of a prohibited steps order application made by the Father which I am case managing separately within these proceedings.

151. **I find the Father's allegation not proven.**

#### The way forward in respect of the Children Act Proceedings

152. The prohibited steps order made on 26 April 2023 is to remain in force pending further assessment. The matter is listed for a DRA on 13 May 2024 where I will consider the parties' reaction to this judgment and what further directions and assessments are required in order to safely consider how and when the Father's re-introduction to the children should take place.

#### Conclusions in respect of the Non-Molestation Application

153. There is no suggestion that there has been any harassment during these proceedings notwithstanding the absence of an interim order. The Mother's concerns relate to historical events when the parties were in a relationship and concerns that the Father was harassing her after the relationship ended.

154. I find that the communications following the end of the relationship were attempts by him to restore contact with his children and to see if a reconciliation could take place. There was no preventative order in place and, in his eyes, there was no good reason to prevent him from seeing the children as he had been from separation until 28 December 2021.

155. I am not satisfied that his post-separation behaviour amounts to molestation. The parties are no longer in a relationship so any behaviours during the marriage are unlikely to be repeated.

156. In light of my findings that there has been no post-separation molestation or harassment, and none during the proceedings, I am not satisfied that the Mother needs the protection of the Court. If he were to harass her in the future, she would be entitled to call the police or return the matter to me for further urgent consideration of a non-molestation order.

157. **I therefore dismiss the Mother's application for a non-molestation order.**

DJ HAMMOND

The Family Court at Manchester

30 April 2024