

**IN THE FAMILY COURT**  
**SITTING AT LEICESTER**

90 Wellington Street  
Leicester LE1 6HG

Wednesday, 24 July 2024

**Before:**

**MR RECORDER O'GRADY**

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**R (CHILDREN: FACT-FINDING: AUDIO RECORDINGS) (COERCIVELY  
CONTROLLING BEHAVIOUR)**

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**Sarah Cornish** (instructed by Peterfield Solicitors) for **the Applicant**  
**Amar Alyas** (instructed by Straw & Pearce) for **the Respondent**

Hearing dates: 17-19 and 24 July 2024

**JUDGMENT**

*This judgment was handed down remotely by the Judge by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30am on 24 July 2024.*

*The Judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.*

**Introduction**

1. The names in this judgment are random pseudonyms to protect the identities of the children and parties to this litigation.
2. This case is about two children: Olivia ("**Olivia**"), who was born in October 2022), and Ben ("**Ben**"), who was born in March 2021. Olivia is 1 year 9 months old. Ben is 3 years 4 months old. I will refer to Olivia and Ben collectively as "**the children**".

3. The children's father is Thomas Mitchell ("**the Father**"). The Father is 46 years old. He is the Applicant. The children's mother is Samantha Lane ("**the Mother**"). The Mother is 34 years old. She is the Respondent. I will refer to the Mother and Father collectively as "**the parents**".
4. This is the judgment of the Court following a Fact-Finding Hearing that took place on 17-19 July 2024.
5. The Father was represented by Miss Cornish, of counsel. The Mother was represented by Mr Alyas, of counsel. I am grateful to counsel for their assistance during this hearing. This case would have been much more challenging without their representation.

## **Preliminary Issues**

### Participation Arrangements

6. The Mother and Father were separated throughout the hearing by a screen. They could not see each other when they gave their evidence
7. Both counsel informed the Court that they were satisfied with the arrangements made for their clients. I am satisfied that the arrangements have allowed each party to participate fully in the hearing having regard to the Court's obligations to ensure presumptively vulnerable parties are safeguarded. I have been mindful not to prejudge the issues by the existence of such arrangements.

### Rulings on Evidence

8. I admitted audio recordings the Mother sought to rely on. I was satisfied this was fair and in the interests of justice given: (A) they had been served prior to the hearing and (B) the Father would have an extensive opportunity to play his own recordings.

## **Background**

9. At the time the parents commenced their relationship, sometime in 2016, the Mother was in a relationship with her then husband, Mark Walker ("**Mr Walker**"). The Mother was unfaithful to Mr Walker from sometime late in 2016 and early 2017. That their relationship was birthed in the context of the Mother's dishonesty in her previous relationship never really escaped the parents' minds. The Mother's and Mr Walker's relationship ended on 16 April 2018 and, the following day, the Mother moved into the Father's home – a property owned by him. The parents had difficulties conceiving Ben, but I am told he was a planned baby. Olivia was an unexpected joy to their lives. The relationship ended on 22 March 2023 – a date I will discuss in greater detail later in this judgment.
10. The Father issued an application for a Child Arrangements Order on 14 April 2023. The FHDRA took place on 6 July 2023. At a hearing on 24 August 2023 the Court ordered the children have indirect contact with the Father and prohibited the Mother from allowing the children to spend any time with Mr Walker. Those orders were appealed by the Mother on 30 August 2023. She sought to set aside the Prohibited Steps Order and an order substituting the interim indirect contact for pre-recorded videos of the children once per month. The appeal was allowed in so far as it related to a case management decision concerning Mr Walker. The appeal against the welfare orders were dismissed. The Court ordered there to be supported contact at a contact centre.

11. On 21 November 2023 the Court ordered direct unsupervised contact between the children and the Father. On 14 February 2024 the Father made an application for the Mother's committal for contempt. A private investigator instructed by the Father videoed Mr Walker at the Mother's home with the children on 29 January 2024. On 28 February 2024 the Mother applied to discharge the Prohibited Steps Order. The Father applied for an order that the children live with him on 5 March 2024 following the Mother retaining the children and the breach of the Prohibited Steps Order.
12. The alleged contempt was found proved on 6 March 2024, on the Mother's admission. The Mother was fined £150 and her contempt was purged.
13. On 18 April 2024 this case was allocated to me by Her Honour Judge Patel. On that occasion the Court concluded a Fact-Finding Hearing would be necessary. The Court made interim orders for the children to spend time with the Father on alternate weekends and in the week. Those orders continue to date.
14. On 10 June 2024 the Father retained the children from the Mother after Olivia was seen with what the Father described to be a bruise to the head and a cut above the eyebrow. She was taken to hospital because of vomiting. On 15 July 2024 the Father filed an application seeking to rely on hospital records and photographs of injuries to the children.

### **The Issues**

15. The issues I must determine are:
  - a. Determination of allegations of abuse made by each of the parents as well, so far as is possible, reach conclusions on the nature of their relationship;
  - b. The interim child arrangements pending final hearing of the matter on 24 and 25 September 2024; and
  - c. The application to discharge the Prohibited Steps Order pending final hearing.

### **Positions of the Parties**

#### **Interim Child Arrangements**

16. The Father seeks orders that the children immediately live with him and spend time with the Mother supervised by a family member. He opposes the discharge of the Prohibited Steps Order.
17. The Mother seeks a continuation of the current interim orders and the discharge of the interim Prohibited Steps Order

### **Key Features of the Evidence Including Assessment of Witnesses**

18. The Court has been presented with in excess of 765 pages of written evidence.
19. Cafcass Family Court Adviser Paul Henry ("**the FCA**") gave evidence on the discrete issue of what the child arrangements for the children should be between now and the final hearing. The Father gave evidence in his case. He also called Rodger Mitchell ("**the Paternal Grandfather**"), who is the children's paternal grandfather and Janet Mitchell ("**the Paternal Grandmother**"), who is the children's paternal grandmother.

20. The Mother gave evidence in her case. She also called Hillary Lane (“**the Maternal Grandmother**”), who is the children’s Maternal Grandmother, and Mr Walker, her romantic interest and father of her eldest child.
21. I have read all the written evidence carefully. I similarly listened carefully to the oral evidence. This judgment is not intended to be a repetition of everything I considered and my failure to recite a particular part of the evidence does not reflect a failure on my part to consider it. What follows is only intended to be a summary.
22. My following remarks are addressed to the non-professional witnesses and not the FCA.
23. Giving evidence towards the conclusion of long and contested proceedings about children is challenging. I recognise there is a build-up over the course of proceedings and, for some, a strong desire to seize the opportunity to ensure their perspective of the truth is spoken in Court. Furthermore, the adversarial nature of this process rarely reveals the best qualities in those who appear before the Family Court. In evaluating each of the witnesses I have been careful to have this fallibility in mind and strained not to be unnecessarily critical of those who appeared before me. However, even making all the allowances I can, I regret that each of the witnesses who appeared before me were most unimpressive. The toxicity of the intergenerational familial conflict sweated out of the parties and those whom they called. Each of the witnesses made very poor impressions and each, I find, gave evidence with advocating their own interests in the conflict first and foremost in their minds. This is very far from being a case where I can determine the issues by preferring one party’s evidence to the exclusion of the other’s. Instead, as will be set out, I will accept some parts of the parties’ evidence whilst rejecting other parts.
24. Where I make observations about the demeanour and behaviour of the witnesses (favourable and unfavourable), I remind myself that discerning fact from demeanour carries inherent challenges and is an unreliable exercise. Thus, whilst in *Re P (A Child: Remote Hearing)* [2020] EWFC 32 the President stated at [12]:

“... a crucial element in the judge’s analysis for the judge to be able to experience the behaviour of the parent who is the focus of the allegations throughout the oral court process; not only when they are in the witness box being examined in-chief and cross-examined, but equally when they are sitting in the well of the court and reacting, as they may or may not do, to the factual and expert evidence as it unfolds during the course of the hearing.”

I remind myself of what MacDonald J said *inter alia* in *Cumbria County Council v R (Special Guardianship Order or Interim Care Order)* [2019] EWHC 2782 (Fam) at [24] and [26]:

“The need for care with witness demeanour as being indicative of credibility has also been highlighted by the Court of Appeal in *Sri Lanka v the Secretary of State for the Home Department* [2018] EWCA Civ 1391. The Court of Appeal observed that it has increasingly been recognised that it is usually unreliable and often dangerous to draw a conclusion from a witness' demeanour as to the likelihood that the witness is telling the truth, noting research suggesting that interlocutors cannot make effective use of demeanour in deciding whether to believe a witness and some evidence that the observation of demeanour diminishes rather than enhances the accuracy of credibility judgments ...

Within the context of the foregoing legal principles, this court must bear in mind that the assessment of the credibility and reliability of the parents should coalesce around matters including the internal consistency of their evidence, its logicity and plausibility, details given or not given and the consistency of their evidence when

measured against other sources of evidence (including evidence of what the witness has said on other occasions) and other known or probable facts. The credibility and reliability of that parent should not be assessed simply by reference to their demeanour, degree of emotion or other aspects of their presentation. This of course works in both directions. It is as problematic to rely on an impression that a witness has an 'honest' tone, manner or presentation, for example that they appear "genuinely upset", as it is to rely on an impression that the tone or manner of a witness appears 'dishonest', for example that they cross their arms or look at the floor. These principles must apply both when the court is evaluating the parent in the witness box and when the court is evaluating the significance of the observations of other's regarding the parent's demeanour at a given point.”

### The Family Court Adviser

25. The FCA gave evidence on the interim arrangements that should be in place pending trial. His “Cafcass Addendum Case Analysis” for this hearing was completed on 15 July 2024. The FCA did not identify any “safeguarding” concerns that would prevent the children having more time with the Father or living with him. His home conditions were appropriate when seen.
26. The FCA’s visit to the Mother’s home on 11 July 2024 raised no safeguarding concerns for the children’s welfare. The Mother told the FCA she is in an ongoing relationship with Mr Walker. Representatives of Leicestershire County Council Children’s Services (“**the Local Authority**”) informed the FCA that they do not have current safeguarding concerns for the Mother’s home or the Mother’s care of the children. Specifically, the Local Authority is aware that Olivia attended hospital in June 2024 and it is not taking any action arising from it.
27. The FCA met with Mr Walker. He denied having any contact with the children except on 29 June 2024. He is in a relationship with the Mother. There is an order that Judith live with him. Mr Walker has an 18 month old child with another former partner. He has fortnightly unsupervised contact with that child.
28. The FCA observed positive attachments between each of the children and their parents. The FCA doubts the parents’ capacity to resolve parenting issues without them escalating. The FCA criticised the Father retaining the children in his care on 18 May 2024 when, in the FCA’s opinion, there was no evidence that Olivia was harmed in the way the Father suspected.
29. In his oral evidence the FCA rejected the Father’s contentions that it is in the children’s best interests to immediately move to the Father’s care. Ben’s nursery have not raised concerns about Ben’s welfare. The FCA is open minded to a future change, but on balance said a change now would do more harm than good when final orders will be made in 9 weeks.

### The Father

30. The Father contended the Mother was physically abusive of him, including slapping, scratching and pushing. He claimed her behaviour mirrored behaviour reported to be experienced in her relationship with Mr Walker. He says the Mother was highly volatile, erratic and unpredictable. There was a strong theme of his evidence that he was *the* victim. It is the Father’s case that the Mother cannot cope with caring for the children, that she neglects them and that neglect results in unexplained injuries.
31. I regret to find that the Father was a deeply unimpressive witness. He was combative and angry. He frequently interrupted counsel. More often than not he failed to directly answer questions that required answers against his interests. He answered questions with questions of

his own. He used cross-examination to argue his cause. He oscillated between being patronising towards counsel and being sarcastic. He frequently showed flashes of immaturity and petulance. He turned questions about himself into attacks on the Mother. All this behaviour persisted after guidance from the Court on several occasions to focus on the questions at hand. At one point when he was in the well of the Court listening to the Mother, early in her evidence, he held his arms outstretched as if a football player complaining at a referee's decision. Often, he screwed up his face in disgust, both when counsel asked questions and when he was listening to the Mother. Aspects of the controlling and coercive conduct I will go on to find the Father to have perpetrated were seen in his behaviour in the Court room.

32. In places the Father's evidence was inconsistent with that of the Paternal Grandfather and Paternal Grandmother. I will find he has lied in parts of his evidence for the purpose of advancing his interests in this litigation. I must be very cautious before I accept or give weight to the Father's evidence.

#### Rodger Mitchell

33. The Paternal Grandfather said the Mother constantly sought his and his wife's support: (A) with caring for the children; (B) managing the relationship with Mr Walker by attending handovers and swimming lessons; and (C) attending Court hearings in the proceedings concerning Judith. He described hearing the Mother use highly abusive language in the children's presence. The Paternal Grandfather accepted that he once said to Judith during a car journey words to the effect, "Your dad's a pussy." I was told that Judith was telling him and the Paternal Grandmother to 'shut up'. He claimed it was said in a jovial way and was 'light-hearted'. That description of his own behaviour did not strike as being at all candid.
34. The Paternal Grandfather was an unsatisfactory witness, although less so than his son and wife. The Paternal Grandfather at times answered questions with his own questions. There were occasions when he angrily raised his voice to counsel. The Paternal Grandfather fairly said at times he could not recall matters and had to refer to his witness statement. His recollection was not always reliable. Some of his evidence was contradicted by the Paternal Grandmother's evidence.

#### Janet Mitchell

35. The Paternal Grandmother's evidence was quite remarkable. I regret to have to describe her behaviour as being extremely poor. It was fortunate there was a screen that separated the Mother and the Paternal Grandmother because the Paternal Grandmother's behaviour was intimidating. The Paternal Grandmother demonstrated unrestrained hostility towards the Mother. When asked by the Court what she felt about the Mother she went on what can, unhappily, only be described as a 10 minute, anger fuelled, rant. The anger and aggression leached from the Paternal Grandmother as she spat out her evidence and frequently pointed aggressively in the direction of the screen behind which the Mother sat. She was argumentative, sarcastic, immature, would at times not directly answer questions against her son's interests and retorted questions back at counsel. She was prepared to offer direct evidence of events when, on probing, she would go on to admit to never being present. At other times she offered evidence but would need to concede she could not in fact recall something. There were strong echoes of the Father's behaviour in the Paternal Grandmother's evidence.
36. The Paternal Grandmother is completely aligned with her son and his interests. She is neither reliable nor credible. I conclude that I am unable to give weight to her evidence except where her evidence is against her son's case and his interests.

### Lisa Zhang

37. Miss Zhang was in a relationship with Mr Walker. She provided written evidence, which included an allegation that she saw the Mother and Mr Walker arguing and the Mother being aggressive. Miss Zhang was required for cross-examination. I was informed she was unable to attend because she was in hospital. I am unable to give weight to the Miss Zhang's evidence because it has not been tested.

### The Mother

38. The Mother gave an account of being in a controlling and coercive relationship with the Father, which she tried many times to leave. The Mother accepted use of abusive language. She asserted that the audio evidence relied on by the Father omitted a full context. The Father would provoke her by being abusive to her before recording started or silently mouthed words to her or performed gestures whilst the recording was on. She claimed the Father co-opted his parents to keep her trapped by having them visit, check up on her and stop her leaving with both children. The Mother tells me that the Father's allegations in these proceedings are a continuation of the abuse that she experienced in the relationship.
39. Unhappily, I must find the Mother was a most unsatisfactory witness. She rarely allowed a question to be asked without interrupting counsel. She snapped back answers and did all she could not to answer questions adverse to her interests, including frequently retorting with questions of her own. She was sarcastic. The Mother's hostility towards the Father was visible and never waivered. She turned questions about her own behaviour into attacks on the Father. All this behaviour persisted even after the Court explained the importance of questions being answered. I do not consider the Mother could sensibly argue that the Court did anything other than extend considerable patience to her to compose herself, focus on the questions being asked and give her best evidence.
40. The Mother's capacity to be reactive, aggressive and short-tempered demonstrated itself in how she gave evidence. I will find she too has lied in parts of her evidence for the purpose of advancing her interests in this litigation. I must be very cautious before I accept or give weight to her evidence.

### Mark Walker

41. Mr Walker is both the Mother's former partner and current romantic interest. Together, they are parents of the Mother's eldest daughter, Judith. Mr Walker told the Court that the Father is obsessed with him and has harassed him. He said that the Father's family have abused Judith. At the time of preparing his witness statement Judith lived with the Father. He told the Court that Judith is now "on holiday" with her uncle in Bristol following allegations Judith has made that she has been hurt by the Father and the Mother.
42. Mr Walker made a very poor impression. In his evidence Mr Walker betrayed arrogance and disrespect towards the Court. He was petulant and immature. He found differences without distinction. Rather than concede matters, he persistently offered, "Possibly," as his answer to counsel's questions.
43. I have no doubt he harbours significant antipathy towards the Father (as does the Father for him) and wishes to protect the Mother. He was not a credible witness. I am unable to accept his evidence except where it is contrary to the Mother's interests. Of significance, he impugned the Mother's credibility when he said she gave false accounts to the Police of their relationship.

### Hillary Lane

44. The Maternal Grandmother told me that the Father and his parents abused the Mother, the children and Judith. I was told this abuse affected the Mother's mental health. The Maternal Grandmother demonstrated considerable animus towards the Father and his family. She said, "I will say Judith has been coerced and manipulated by a family she should have avoided like the plague." Not recognising the contradiction, she told me that she does not always believe Judith tells the truth, but when she says things negative things about the Father or Mr Walker she should be believed.
45. The Maternal Grandmother admitted that she dislikes the Father intensely and laughed when it was put to her that she assaulted him by slapping him. At times she was sarcastic. The Maternal Grandmother demonstrated a moment of objectivity when she said she does not always believe what her daughter tells her. That would not ordinarily warrant note, except for how it contrasted with the attitude of the Paternal Grandparents.
46. I found the Maternal Grandmother was strongly aligned to her daughter. Her antipathy towards the Father and his family mean I must treat her evidence cautiously.

## **The Law**

### Factual Determinations

47. When a fact is in dispute, the burden is on the party alleging the fact to be true to prove it is true. The standard of proof is a simple balance of probabilities. Whether an assertion of fact is true is binary. If the standard of proof is met, then the assertion is fact and treated so for my decision-making. If the standard of proof is not met, then the assertion is not a fact for my decision-making. There is no room for treating suspicion as fact for the purposes of my decision-making.
48. Any findings I make must be based on evidence, including inferences reasonably drawn from the evidence and not speculation. That evidence can be written or oral and I can rely on hearsay evidence from witnesses who have not given oral evidence. However, I must consider carefully what weight to give that hearsay evidence as I have not had the opportunity to consider how it would have stood up to challenge by cross-examination.
49. Baroness Hale cautioned on fact-finding in private law proceedings in *W Children* [2010] UKSC 12 at [29]:

“...there are specific risks to which the court must be alive. Allegations of abuse are not being made by a neutral and expert Local Authority which has nothing to gain by making them, but by a parent who is seeking to gain an advantage in the battle against the other parent. This does not mean that they are false, but it does increase the risk of misinterpretation, exaggeration or downright fabrication”
50. The Court must take into account all the evidence, considering each piece of evidence in the context of the other evidence – surveying a wide landscape – and must avoid compartmentalising.
51. I direct myself in accordance with the case of *R v Lucas* [1981] QB 720 and subsequent Family Court case of *ABC* [2021] EWCA 451 in the event that I consider that any of the evidence I have read or heard contains inaccuracies or lies –

“[that a lie] may be probative of guilt. A lie is only capable of supporting other evidence against [the person telling the lie] if the [court is satisfied]



that: (1) it is shown, by other evidence in the case, to be a deliberate untruth; i.e. it did not arise from confusion or mistake; (2) it relates to a significant issue; (3) it was not told for a reason advanced by or on behalf of [the person telling the lie], or for some other reason arising from the evidence, which does not point to [the person telling the lie]'s guilt.” And “... only if [the Court is satisfied] that these criteria are satisfied can [the person telling the lie]'s lie be used as some support for the [case against him], but that the lie itself cannot prove guilt. ...”

### Domestic Abuse

52. I am mindful of the definition of domestic abuse under section 1 of the Domestic Abuse Act 2021. Domestic abuse includes any single incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are personally connected within the meaning of section 2 of the Domestic Abuse Act 2021.
53. Abuse can encompass, but is not limited to, psychological, physical, sexual, economic or emotional abuse. Economic abuse means any behaviour that has a substantial adverse effect on the other's person's ability to acquire, use or maintain money or other property, goods or services.
54. Coercive behaviour includes an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.
55. Controlling behaviour includes 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.
56. The circumstances encompassed by the definition of domestic abuse in Practice Direction 12J recognises that coercive and/or controlling behaviour by one party may cause serious emotional and psychological harm to members of the family unit, whether or not there has been any actual episode of violence or sexual abuse.
57. In short, a pattern of coercive and/or controlling behaviour can be as abusive or more abusive than any particular factual incident that might be written down and included in a schedule in court proceedings. It follows that the harm to a child in an abusive household is not limited to cases of actual violence to the child or to the parents. A pattern of abusive behaviour is as relevant to the child as to the adult victim. A child can be harmed in any one or a combination of ways, for example, where the abusive behaviour:
  - a. Is directly against or witnessed by the child.
  - b. Causes the victim of the abuse to be so frightened of provoking an outburst or reaction from the perpetrator that she or he is unable to give priority to the needs of his or her child.
  - c. Creates an atmosphere of fear and anxiety in the home which is inimitable to the welfare of the child.
  - d. Risks inculcating, particularly in boys, a set of values which involves treating women as being inferior to men.
58. It is equally important to be clear that not all directive, assertive, stubborn or selfish behaviour, will be 'abuse' in the context of proceedings concerning the welfare of a child.

Much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour. There is no bright line that defines what kind of behaviour can properly be characterised as coercive and controlling.

### Welfare

59. Each child's welfare individually has been my paramount consideration. I assess each child's best interests within the context of the considerations in section 1(3) of the Children Act 1989.
60. I remind myself that when considering whether to make a section 8 order, I must presume unless the contrary is shown, that the involvement of each parent in the child's life will further each child's welfare. A parent will be treated as benefiting from that presumption unless there is some evidence before the court to suggest that the involvement of the parent in the child's life would put the child at risk of suffering harm.
61. The court must not make an order pursuant to its powers under the Children Act 1989, unless it considers that doing so would be better for the child than making no order at all, or no less draconian order.

### **Discussion and Findings**

#### The Parents' Relationship

62. During three days, I (along with the Court staff) have endured listening to approximately 1 hour 40 minutes of audio recordings. Approximately 20 minutes were played on the Mother's behalf in her cross-examination of the Father. The remainder were recordings made by the Father and played during cross-examination of the Mother. They were nothing less than horrifying. Not only in their content, but also in the blank spaces of what those recordings *in of themselves* say about the parties – especially the Father – (and their own parents).
63. The Father placed significant emphasis on his recordings. All that the Father can be heard saying in his recordings has important context – he knew what he said was being recorded and he knew he planned to deploy those recordings to a future listener, this Court, in aid of his position. His statements on the recordings are therefore an inherently unreliable means of ascertaining the truth.
64. The Father engaged in toxic controlling and coercive behaviour, of which the recordings themselves are but one example. Whilst a part of the Father's motivation for making recordings was to have some material that would corroborate his account of the relationship, the overwhelming motivation was his desire to case build. That is to say, he wanted to build a portfolio of evidence which he could later use to attack the Mother, criticise her parenting and enhance his own case for care of the children. He knew that evidence would be required because the Mother told him expressly on many occasions that she did not love him and wanted to leave the relationship.
65. I have no confidence the Father's recordings provide me the full context of the relations between the parties because (A) I cannot see what was taking place; (B) they tell me nothing of what preceded the recording; (C) I am unable to assess whether they have been clipped or edited; and (D) I have been played only that selection of recordings that the Father considers advance his interests. Thus, I must be very cautious in giving them any weight except where they offer evidence against the Father's interests.
66. The recordings of themselves demonstrate the Father frequently lost sight of the children's best interests. Rather than walk away, or defuse a situation, or actively listen to what his

partner was saying, he took out his phone, opened the relevant application, pressed record, put his phone in his pocket and doggedly pursued the Mother, often peppering her (machine-gun style) with his rhetorical statements. He persisted in this even when his children were screaming. I find he was more focussed on ensuring he had the material he could later use against the Mother than ensuring the children's welfare was promoted.

67. He could be heard goading the Mother. He often changed his voice to an indignant and high-pitched tone when denying his own behaviour on the recordings. He gaslit the Mother. I am sure beyond any doubt that he would belittle and antagonise the Mother before recording. His guard slipped in his evidence when, whilst apparently quoting the Mother, he changed his voice to one that was infantile. He was seemingly so unaware of that behaviour that when asked by the Court what that voice was, he initially explained it as a cold.
68. The Father was the dominant party in this relationship and he exercised close supervision of the children and Mother that was driven by abusive, often jealous, control. It is compelling that the Mother communicated to the Father expressly that she wished to end the relationship with the Father. Yet, she was unable to extricate herself and the children. Instead, the Father at times co-opted his parents to prevent the children being re-located away from him. Having listened to them both, I have no doubt that living with the Father and the Paternal Grandmother would have been quite unbearable. Similarly, living with a person with the Mother's combative, loud and reactive 'fight style' would have been challenging. I accept the Mother felt trapped and the Father limited her agency by his presence (what he described as being around her "24/7"), by limiting her ability to leave the home with both children, by use of belittling communication, criticism of the Mother's parenting and critical remarks of her mental health.
69. The children were caused significant emotional harm by the Father in that:
  - a. He raised his voice abusively at the Mother in their presence;
  - b. He coercively controlled and emotionally abused their primary carer, which likely had a vicarious impact on them because they will have detected her anxiety and stress;
  - c. He knew he would be able to trigger the Mother into an explosive reaction to his actions and he pulled that trigger in the children's presence knowing they would be exposed to what followed; and
  - d. He failed to protect them from being exposed to the volatility of the parents' relationship.
70. Thus, whilst (as I will find) Mother's behaviour left the Father with visible injuries, the Father's psychological and emotional abuse of the Mother caused invisible wounds of a significant nature to a vulnerable person. In the Father, the Mother found a person who was generally not empathetic to her needs. Instead, he was attuned to how to exploit her vulnerabilities. Whilst he claimed to me that he just wanted to help the Mother, his recordings demonstrated that he lacked empathy.
71. It is not apparent to me that the Father appreciates the harm he has caused the children. I reject his suggestion he has, "Reflected a hell of a lot." His belief that there was nothing else he could have done differently evidences he remains in the infancy of reflecting on his conduct.
72. The Mother is vulnerable because of her history of challenging mental health and apparent history of an earlier abusive relationship. Her "fight style" in conflict with the Father was use

of loud, aggressive and extremely abusive language. Furthermore, the Mother, I will find, resorted to use of physical violence, including in the children's presence. At times the Mother sounded beyond any restraint. The children could be heard screaming and crying immediately after hearing the Mother's hot and angry screams. At times the Mother goaded the Father by comparing him to Mr Walker, which she knew would trigger his jealousy and anger. I accept she is an extremely reactive person and her volatility could escalate rapidly.

73. Like the Father, the Mother persisted in conflict, rather than walk away or defuse it. I accept that the context to some of this behaviour was the Father's control and abuse, yet the children were exposed to the Mother's behaviour and did not know that context. The Mother is ultimately responsible for her conduct in the children's presence.
74. The Mother did not hold or pocket her phone when she made her recordings. Instead, (as the Father told me he saw), she propped her phone up in a room. I find the Mother's recordings were less motivated by a desire to case-build, than to be able to demonstrate the life she experienced in the face of a person who at times denied reality by his gaslighting. I am, however, compelled to conclude that the act of recording represented a prioritisation of the Mother's own needs over the children's. For so long as the Mother expended her energy and focus on recording, she was not doing everything to promote the children's best interests.
75. The children were caused significant emotional harm by the Mother in that she:
  - a. Shouted extremely abusive language in their presence which startled and terrified them;
  - b. Physically abused the Father in their presence; and
  - c. Failed to protect them from being exposed to the volatility of the parents' relationship.
76. It is not apparent to me that the Mother appreciates the harm she has caused the children.
77. I reject the Father's evidence that he lived a life 'walking on eggshells'. The better analogy from the children's perspective was that they, the children, were living in a minefield with their father stood at the side throwing rock into it, tempting an explosive reaction from the Mother.

#### September/October 2022

78. The parties had an altercation whilst the Mother was 36 weeks pregnant with Olivia. The Mother wanted to leave the Father. She collected belongings for herself and Ben. The Father did not want the Mother to leave. I accept the Mother's evidence that the Father pushed the Mother to stop her leaving the family home. I accept the Father's evidence that the Mother, in retaliation, dug her nails into the Father's neck and slapped him with force. I reject the Mother's account that she reached up as high as the Father's neck to grab the Father to prevent herself falling. It is more likely, if she was falling, that she would have braced her fall behind her. The Mother's claim that she scratched the Father whilst falling was dishonest, as was the Father's claim he did not try to stop the Mother leaving.

#### December 2022

79. On 27 December 2022 the Mother wanted to leave the family home with both children. At the time Ben was unwell. The Father refused to allow the Mother to take Ben, which he knew would have the effect of making the Mother feel trapped because she was his primary carer. The Mother was extremely verbally abusive. She was very loud. She used shocking language

in Ben's presence. The Father antagonised the Mother by invoking her family and praying on her mental health by telling her she was a "fucking lunatic" and "so paranoid".

80. The Mother threw an object in the Father's direction. The Father called his parents and co-opted them into preventing the Mother leaving with Ben. The Paternal Grandfather's evidence that the Father merely called him to attend because "[the Mother] was making false accusations" was not candid. He was called to attend to help control the Mother because stopping her leaving with Ben was the Father's priority.
81. The Paternal Grandparents arrived after the Police. The Mother was unable to leave with Ben and instead left with Olivia. The Father's claim in his written and oral evidence that the attending Police Officer said the Mother needed to be sectioned was a lie. I do not accept that is a matter he could be mistaken about. Had a Police Officer taken such a serious view of the Mother's welfare the least that would be expected would have been a record in the Police disclosure. The Father's lie was inconsistent with the Paternal Grandfather's evidence that no such thing was said. The purpose of the Father's lie was to embellish his account of the Mother's behaviour to make his version more believable and paint the Mother as someone whom those in authority perceived to be dangerous. I further reject the claim the Police directed the Mother not to take Ben. Had that been the case it is likely it would have been recorded in the disclosure. She held Parental Responsibility and it is not clear what authority there would have been to stop her taking her son with her.
82. The Mother was not candid in how abusive her communication was. She minimised her outrageously volatile conduct. Her lack of candour was to minimise the seriousness of her extremely volatile behaviour.
83. The Mother returned to the family home the following day. She arrived to find the Paternal Grandparents present. The Mother was enraged and furious because she knew she would have difficulties taking Ben. She had not calmed from the prior day. She lost all control of herself. Ben witnessed the Mother's extreme language and raised voice. Ben was terribly distressed by what he saw and heard.
84. The Mother was desperate to leave the family home with both children. The Mother told the Father she wanted to leave. She screamed and shouted at him:
- "I don't want to be in a relationship with you. Why should I lose my children and stay here in a loveless relationship because you want me to?"
- You keep me here even though I fucking hate you. You force me to stay. You won't let me go. You keep me here and get your mum and dad involved ...
- I'm here because you force me to be.
- I literally hate you."
85. The Mother felt trapped and unable to leave. The Father goaded the Mother, including by calling her "insane" and by use of a belittling tone of voice. He gaslit the Mother when he told her that he had "never stopped [her] leaving". He deflected from his behaviour that stopped her leaving onto *how* she was communicating that she wanted to go by saying things like, "What is wrong with you?", "Stop shouting," rather than hearing how trapped she felt.

January 2023

86. There was an extremely heated conflict between the parents. There were volleys of verbal

abuse exchanged between the parties. The Mother wished to take Ben. The Father did not want her to. He told her she was not taking him. During the conflict the Father deployed his indignant high-pitched voice. The Mother yelled, "I fucking hate you. Get the fuck away from me. Nasty cunt." The Father again, did not hear how distressed the Mother was or defuse the situation. He perpetuated the conflict by picking apart particular words as opposed to seeing the big picture of the conflict that was playing out in front of the children, "How am I nasty?" The Mother told him in terms, "Let me go." A child was screaming and crying whilst this was all taking place.

87. Whilst it is common ground Olivia made contact with the floor, neither party has proved the circumstances they allege that led to that. Whilst the Mother was heard to say, "You fucking piece of shit you pushed me," and the Father replied, "Liar," I formed the impression they were both speaking to the listener of the recording, rather than to each other and it is not safe to place weight on what they each said.
88. The Mother did say she might drive into the Northbank River. That was not a serious threat to kill herself. Nor was it merely sarcastic as the Mother claims. Having listened to the Mother, I find it was a means (a regrettable means) by which the Mother communicated how little agency she felt she had and a way of inflicting fear and pain in the Father if he did not relinquish some control. I consider the Father knows this to be the case, but he weaponised the comment in these proceedings to characterise the Mother as mentally unwell. I do not consider, from what I heard, the Father was empathetic or genuinely concerned for the Mother's welfare.

#### February 2023

89. The Paternal Grandparents attended the family home. I accept the evidence that the door was locked, but the Father has not satisfied me the Mother hid the key. I accept the Father's evidence that the Mother was very distressed by the arrival of the Paternal Grandparents. That was because she saw them as interfering, aligned to her son and critical of her. The Mother was upset that the Paternal Grandfather had met with the Maternal Grandmother unbeknownst to the Mother.
90. I accept the Father's and Paternal Grandfather's evidence that the Mother was yelling, "Cunts," from upstairs because of how upset the Mother was about their arrival. I consider the Paternal Grandmother is mistaken in recalling the Mother did not. The Paternal Grandfather went upstairs. I do not consider, in the face of the Mother's abuse, that he went upstairs to calmly discuss a text message and it is more likely he went up to remonstrate with her. The Paternal Grandmother subsequently went upstairs and the Mother shouted, "Cunt," at her and stuck her middle finger up in her face.
91. At this point the Mother felt trapped in the home because she could not take Ben and she wanted to leave. She contacted her own mother. After the Maternal Grandmother arrived, the Father or the Paternal Grandfather locked the house to prevent the Mother and the Maternal Grandmother leaving with the children. The Father's firm denials in writing and his oral evidence that the doors were not locked were not honest. I prefer the Maternal Grandmother's evidence against the Father's interests that it was locked. The Father's dishonesty was to mislead the Court from concluding the Mother may have felt trapped. I similarly reject the Paternal Grandfather's evidence that "no one stopped" the Mother taking Ben.
92. There were then three generations in the home. Both sides of the children's family engaged in highly abusive behaviour towards each other. The Maternal Grandmother was petulant and belittling towards the Father. The Father kept telling the Mother, "You're unmedicated." Ben was upset and screaming. Judith was also in the house and exposed to this behaviour.

93. There was a tussle over Ben. The Mother and Maternal Grandmother were determined to leave the family home with him. The Father and the Paternal Grandparents were equally determined they would not. The grandparents were doing nothing to calm the other adults who were present. Instead, they inflamed the situation. An exchange between them appears to have been:

F: "You're not taking the children away."

M: "You're a cunt. Get off me."

Other Female: "He's my grandson. You're not having him." (Ben crying very loudly)

94. The Maternal Grandmother forcefully slapped the Father in Ben's presence causing reddening to the Father's face.

95. I accept and find that the Father took the Mother's car keys to prevent her leaving with Ben. The Mother and Maternal Grandmother left with the children in the Maternal Grandmother's car. One of the children was screaming and crying for an extended period as they drove off.

### March 2023

96. On 1 March 2023 there was further conflict in the family home between the Mother and Father. I am unable to find what instigated the conflict. The Mother was shouting and verbally abusive. I accept the Father antagonised her. He pulled faces at her. I accept that, knowing he was recording her, he silently mouthed, "You're not having the fucking kids," because he wanted to case-build with his recording. He goaded the Mother by rubbing his fingers together. In an unacceptable act of violence, the Mother slapped the Father.

97. There was a confrontation between the parents on 22 March 2023. I am not satisfied I can conclude what started it. I accept the Mother became enraged and began packing the children's belongings. Her language was extremely distressing to listen to. In a raised voice and then later shouting the Mother said words such as, "Fucking pussy," "I hate you," "I am taking my belongings," and "You're a fucking piece of shit." The Mother's claim to have not been verbally abusive was manifestly false and dishonest. I accept the Mother scratched the Father to get hold of Ben.

98. The Father goaded the Mother with words such as, "You lied again," "You're a fucking liar," and "You're off your fucking nut." In moments when the situation seemed to calm, the Father would re-engage the Mother by saying things such as, "You're a liar," "You don't give a shit," and "You abandon them." Whilst the Father was not shouting and screaming as the Mother was, his behaviour was abusive nonetheless because he continually sought to coerce and trigger the Mother whilst recording her. It is revealing that he conducted himself in these ways even when he knew he was recording himself.

99. Throughout this there was obvious crying and distress of a child. The parents were both oblivious to meeting their child's needs, did not defuse the conflict or protect the child. Olivia, Ben and Judith were all exposed to this behaviour.

100. I reject the Father's claim that the Mother pinned Ben down for 12 minutes because (A) I think it unlikely the Mother would deliberately physically hurt her son and pinning him down would undoubtedly have done that; and (B) there was no evidence of injury, such as bruising, which may be expected of a child being pinned down for such a period of time.

101. The Father called his own father and got him to call the Police. This was a further example of

the Father co-opting his family. The Father failed to explain in his evidence why he called the Paternal Grandfather and his failure to call the Police himself. Doing so would have allowed him to step out of the heat of the conflict, be calmed by the Operator and give his own account directly. He chose the step that drew in his parents and kept him engaged in the battle with the Mother.

102. Both parents were arrested after this incident. The Father was bailed to keep away from the children. He did not see the children until 23 September 2023. That he was bailed to keep away from the children is a significant reason for the hostility of the Father and the Paternal Grandparents towards the Mother.

#### Injuries

103. The Father asserts the Mother “cannot cope” with caring for the children and neglects their safety. He claims a consequence of that neglect are injuries caused to the children. I make no finding to this effect. I will evaluate the parents’ capacity to meet the children’s physical, emotional and psychological needs at the welfare stage with the guidance of Cafcass.

#### Mother’s Consistency with her Medication

104. The Father has not proved the Mother regularly desisted with her medication. He told me in writing that the Mother “kept coming off her medications completely, without my knowledge...,” whilst in his oral evidence he claimed he knew at the time she was not on her medication. He is not a credible historian on the Mother’s use of her medication. The single recording of the Maternal Grandmother saying that the Mother was off her medication tells me nothing of the context, time or duration. I am unable to give it weight. Whether the Mother looks after her mental health will undoubtedly be an issue that touches on the Mother’s parenting capacity that the FCA will analyse and I will consider at the final hearing.

#### Relationship with Mark Walker

105. Mr Walker is not a party to these proceedings. My capacity to make findings adverse to him is necessarily constrained. He and the Mother are presently in a romantic and intimate relationship with each other. On 18 November 2018 Mr Walker reported to the Police a string of abuse of him by the Mother. The Mother was interviewed by the Police on 28 November 2018. She variously denied Mr Walker’s allegations and made allegations of abuse against Mr Walker. In his oral evidence Mr Walker told me the Mother’s denials and claims of abuse by her were false.
106. I am unable at this hearing to determine where the facts sit as between the Mother and Mr Walker. However, the following must be true – one or both lied to me in their evidence and one or both lied to the Police.
107. In evaluating the facts alleged by the Mother against the Father I have had regard to the what is alleged to be a pattern of behaviour with Mr Walker and specifically the Mother’s dishonesty.

#### Mother’s Allegation 5

108. I make no findings on Mother’s allegation 5.

#### **Interim Welfare Conclusions**

109. At this hearing I am only tasked with determining what arrangements are in the children’s best interests between now and a final determination of the case in 9 weeks’ time on 24 and



25 September 2024.

110. I do not consider it is in the children's best interests to change the present arrangements for whom they live with and how they spend time with the Father because: (A) I require the advice of Cafcass on what arrangements are in the children's best interests in light of my findings; (B) it would be premature to order the children live with the Father without understanding what, if any, impact his proved coercively controlling behaviour may have on the Mother and children; and (C) the children will likely experience emotional disruption by changing the arrangements and it is not clear that disruption is proportionate to any other harm or risk of harm given the arrangements may need to again change in 9 weeks' time.
111. I accept my findings about the Mother mean there is a risk of harm to the children from her behaviour. However, it is not presently evident to me that that *risk* of harm is greater than the harm they *will* suffer by moving from her primary care coupled with the risk of harm to their emotional safety in light of the findings I have made about the Father. These are matters that must be considered at a full-hearing of the welfare issues and my conclusions today in no way determine or indicate a view about what orders may or may not be in the children's best interests on a final basis.
112. I therefore dismiss the Father's application to vary the interim arrangements.
113. I am not satisfied in the interim it is safe to discharge the Prohibited Steps Order that restrains the children's contact with Mr Walker. That may be a step that is taken, but it is one that requires analysis by Cafcass.
114. I therefore dismiss the Mother's application to discharge the interim Prohibited Steps Order.

### **Conclusion**

115. The parties agree that the Court should invite Mr Walker to intervene in the proceedings to participate in the final hearing so that welfare orders and findings may be made as required.
116. A section 7 report will now be required to provide a holistic analysis to the Court of the welfare options, including the risks of harm to the children and parents.
117. The issues the Court will need to consider at the final hearing include:
  - a. With whom the children should live;
  - b. What time the children should spend with the parent with whom they are not living;
  - c. Whether these parents care capable of and/or it is safe for the parents to jointly exercise Parental Responsibility and, if they are not and/or it is not safe, whether one of the parents should have determinative Parental Responsibility to the other's exclusion;
  - d. Whether a final Prohibited Steps Order should be made; and
  - e. Whether the children's last names should be changed.
118. At the final hearing I will consider making directions pursuant to section 91(14) of the Act of the Court's own motion (see section 91A(5)(b) of the Act).
119. That is the judgment of the court.