

IN THE FAMILY COURT AT MANCHESTER

Case Number: MA23P00735 (consolidated with MA23F00887)

Neutral Citation Number: [2024] EWFC 349 (B)

IN THE MATTER OF AS, BS & CS (CHILDREN)

Re: AS, BS & CS (Children)(Finding of Fact and Non-Molestation Order dismissed)

Before DJ F HAMMOND

BETWEEN:

PQ

Applicant Father

-and-

RS

Respondent Mother

HEARING DATES: 15 - 17 OCTOBER 2024

DATE OF JUDGMENT: 11 NOVEMBER 2024

JUDGMENT

This judgment was given in private. The judge gives permission 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 this judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.”

This version of the judgment has been anonymised in order to protect the identity and the privacy of the child involved in proceedings. The published version contains small amendments to the version handed down in proceedings in order to achieve that aim.

1. This case concerns the following children:
 - AS, a girl born on [date], now aged almost 15;
 - BS, a boy born on [date], now aged 12;
 - CS, a girl born on [date], now aged 5
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 15 to 17 October 2024. I am handing down judgment today, on 11 November 2024.
3. On 18 April 2023 the father of the children, PQ, applied for a 'spend time with' order in respect of the children. I will refer to him as 'the Father' in the judgment. The Father has parental responsibility for the children having been married to the mother of the children at the time of their birth and having been named on their birth certificates.
4. On 21 September 2023 the mother of the children, RS, applied for a non-molestation order. I will refer to her as 'the Mother' in the judgment. An interim non-molestation order was made on notice by a Deputy District Judge on 13 October 2023 and that order has been extended until the conclusion of this hearing. I have case managed the non-molestation order proceedings and the Children Act proceedings and have consolidated them with the intention that findings would be considered at this hearing, and those findings would feed into a final decision on the non-molestation order application.
5. On 01 March 2024 DJ Morwood directed that a finding of fact hearing was required, and I agreed that one was necessary at the PTR/Ground Rules hearing on 04 June 2024. At that hearing I extended the interim non-molestation order which was to last until the conclusion of the finding of fact hearing or further order. At the outset of this hearing, I was satisfied that it remained appropriate to conduct a Finding of Fact hearing.
6. It is some time since the Father has seen the children and he tells me that he is desperate to do so. The last time he saw the children was in 2020. Following the parties' separation the Father was charged with rape, ABH and coercive control against the Mother. Those charges took until 2022 to be tried in the crown court. At the trial the Father was acquitted of rape and ABH and a verdict could not be reached on the allegation of coercive control.

The CPS have subsequently decided not to seek a re-trial on the coercive control allegations.

7. The relevant allegations that I directed should be determined are contained within the Mother's schedule of allegations at D14 of the bundle. At the PTR I had determined that it was not appropriate to determine two allegations of physical harm alleged to have been directed at the children.
8. At this hearing the Father has been represented by Ms Marron of counsel and the Mother has been represented by Ms Grehan of counsel. Although it is a convention for a judge to commend counsel, in this case the standard of advocacy from both counsel was extremely high quality. They could not have done more for their clients.
9. I heard evidence from the Mother and the Father only.
10. 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.
11. The Father had the benefit of a Mirpuri interpreter throughout the hearing.

The Law

12. The non-molestation order application falls to be considered under Part IV of the Family Law Act 1996.
13. A non-molestation order is 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.
14. There is no statutory definition of “molestation”, and it covers a wide range of behaviour including e.g. using or threatening violence, shouting, harassment, nuisance telephone calls, texts and social networking site postings, smashing furniture, etc.

15. There is power to make these orders either on specific application for such or in any family proceedings in which the respondent is a party and the court considers the order should be made for the benefit of the other party or any relevant child.
16. 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.
17. 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.
18. 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.
19. 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.
20. Findings of Fact must be based on evidence, including inferences that can properly be drawn from the evidence, and not on suspicion or speculation.
21. As there are very different recollections of past events I give myself a Lucas direction. People lie, and they lie for various reasons. They can lie through shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure, however because they lie about one thing does not mean that they have lied about others.
22. It is apparent to any judge tasked with listening to the recollections of witnesses that memory can be unreliable. There are all sorts of reasons why people can appear to

remember things that have not occurred or fail to mention things that have 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, with professionals and with witnesses can lead to memory creep and the development of 'memories' of events that did not actually occur.

23. 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.
24. 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. The same applies to when they are giving 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.
25. Domestic abuse often occurs during arguments or where there are heightened tensions on both sides. In my judgment the most important factor in determining whether behaviour is abusive is to give consideration to 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.
26. There are cultural issues of relevance in this case. The Mother is a British Pakistani. She was born and brought up in [a Greater Manchester town]. The Father is Pakistani. The marriage was arranged. It was not a love match. 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. I have had these factors in mind when considering the findings that I have been asked to make.

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

28. 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..."

29. 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"*.

30. 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"*.

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

Evidence

32. The bundle before the Court was 435 pages long. There were also five videos, four of which were disclosed as part of the police disclosure. The police videos included bodycam footage and ABE interviews of the parties. The other video was a short clip of CCTV footage disclosed by the Father that related to the Mother's allegations around events in September 2023. At the outset of the hearing the Mother chose not to maintain her objections to the Father's late witness statement being admitted into evidence.

33. I will analyse the key aspects of the oral and written evidence in my analysis of the evidence and my findings.

The Mother

34. The Mother gave evidence first. She was an unsatisfactory witness in a number of respects. She was combative and argumentative. She seemed unable or unwilling to focus on the questions she was being asked. I understand the difficulties in giving evidence. Cross-examination must be a difficult process for witnesses who are having to answer questions and give their recollections under intense pressure before strangers. Nonetheless, the Mother continually gave overly long answers that veered away from the question, and she regularly spoke so quickly it was very difficult to follow and note down everything that she said. This was despite my repeatedly explaining to her that she had to focus on the questions and give answers in short sentences so that all of her words could be translated for the Father and written down by me.

35. For a number of her answers, she appeared to blurt out an answer without thinking and then would repeat it three or four times giving me the impression that she was trying to convince herself and me that the answer was true. I suspect that this was a combination of her own particular mannerisms, which were also in evidence in the police interviews, and the pressure of giving evidence in court, as opposed to it signalling wholesale attempts to mislead.

36. There were a number of inconsistencies and omissions in the evidence that she presented to the Court. When she was describing the incident where she alleges that she was struck by the Father with a slipper she told the police that she was sitting on a stool when he was striking her. She told me that was accurate but could not explain why her statement at B2 stated that she was pushed onto a sofa during the incident before being hit with the slipper.

37. When asked about her allegation of rape she was positive that it was a one-off incident that occurred in 2014. She could not explain why she told the police in 2020 that the rape was in 2015. She appeared to suggest that the police only focussed on one allegation of

rape and was then taken to E25 where she stated in her non-molestation application witness statement that she was raped on several occasions and at D48 her comments to the police suggested that she had been raped on multiple occasions, with the last occasion being in 2015. When pressed during her evidence she stated that she had always said that it was one time only and she had not really understood it to be rape until she had discussed the incident with the police.

38. The Mother had disclosed a video to the police with a recording of an argument between herself and the Father. Her evidence to me was that she had nothing to do with making the video. The children had made the recording and had forwarded it to the maternal grandmother who had raised the argument with the Mother. She told me that she knew nothing about the recording until her mother raised it with her. This was important evidence as the Father argues that the Mother was complicit in the recording and that her recorded comments see her goading the Father into behaving badly. The Mother told the police a different story. She said that the kids had made the recording, but that she had forwarded it to her mother so that her mother could hear what she was being subjected to. This is a notable difference and her explanation that this may have referred to her sending a copy to the Mother later was unconvincing.

39. In her oral evidence to me she told me that she needed the protection of a non-molestation order as the Father had immediately parked outside her house to harass and intimidate her the day his bail conditions lapsed after he was acquitted in his criminal trial in September 2022. She had no explanation as to why this account was not recorded in her witness statement which records two incidents of his being parked outside her house in August and September 2023. It seems to me that this would be a crucial piece of evidence when giving an account to the Court to support an application for a non-molestation order.

40. These inconsistencies and omissions were not minor and cause me real concern over the reliability of the Mother's evidence.

The Father

41. I hold similar concerns in respect of the Father's evidence. He is obviously intelligent and appears to suggest that he was a placid anchor in the marriage, whilst the Mother had

issues with her mental health and would be argumentative at every turn. There were a number of instances where, even allowing for issues with translation, he was evasive. This was particularly the case when he was being asked what he would say to the Mother during arguments.

42. Ms Grehan is right about the Father. Instead of taking responsibility for his actions he repeatedly sought to blame others:

- a. The problems in the relationship were all down to the Mother;
- b. The audio recording was mistranslated;
- c. The police interview with him was mistranslated;
- d. The Mother's GP letter is inaccurate because they are friends of the Mother;
- e. The safeguarding Cafcass family court advisor misrepresented him.

43. Many of the alleged mistranslations were explored further in the hearing with the Court interpreter, and the translations being explored had a high degree of accuracy.

44. There were important inconsistencies in his evidence. When answering the Mother's allegation that the Father had slapped her after she failed to react to his giving a woman at a flower at a wedding in 2009 the Father told me that this incident did occur but that it was the Mother who had given him the flower to give to his cousin. There had been no slap. When it was pointed out that he had flatly denied the allegation in his witness statement and there was no acknowledgement of a flower being an issue of contention he stated that he had only been reminded of the flower when the question was asked in cross-examination. When questioned further around this issue he then sought to suggest that there was another wedding in 2013 where the flower incident occurred and that's why he had not mentioned it when dealing with the 2009 wedding allegation. These answers lacked credibility and gave me the impression that he was trying to talk himself out of trouble.

45. When the Mother's rape allegation was put to him the Father initially refused to accept that he believed that the Quran preached that it was a husband's right to have sex with his wife. The Father is a practising Muslim. He said that he always asked permission to have sex with the Mother and when it was refused, he would accept that and there would not be any arguments about it. When his police interview at D140 and D141 was put to him he

initially tried to suggest that there were translation issues. The recording was listened to, and whilst the interpreter suggested that the questions were being translated in Indian Punjabi and not Mirpuri, it seemed clear to me that the Father understood the questions and that the translations of his answers were accurate.

46. He told the police that there were arguments when the Mother refused sex, that he reminded her that the Quran said that it was her duty to have sex with him and he agreed that he thought that it was unacceptable that she was refusing to have sex with him as she was not following the teachings of the Quran. His explanation of his comments at D140 to the police that, should the Mother refuse his request for sex he would sleep separately so that *'things did not happen whilst they were asleep'*, was difficult to understand and accept. He appeared to admit that he was concerned that he would try to have sex with her whilst they were asleep even though she had said *'no'* when he had asked her.

47. The Father told the Court that he remarried at the end of 2022. At C27 during an interview with Cafcass he denied having a new wife and said that the Mother was saying these things to prevent him seeing the children. When asked about this his answer was unimpressive. He said that he was answering a question as to whether there was a wife in the UK, and he accused the family court advisor of misrepresenting his answer.

48. Within the police evidence there is a transcript of an audio recording which the Mother says was taken by the children. As I indicated previously the Father believes the Mother had a part in taking the recording. Whatever the source of the recording it paints a concerning picture of the Father's behaviour even having regard to the substandard nature of the translation. The Mother has raised her own issues with the translation to the police. The Father says that the translation is fundamentally flawed as it was translated in Urdu and not Mirpuri and Urdu translations will result in certain phrases having entirely different meanings. The original of the audio has never been disclosed into these proceedings. The issue with the translation was raised halfway through the Father's evidence while he was under oath although it had been foreshadowed by Ms Marron at the outset of the hearing. No application for disclosure of the audio file was made by either party notwithstanding the Mother confirming that it may well be available. Both advocates appeared to agree that I would have to determine what weight to give the

transcript where both parties have raised criticisms with it and there may well have been a language issue with the translation.

49. The Mother says that the recording, which she believes was taken in June 2020, followed threats by the Father towards her and the children. The transcript contains the following exchange:

Female (the Mother): *what will you do?*

Male (the Father): *it will be seen*

Female: *What, tell me now what you go going to do*

Male *I am not telling yet, let me write a will first then I will tell you*

Female: *You write a will, what'll you say in Will, what'll be in the Will?*

Male: *Leave it, don't talk to me, until after you apologise from my parent, apologise from my sisters who you have called bitches and shameless, after apologising from them*

50. He had denied ever threatening to take his own life. When asked about this passage he said that he was being pressurised by the Mother and her family, that when that happened you have to say something and that what he meant was that he needed to write a will so that if anything happened to him it would be her family's fault. It is clear to me that he was using a threat to his own life to place emotional pressure on the Mother to get what he wanted, in this case an apology.

51. In another exchange:

Female: *He is [name]'s son, (father's sister's son, cousin)*

Male: *He [name]'s son, oh, "that [other name]" fucker, was getting fucked around, and was fucking you, you mother-fucker*

52. He denied having said that and blamed the translation. He says that he did not say "mother-fucker". He said he can't remember what he said but he never used those words in his own language.

53. At D61 there was the following exchange:

Female: *I do not understand you, after doing the house up, what will you do?*

Male: *I will show you then what I will do*

Female: *Will you kill us as well?*

Male: *You will see then*

Female: *How will I see*

Male: *You will see what happens*

Female: *If you want to go, then go, where will you go*

Male: *I am not going like this, I will take a few, two, may be four people with me*

Female: *Oh, really,*

Male: *Really, I will finish everything that you have issues/troubles with about me, I will finish everything, they will go with me*

54. Once again, he blamed the translation, however I have little doubt that this was the Father ominously threatening the Mother. I do not accept his account that he was talking about getting a different house for them all to live in.

Specific Findings

55. One of the Mother's allegations is that the Father was responsible for controlling and coercive behaviour during their marriage. Allegations of controlling and coercive behaviour require me to consider the relationship in the round.

56. The Father's case theory is that the Mother has had a plan to cut him out of their life after C was born. Until around the time C was born, his case is that they enjoyed a happy, ordinary marriage. He believes that her plan included retaining the family home in the event of a separation. His case is that she made these false allegations to achieve those ends.

57. The Mother's position is that she was trapped in a loveless marriage with a controlling man with no support systems in place. He had grown up in a situation in Pakistan where abuse was normalised, and he brought that to his marriage. She had not reported abuse at

the time through fear of the consequences for her and the children and she had not fled as she had nowhere to go. She had invested her life savings into the family home and did not see it as a viable proposition to flee and live on the streets or in a hotel with the three children and she wanted to retain her financial investment.

58. I will now deal with each of the specific allegations relied on by the Mother:

Physical Abuse

The Father would pinch, push and slap the Mother

59. The Mother's case is that if she was not awake and the kids were up the Father would wake her with pinches, pushes and slaps. She says that they caused bruises. The Mother has produced no supporting evidence relating to any bruises however the Father admits that she would bruise regularly as she is a diabetic and she would bruise at her injection sites.

60. In response the Mother has produced a letter from her GP which can be summarised as follows: the Mother has never complained of bruising resulting from insulin injections, and the size of the needles used make the chances low that this would be the cause of bruising. However, the GP states specifically '*It is impossible to comment on the likelihood of bruising as this is an individualised risk*'.

61. At paragraph 13, on B3 the Mother described a bruise from injecting herself with insulin which is difficult to square with the evidence she has adduced from her GP.

62. She initially raised this with the police during the attendance at the end of the relationship in August 2020. I am concerned that there is potential for a party to look back on a long relationship and revise history in certain respects whilst looking backwards through a lens coloured by the disharmony at the end of a relationship. In particular, I have formed the view that there are aspects of the Mother's evidence where this is exactly what she has done.

63. The Father would leave for work very early and accepted that sometimes the children were up before he left when the Mother was still asleep. They stayed upstairs but he could

hear them. He accepted that occasionally he would have to go upstairs to wake her but denied that he would pinch her to wake her up. His account was that he would wake her to ensure that her blood sugar levels were suitable for looking after the children that day.

64. I find that on occasion he would prod or push her to wake her up so that he could assess if she was fit enough to look after the children. She now looks back on that rough handling and sees it as abuse, grouping it with other events she experienced with the father which I will go on to address.

65. I do not find that the Father routinely abusively pinched and pushed the Mother. I am concerned over the Mother's reliability as a witness, there is no corroborative evidence and the Father's account has been consistent and is more credible.

66. The Mother then went on to describe three historical instances of physical abuse perpetrated by the Father. Notably, in her police report in November 2019 at D55 she described three previous instances of physical abuse at the hands of the Father.

67. In paragraph 3 of her witness statement the Mother stated that she was slapped by the Father in January 2009 after he accused her of disrespecting his family by telling his sister that they could not have the couple's set of knives. The Father denies this allegation and recalls no event similar to that described by the Mother. The Mother's account has remained consistent throughout and is very specific. The reference to bending a knife is the sort of detail that has the ring of truth about it. This allegation and her next two allegations are consistent with her having told the police in 2019 that there had been three previous instances of physical assaults. No alternative explanations for the Mother perceiving an assault were suggested. I prefer the Mother's evidence in this respect.

68. I find this allegation proven.

69. In paragraph 4 of her statement the Mother described being slapped after returning from a wedding when there was an issue over the Father giving someone at the wedding a flower and the Mother not reacting appropriately. The Father in his oral evidence suddenly remembered the incident but alleged that the other had given him a flower to give to his cousin. Then he said that this was at a different wedding when it was put to him that he

had not remembered any such incident when preparing his statement in response where he had given just a flat denial. Again, the Mother's account is consistent, it describes a specific memorable incident with the ring of truth around it. The Father's evidence was inconsistent and suggested to me that he was being evasive because he recalls something having happened following a wedding. The account is consistent with there being a second instance of abuse reported to the police in 2019.

70. I find this allegation proven.

71. In paragraph 6 of her statement the Mother described being repeatedly hit by the Father with a slipper in B's presence in Summer 2017. This allegation was given to the police during her ABE interview. I did not find her account to the police to be inconsistent with her current account as to its central theme and she has not embellished her version. It is consistent with her account in 2019 to the police that there were three previous instances of physical abuse. I prefer it to the Father's blank denial.

72. I therefore find the allegations that the Father slapped the Mother in January 2009, February 2009 and Summer 2017 are proven.

The Father raped the Mother

73. This is a serious allegation. The Mother's oral account to the Court is that she was raped on one occasion. She believes that this was in 2014 but it could have been in 2015. The Father had asked for sex. She had refused and the Father manhandled her into the bedroom, held her down, removed their trousers and penetrated her. She says that she was struggling and telling him to move and leave her alone. He told her to comply, finished and then left. A bottle of Lucozade was thrown at her.

74. That is the version that she gives in her statement at B2. In her evidence she referred to *'the rape'* and clarified that it was a one-off incident. She mentioned it during the bodycam footage on 27 August 2020 and later expanded on it during her interview. At D48 in the FWINS a record on 28 August 2020 states *"During the relationship, with the last time at some point in 2015, the offender would say he wanted sex. If R refused he would force himself on top of her, holding her down on the bed, removing or moving her*

clothes to the side and raping her. He would tell R that because they were married he could have sex with her whenever he wanted to.” That account may well have come from the conversation recorded in the bodycam footage where the Mother said that he would force sex on her on a number of occasions, particularly when she was low.

75. This entry gives the impression that the Mother was complaining of multiple instances of rape and that she was complaining of a rape in 2015 not 2014. When pressed about this the Mother stated that it was a one-off incident and that she had “*always said that it was one time only*”, although at one point during her evidence she said “*they only focussed on the one*”. At E25 in the statement that supported her non-molestation order application the Mother stated at paragraph 9, “*throughout the relationship, on several occasions, the Respondent raped me. On one of these occasions he followed me upstairs. He states, “I need it now”. I was unsure as to what he meant by this. After some time, when I was going downstairs, he pushed me back up. He locked our bedroom door, stating “You have to”. After raping me, he stated “Sort yourself out”. I am unsure as to why I did not call the police. I believe this was because I was naïve to the fact that this was wrong even when married.*”
76. There was a theme running through her police interviews and her evidence before me that she was not clear that the Father’s behaviour amounted to rape. She told me that she could not really say what it was, but she knew it was wrong.
77. The Father categorically denies ever having raped the Mother. He says that there were lots of occasions where he would ask for sex, and she would say no and he always respected that. He said that they would only really have sex when she wanted it and not when he asked for it. His case is that the Mother invented this allegation when speaking to the police in August 2020 and did so in order to remove him from the house, prevent him from seeing the children and to cut him out of any financial entitlement. He says that if it was true, it would have been reported earlier. He adds that the Mother cannot have been in any doubt that what she describes was rape.
78. He ultimately accepted that his comments during the police interview were accurate, namely that in his view the Quran taught that it was the husband’s right to have sex with

his wife and that he had told her that when she refused, she was acting in an un-Islamic way.

79. His suggestion that their sex life was entirely at the Mother's whim does not seem likely to me having heard from these witnesses.
80. I have to determine whether or not the Mother's allegation that the Father raped her is true. There is uncertainty in the Mother's accounts over when it might have occurred and there are inconsistencies over whether it happened once or on more occasions. Miss Marron says that these issues are fatal to such a serious allegation being established.
81. I must make it clear that, notwithstanding Ms Grehan urging me to view statements given to the police by family members of the Mother as being corroborative of the Mother's rape allegation, I place no weight on those third-party statements in the police disclosure. The witnesses have not attended, and they have not been questioned on the accuracy of, or the motivation behind their statements. They are family members who may well have an axe to grind.
82. In my judgment, the inconsistencies around the Mother's account make sense in the situation in which she was living. I find that the Father was domineering and that he believed that he had a right, derived from the Quran, for sex. The Mother described numerous instances in the relationship where she had kept the Father sweet by wearing the clothes that he preferred, backing down in arguments and generally agreeing to things that she did not want. Those accounts had the ring of truth to them. I am sure that this is likely to have been the same as far as their sex life is concerned.
83. There will have been a number of occasions where the Mother declined a request for sex and the Father pressed on. That can perhaps be seen in the Father's own words during the police interview at D140 when he says that if she refused, he would take himself away from the bedroom to ensure that '*things did not start to happen*' should he want to have sex.
84. I find it more likely than not that on many occasions the Mother would go along with having sex with the Father when she had initially been opposed to the idea. That was the

impression that I got from a number of her answers. In the absence of overwhelming control and coercion that is unlikely to amount to rape, as, to the Father, she will have apparently consented. On one occasion, however, probably in around 2015, the Father forced himself on the Mother after she expressly said no. He did it because he felt it was his right to do so. At no point during the episode did the Mother consent and she tried to get him to stop but he would not. The Father knew that she was not consenting. He raped her on that occasion.

85. The confusion in the Mother's accounts stem from her trying to understand what was happening on the other occasions when she submitted to sex that she did not really want. That applies equally to her inconsistency over the year in which it occurred. I do not accept that it will have been black and white to the Mother whether or not she has been raped. It can be notoriously difficult for people in abusive intimate relationships to know and understand where the boundaries lie in sexual relationships and very often it can take the clarity of separation for them to process what happened. It is important that even on those occasions where the Mother suggested there were multiple rapes, she defaulted to describing the one off occasion in a manner consistent with the current allegation.

86. I am aware that I have found the Mother's evidence to have issues with its reliability. That has caused me to look long and hard at each and every allegation that she makes. The central account in this allegation has remained consistent and the Father's evidence causes me to find that her allegation is likely to be true.

87. The allegation that on one occasion the Father raped the Mother is proven.

Mental and Emotional Abuse

The Father threatened to kill himself

88. The Mother states that the Father would regularly resort to making threats to kill himself. Those sorts of threats can be extremely emotionally harmful to those connected with the person who makes the threat. They are a form of emotional blackmail and an attempt at control. The Father denied ever making threats to kill himself.

89. The recording provided to the police by the Mother evidences one example of his making such a threat. It does not matter whether the Mother was instrumental in the creation of the recording, because the Father can be seen to threaten to take the family with him in the event that she does not do what needs to be done to resolve their differences. When asked about it he tried to divert from the questions by arguing that he had not committed suicide which means that he did not make the threat. This was a regular tactic of his when being questioned about difficult topics.
90. The fact that he has been recorded making such a threat, and the fact that he denies it entirely, leads me to find that it was likely a threat that he would regularly make when things were not going his way as the Mother suggests.
91. Not within the Scott Schedule, but within the Mother's witness statement, are allegations that alongside threats to kill himself there were threats to report her to her father and threats to divorce her. Having heard from the Father, and having heard how he threatened her with taking his own life, as well as making other threats I will come on to later, I am satisfied that it is likely that he would employ similar tactics in threatening her with things that might harm her in order to exercise control.

92. This allegation is proven.

Verbal Abuse

The Father would often insult the Mother

93. The Mother alleges that the Father would call her a cow, a dog and a fat cow.
94. The Father in his evidence accepted that he called the Mother a bitch during arguments. Miss Marron said that this admission was an example of how transparent he was being with the Court, but it is notable that he did not accept having used that word in his witness statement and instead sought to suggest that he never used offensive language.
95. The evidence I have read and heard suggests that this was a turbulent marriage marked by a number of arguments. I reject the Father's suggestion that he was the moderate mild-mannered partner with all of the aggression and dysregulation coming from the Mother.

96. Once again, the transcript of the recording shows his intemperate language towards her. I do not accept that his calling the Mother a mother fucker is a mistranslation. That argument has captured his using threats and emotional blackmail and also his resorting to abusive language. I can accept that the Mother appears to be goading him during the argument, but it would be an unlikely turn of events for his behaviour to be captured on the one occasion that it became extreme.

97. As well as calling her a bitch, I find it more likely than not that the Father would resort to abusive names for the Mother during arguments and would call her a dog and a cow, common derogatory names in Urdu/Mirpuri, when angry with her.

98. This allegation is proven.

Controlling and Coercive Behaviour

99. There are a number of specific instances of controlling and coercive behaviour alleged in the schedule. I will consider them as part of my overall assessment of whether or not the Father was controlling and coercive. I remind myself that looking at allegations of control and coercion individually may cause me to miss the bigger picture.

100. There is always a danger that upon separation the dispute between the parties will cause one or both of them to revise history and read things into previous events that did not happen in the way now being suggested. It is also important to distinguish between those cases that involve cultural standards in different communities that are willingly accepted by both parties to the marriage and those cases where those standards or behaviours have resulted in control or coercion within the meaning of the Domestic Abuse Act.

101. I note that the Mother has adduced no independent evidence and does not seek to rely on any third-party evidence from family or friends to support her allegations of control.

102. The Mother spent substantial amounts of time with her family. She says that she went out with the girls which would be unlikely if she was being monitored. She went to family weddings and funerals, left the home and returned on her own. She had the support of her family and managed her own finances- telling me that she paid the mortgage on the house, and that it was bought with her savings. It is very unusual in my experience for a controlling father to direct that a mother and her children are to spend significant periods of time with the maternal family- that is the antithesis of control. It is also unusual for a controlling and coercive spouse to allow their partner to have unrestricted access to their own money. **I do not find that he dictated where she went and what she did or how she spent her money.**
103. **I cannot accept her allegation that the Father would access her phone using her thumb and remove her contacts.** It seems unlikely that he would restrict her access to her family when he was encouraging her to spend so much time with family members on her account. Given my concerns as to the reliability of her evidence, in the face of the express consistent denial of the Father and the evidence that he encouraged her to spend time with her family without him, I do not find this allegation proven on the balance of probabilities.
104. Having heard her evidence **I find her allegation that he forbade her from wearing certain clothes, perfume or a watch to be unlikely and therefore not proven.** I find that the likelihood is that he had strong views and preferences and that she would go along with those views. It is likely that she chose to wear the clothes that he bought her. It is not unusual for someone visiting Pakistan to buy, and return with, traditional clothes. It is not unusual for a wife to want to dress and comport themselves in a way that their husband likes. There is little detail of conversations where he prevented her or chided her for acting in a way that he disapproved of.
105. Likewise, **I do not accept that she was prevented from attending a family funeral.** Firstly, her evidence is that she went. This is important because control and coercion as an offence carries with it the need to prove subordination, harm, fear and/or submission. The likelihood is that her strong-willed husband, who would expect that his role was to make decisions and give sound advice, would strongly recommend that she did not do certain things. The fact that she went to the wedding is more consistent with his having

advised her not to go but her making decision contrary to his advice. It is common for wives in this situation to leave the marriage and then construe those sorts of incidents as control when, in fact, they fall a long way short of the threshold for criminal behaviour. In many relationships there is a power imbalance, and the weaker party feels unhappy and dissatisfied. It requires much more for the conduct complained of to be criminal.

106. **I do not find that the Father refused to be tested as a match when A required a blood transfusion.** There is no corroborating evidence of what the Mother says she understood was the position from the nurse. The Mother did not call the Father, she has not adduced evidence from a member of the nursing staff and the medical notes make no reference to his having refused. In any event, I do not see how this could amount to controlling and coercive behaviour even alongside the other instances the Mother relies upon.

107. Likewise, an allegation that the Father would shout at the Mother is unlikely to amount to controlling or coercive behaviour. The allegation relates to one incident where, if true, the Father was clearly annoyed at something the Mother had said. It seems clear that the Father would tell the Mother to be quiet when he did not want to hear what she was saying. He does so during the audio recording. However, the audio recording also shows her pushing and prodding at him. It may be because the Mother was complicit in the recording and was trying to elicit certain responses. In the alternative that is how their arguments would progress. It is not unusual when couples argue for one to lose their temper and shout at the other. Without a pattern of the Mother being continually shut down by the Father shouting at her **I cannot see how the one-off instance of shouting alleged by the Mother could be said to be an attempt to subordinate her or punish her.**

108. On the issue of the audio recording, it does not appear to me to be important to make a finding whether or not the Mother was complicit in making the recording. Whilst I do not need to make a formal finding, there is support for the Father's allegation that she was party to the recording on the following bases:

- a. She was inconsistent in explaining how the recording came to her attention and the attention of her Mother;

- b. She alleges that the children, who were still quite young, would have had the know-how to record them secretly and send it to their grandparents, when in fact they were spending significant time with the grandparents and could just have told them what was happening;
- c. The Mother's behaviour in the audio recording sees her continually asking for further information from the Father about what he is going to do despite his asking her to leave him alone. It reads as if she was trying to get him to make threats and expand upon them.

109. As far as the allegation that the Father broke plates in anger over the Mother's refusal to befriend a lady who wanted to apply for a job at his [place of work] is concerned, **I do not find that this allegation is proven.** The Father has been consistent in his denial. The Mother has the burden of proof and has issues with the reliability of her evidence. Although this is an oddly specific allegation it is difficult to imagine a situation where the Father would ask the Mother to befriend someone who wanted a job where he worked. I suspect that the Mother has misremembered this interaction and has reimagined it as abuse.

110. The Mother's account was that she wanted to make the relationship work. The relationship got better and worse, she admits that it got better and that led to the conception and birth of C. The Father was the breadwinner, and she was at home looking after the children. She was describing a marriage with some happy moments and many unhappy ones.

111. There are instances of controlling and coercive behaviour identified by the Mother that I accept occurred. **I accept that the Father would make threats to remove the children from her care.** The report to the police in November 2019 at D55 shows her telling them of her concerns and her inability to sleep properly due to his threats long before the relationship was over. That is compelling evidence as to what she had experienced at the time. **I have also accepted previously that he would make threats to take his own life.** The Mother alleges that the Father would threaten to burn the house down taking the family with it. I have already found that he was making ominous threats in the audio recording, and I agree with the Mother that this was a threat to take them all with him. I accept the Mother's evidence that this was a threat that he had used before. It

involved a threat to burn the house down. **The Mother's allegation that he would make threats to kill the mother and the children is proven.**

112. In summary, therefore, **I do not form the view that the relationship between the parties was controlling and coercive to the extent portrayed by the Mother in her evidence. She had more independence than she alleges. The Father did seek to control and coerce her, however, by making threats. These threats were designed to get what he wanted, whether that was to get her to be quiet, to get her or her family to apologise or for some other reason. The threats were designed to subordinate her and were designed to put her in fear.**

113. **This allegation is proven to the extent that I have indicated above.**

Findings in respect of the Non-Molestation Order Application

114. The non-molestation order was sought on the basis that the Father had parked close to the Mother's property on 09 September 2023 as the Mother returned with the children and he subsequently started talking within his vehicle. That distressed the children. That was subsequent, it is alleged, to an incident on 23 August 2023 when the Father parked outside the Mother's property and smirked at her.

115. The application was not made primarily on the basis that the Mother needed protection from the Father as a result of the domestic abuse that I have been asked to determine as part of the finding of fact. Instead, it was the incident on 09 September 2023 that the Mother inferred in her application was the need for protection from the Court.

116. As a result, it seems to me that I am bound to consider the events of 09 September 2023 and 23 August 2023 and determine what happened on those occasions.

117. The Mother believes that the Father was parked on the street waiting for them. The Father says that there were two other people in the car, and they were going to pay their condolences for someone who had died in Pakistan.

118. The Father has produced CCTV of the incident from his friend's camera. His friend, Mr T, lives across the street. That appears to show someone else in the passenger street with the window down. The Father said it was Mr T in the passenger street and he was smoking which is why the window was down. The video supports his account that he did not stop the car.
119. As far as the 23 August 2024 allegation is concerned the Father accepts that he was on the Mother's road but says that he was 25 metres or so away and had attended because it was Mr T's mother who had passed away.
120. **I find that it was a chance occurrence that the Father was passing when the Mother and the children were walking along the street although it is right that the Father gave little thought as to the effect of his presence on the children.**
121. **I find that the Father was parked outside the Mother's property on 23 August 2024 to see Mr T and not to intimidate or harass the Mother, or to upset the children.** She may have perceived that he was there to intimidate her, but I do not find that was his intention. He had deep roots and friends in the area.

Conclusions in respect of the Non-Molestation Application

122. In my view non-molestation orders are primarily designed to give short term relief to parties at the conclusion of a relationship or when there has been a flare up between parties who have separated or who are no longer on civil terms. A non-molestation order is an extremely serious order, often impinging on the rights of a citizen to go about their daily business in a way that would otherwise be lawful. In this case the Mother's application relates primarily to a one-off incident in September 2023, incorporating reference to a previous event in August 2023.
123. I have not found that the incidents in August and September 2023 were attempts by the Father to harass, intimidate or molest the Mother. Even if I am wrong about that, the Mother has the benefit of the protection of the interim order for over 12 months, which is a period in excess of how long such an order would ordinarily last. There have been no proven breaches, and, in those circumstances, I would not have acceded to a request to

extend the order. I cannot find that the Mother needs the protection of the Court through such a draconian order. If she did initially need protection, I would not be satisfied that she needs continuing protection beyond today. The Mother reminds me that the Father has demonstrated a lack of insight as far as the effects of his presence on the children is concerned, however that does not warrant the imposition of such a draconian order.

124. **I will therefore direct that the non-molestation order is to be discharged immediately following this hearing. Clearly, if the Father were to subject the Mother to harassment or molestation in the future she is free to make a further urgent application to the Court for protection.**

125. Any further concerns can be managed through orders in the Children Act proceedings.

DJ HAMMOND

The Family Court at Manchester

11 November 2024