

IMPORTANT NOTICE

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IN THE FAMILY COURT SITTING AT NORTHAMPTON

**Neutral citation: [2024] EWFC 65 (B)
Case No. NN22P00645**

Friday, 9 February 2024

Before:

MR RECORDER ROWBOTHAM

Between:

M

Applicant

– and –

F

Respondent

Representation:

Charlotte Osborne (Counsel) for the Applicant

Ella Cantor-Freedman (Counsel) for the Respondent

Hearing dates: Tuesday, 21st to Friday, 24th November 2024

JUDGMENT

Introduction

1. These proceedings concern the welfare of two boys: X, aged 12 years and Y, aged 10 years. The children’s mother is aged 44 years; she is represented by Ms Osborne of Counsel instructed by Family Law Group. The father is aged 53 years; he is represented by Ms Cantor-Freedman of Counsel instructed via the public access scheme. Both parents share parental responsibility for the children. For ease of reference, I shall refer to M as “the mother” and to F as “the father” throughout this judgment.
2. By Form C100 dated 5 October 2022 and issued that day, the mother made a without-notice application for orders *inter alia* that the children live with her and prohibiting the father removing the children from her care. That application was accompanied by a Form C1A

(allegations of harm and domestic violence) of the same date. A separate application was also issued under the Family Law Act 1996, the mother seeking a non-molestation order, again on a without-notice basis. By Form C100 dated 13 October 2022, the father made a cross-application for a child arrangements order and an urgent prohibited steps order preventing the removal of the children to Spain. He also seeks a discharge of the non-molestation order and lodged a Form FL403 in October 2022.

3. As long ago as the hearing before Deputy District Judge Oakes on 15 November 2022, the court identified the need for a fact-finding hearing to determine the allegations raised by the mother. That hearing was originally listed to take place before me in August 2023 but was ineffective. The matter eventually appeared before me for a finding of fact hearing over four days commencing Tuesday, 21 November 2023, that first day being set aside for reading and the consideration of the audio recordings.
4. I wish to preface this judgment by summarising the issues to be determined. First, I am concerned only with the allegations of the mother against the father, which allegations fall almost exclusively into the category of coercive and/or controlling behaviour. The mother has (in her written evidence) referred to an incident of alleged smacking of the children by the father but she accepts that is not an allegation which is pursued and that the court must, therefore, proceed on the basis that the father has not physically abused the children. Indeed, as the mother has confirmed, there is no suggestion that the father poses a risk of physical harm to the children.
5. Second, I am not tasked with determining such cross-allegations as are made against the mother by the father in his written statements. Indeed, I note that those allegations were formally withdrawn at the pre-trial review before District Judge Bridson on 25 July 2023, with the caveat that there remain safeguarding issues which the father wishes to pursue at such time as the court turns to the determination of the children's welfare.
6. That brings me to my third point: I am not today making any decisions concerning the children's welfare. That being said, I note at this stage with regret the delay experienced in these proceedings to date, not least because – having heard their oral evidence over three days – I have no doubt that both parents love the boys passionately. In considering the mother's allegations, I have also had cause to consider various reports from professionals in which the children have reported missing their father. The father in particular has expressed his frustration with the slow pace of these proceedings.

Factual Background

7. The parties met in 2009 and lived together from 2010 onwards. They are not married and there are two children from their relationship, X and Y. The parties separated in October 2022, by which time they were renting a three-bedroom house in a part of Northamptonshire where they had lived since around 2014. The father's family reside in the area whereas the mother's family now live predominantly in Spain.

8. The father works in the education sector as a writer and researcher; he has confirmed that his job involves *'working from home'*. The mother worked as a teaching assistant until around four or five years ago, when she suffered an accident at work in which she fell down stairs. Since then, she has been unable to work and – for the latter period of the relationship – the family's financial needs were met predominantly by the father while the mother applied for additional support from the Department for Work and Pensions ("the DWP").
9. It is common ground that the family was beset with a number of challenging circumstances in the last few years. As well as the parents' own needs (to which I return, below) it is clear that the eldest son, X, has a number of additional needs arising from diagnoses of Autism Spectrum Disorder ("ASD") and/or a pathological demand avoidance, dyslexia and Ehlers-Danlos syndrome. There is reference in the local authority disclosure to other conditions, including asthma and sleep apnoea. In his statement, the father refers to X as having *'Mental Health issues manifesting as attempted suicide, running away and assaults on his mother and brother'*. Writing in support of the mother's appeal to the DWP for Personal Independent Payments ("PIP"), he explains how *'both [children] have multiple food allergies requiring special diets excluding wheat, dairy, soy, eggs – one child can eat some of these, the other none'*.
10. In a letter from her GP, the mother is reported to suffer from a range of physical conditions, some of which arose following her accident at work. These include *'brittle'* asthma for which she takes three different medications/inhalers and I was told that her fall has left her with reduced lung capacity. She has a long-standing diagnosis of epilepsy (for which she takes medication and which is said to be *'well controlled'*) and suffers joint pain. Since 2015, the mother has been treated for depression; this appears to have deteriorated in November 2021 due to *'stress in the home situation'*. There is also reference within her medical notes to a diagnosis of *'[f]all at work several years ago causing her some contusions but no fractures'*.
11. There seems little dispute that the mother's incident at work was a life-changing event for the family. In his submission in support of the mother's PIP appeal, the father describes how he had *'witnessed the ongoing deterioration of [the mother's] health – transforming her from an active and sociable individual to someone who is virtually housebound and suffering from depression'*.
12. The father's GP confirms that he was diagnosed with anxiety in 2017, for which he was prescribed Sertraline (100mg) and Diazepam. In November 2020, he was diagnosed with appendicitis resulting in a laparoscopic appendicectomy; I am told that he subsequently contracted a form of sepsis. Although he has not been formally diagnosed with ASD, the father describes himself as having a *'suspected diagnosis of highly functioning Autism'*.
13. In a series of e-mails to the mother in September 2022, the father described the family's experience as *'hell'* and *'very tough'*, listing the various adversities they had faced:

... your family moved away, lockdowns, dads [sic] health and death, we had covid, I had sepsis, kids [sic] health, X's mental health and suicide attempt/running, your health, your accidents and hospitalisations, you had to leave the job you loved, my anxiety meds taking my sex drive away, your severe depression and tiredness, X in our bed due to his anxiety, we've never been able to talk or be a couple, external influences etc etc.

When the local authority undertook an Early Help Assessment in 2022, they concluded that the family's life was '*very complex*'. It would be difficult not to agree with that description, nor with the reference made to the difficult balance between the mental health needs of the children and of the parents. The mother was described as '*finding it difficult to cope*'.

14. The mother describes how she made the decision to separate during a holiday to Spain in August 2022. While the exact chronology is somewhat woolly, it is common ground that the parents discussed separation on 12 or 13 September 2022 and that the father initially left the family home to stay with his mother. He returned to the property a few days later. Perhaps unsurprisingly, the atmosphere in the home appears to have become very tense very quickly, a situation exacerbated by a number of interactions with professionals. On 20 September, the mother's sister contacted the police to report her concern that the father was being '*controlling*'. This was then followed by another complaint on 28 September, this time by a friend, making further allegations that the mother was the subject of controlling behaviour. This latter report resulted in the police attending the family home and speaking to both parties; the officer was concerned that '*something [was] not right*'.
15. It was during this time that the mother appears to have made an application to the local housing authority. On 23 September 2022, she spoke to a housing officer who records as follows:

She [the mother] explained to me she is currently in a controlling relationship and that the police are involved. She explained that Helen has offered her to stay in a bed sit but [she] just didn't feel like that was appropriate with her two children ...

I note that the mother was in fact provided with housing on or around 27 September 2022 but that she did not move there with the children until 6 October 2022. The father has remained in the family home to date.

Procedural Background

16. It is in the context of the above that the mother made a series of *ex parte* applications issued on Wednesday, 5 October 2022. Those applications were heard the same day, when the court made a without-notice order prohibiting the father from removing the children from the care of the mother. A specific issue order was also made for the father to return the children to the

mother's care upon service of the order. Cafcass were directed to undertake safeguarding checks and the matter was timetabled through to a first hearing dispute resolution appointment. In addition, the court made a non-molestation order against the father to last for a term of twelve months, which order included a zonal provision not to enter a specified parish or go within 100 metres of any property where he knows or believes the mother to be living.

17. The Family Law Act 1996 proceedings were listed for a return hearing, which came before me on 25 October 2022. By that time, the father had lodged a Form FL403 dated 13 October 2022 seeking a discharge of the non-molestation order, as well as a cross-application for a child arrangements order by way of a Form C100 of the same date. That latter application was accompanied by a Form C1A in which he made a series of allegations against the mother, including that she had caused emotional and psychological harm to the children. In support of his application, the father had provided a 29-page statement along with a link to a large number of electronic files; by order of 17 October 2022, he was directed to provide the same in paper format.
18. When the matter came before me, it was agreed that the without-notice prohibited steps order could remain in place on the basis no admissions or findings had been made. On reviewing the non-molestation order, I took the view that a number of the injunctive orders were not justified on the mother's own case, not least the reference to threats of violence against the mother and the children; I discharged those provisions I felt were disproportionate and left in place a streamlined order targeted at the harassing behaviour alleged. The recitals to that order include an agreement for video contact to continue three times per week, which was to *'remain child-focused and shall not be used as a means to denigrate the other parent'*. I refused permission for the father to rely on his 29-page statement with exhibits totalling some 232 pages. Instead, he was directed to file a concise statement limited to fifteen pages; in hindsight, that order ought properly to have confirmed the font size and line spacing.
19. The first hearing dispute resolution appointment was heard by Deputy District Judge Oakes on 15 November 2022. The court identified the need for fact-finding and made directions for the mother to file and serve her allegations in the form of a list with a statement in support, with the father to respond, and statements limited to ten pages. Both parties were permitted to rely on the evidence of two third-party witnesses and directions were made for the obtaining of GP letters, police and local authority disclosure. It is to be noted that the father had sought disclosure of the mother's full medical records and the order records him *'raising concerns about the Mother's health'*. The court consolidated the children and Family Law Act proceedings. The video contact was formalised by way of a child arrangements order, with additional provision for online messages via *'in game chat'*.
20. By Form C2 dated 22 December 2022, to which she attached a very detailed 'rider', the mother sought a variation of the 'spend time with' order in light of alleged comments made by the father during video calls and messages sent by him to the children during online gaming. That application was heard by District Judge Bridson on 30 December 2022. The

order records that the court expressed its concern that the father's '*comments to the children on X-Box are made to divide loyalty between the parents*'. All communication via online gaming was prohibited, with contact to remain via video, supervised by family friends.

21. By the time the matter appeared for hearing on 16 March 2023, a dispute had arisen around the fact that the father had elected (without permission) to lodge his own schedule of allegations. Subject to some refinement, both parties were permitted to seek findings against the other and the matter was listed for a fact-finding hearing to commence on 21 August 2023, allowing four days. The mother was granted permission to file evidence in response to the father's allegations as well as to rely on audio recordings which the father had previously uploaded to a Google drive of evidence.
22. By Form C2 dated 5 May 2023, the father sought a progression to supervised contact in a contact centre. That application was heard by District Judge Bridson on 12 May 2023, the order recording that both parties accepted video calls were not meeting the children's needs. Provision was therefore made for contact to take place on a fortnightly basis in a contact centre. Again, allegations were raised by the mother as to the appropriateness of the father's conversations with the children, with an additional complaint being made that he had shared information about the mother online.
23. A pre-trial review took place on 25 July 2023, when transcripts of the audio recordings were directed and issues concerning third-party evidence were addressed. Significantly, the father was granted permission to withdraw his allegations such that fact-finding would proceed only on those allegations sought by the mother. I note the order of the court that '*the bundle must be reduced to include only the necessary documentation*', with permission to exceed 300 pages but not 500 pages. In fact, when the matter next appeared before me, the bundle stood at some 981 pages in breach of that very clear direction.
24. Sadly, the fact-finding hearing in August was ineffective for reasons that do not merit exploring here. On 22 August 2023, I had no choice but to adjourn the matter to November. The mother confirmed that the father's witnesses were not required to attend to be cross-examined. Further case management directions were made, with a recital that the exhibits of the father (contained in their own tab of the bundle and totalling over 430 pages) could remain on the basis that '*the court is not expected to read the exhibits unless specifically directed to them*'. At this hearing, permission was granted for in-game communication to resume via X-Box on the basis the mother was provided with all passwords and could terminate the same in the event the messages were inappropriate; otherwise, direct time in a contact centre was to continue.
25. On 28 September 2023, the mother made a further application (again with a detailed 'rider') in which she expressed concern that face-to-face contact was not taking place as directed, with the children not having seen their father since 12 August. Further, she complained of a number of messages sent by the father to the children via X-Box, exhibiting examples of messages that were (she said) adult-led. On 12 October 2023, that application was heard by

His Honour Judge Handley and an order made to extend the non-molestation order until the end of the fact-finding hearing. Both parties were granted permission to file ‘*updated statements*’ limited to fifteen pages.

The Finding of Fact Hearing

26. So it was that the fact-finding hearing was heard by me over four days commencing Tuesday, 21 November 2023. The hearing took place as an attended hearing at Northampton, with both parties represented and special measures being provided by way of screens in the courtroom.
27. I heard oral evidence from the mother on Wednesday, 22 November 2023. At the commencement of the hearing, the father confirmed that he did not seek to cross-examine the evidence of the mother’s witnesses, L and P, such that they were released and the mother’s case was concluded by the end of the second day. The father’s oral evidence was heard over the course of days three and four, concluding shortly before lunchtime.
28. I heard detailed oral submissions from Counsel over the course of the afternoon of the final day into the early evening. Given the time, I reserved judgment and heard oral submissions on the interim child arrangements; in an *ex tempore* decision, I extended the non-molestation order and discharged the order permitting contact via X-Box online messages. Provision was made for face-to-face, supervised time and videocalls between then and the next hearing.
29. Notwithstanding the very clear direction of District Judge Bridson at the pre-trial review, the bundle had expanded again by the time of the hearing, now totalling some 1,402 pages plus audio recordings. In addition, one transcript had been omitted from the bundle along with several statements and exhibits. The father’s evidence tab of some 437 pages remained in the bundle; although I was told that ten of his exhibits had been omitted (all of which I have read) I note that some are repeats. Despite my warning that I would only read such documents in the additional evidence tab to which my attention was specifically directed, the additional time provided by the decision to reserve judgment has allowed me to read the entirety of the bundle, including all of the witness statements (both within and without the bundle) and all of the father’s exhibits (both within and without the bundle), and to relisten to the audio recordings.
30. As to the scope of the hearing, there is in the bundle a document entitled ‘Scott Schedule’ prepared on behalf of the mother dated 15 January 2023. It contains six main allegations, some of which contain sub-allegations but all of which fall under the bracket of controlling and coercive behaviour in some form (save allegation five, which might properly be categorised as emotional harm to the children). They are denied by the father. At the outset of the hearing, the point was aired as to the appropriateness of a schedule in the context of allegations of this nature, that is, where the mother alleges a pattern of abusive behaviour.
31. In the case of *Re H-N and Others (Children) (Domestic Abuse: Finding of Fact Hearings)* (“*Re H-N*”) [2021] EWCA Civ 448, the Court of Appeal made several observations regarding

the use of schedules in the context of cases such as this. There is, the court observed, a tension between the need for any party to understand the case brought against them and the danger inherent in formal pleadings, where *‘coercive and controlling behaviour is likely to have a cumulative impact upon its victims which would not be identified simply by separate and isolated consideration of individual incidents’*. There is a risk, it has been said, that a focus on schedules in a case of alleged controlling abuse risks preventing the court from viewing the parties’ relationship with a bird’s eye view. At [45], the Court of Appeal observed the force in the criticism made that:

By reducing and then further reducing its field of focus, the court is said to have robbed itself of a vantage point from which to view the quality of the alleged perpetrator’s behaviour as a whole and, importantly, removed consideration of whether there was a *pattern* of coercive and controlling behaviour from its assessment.

There is, the court held, a need to *‘move away from using Scott Schedules’*, not least where their use might deprive the court of the ability to expose *‘more subtle and persistent patterns of behaviour’*.

32. In the present case, there is a Scott Schedule. The focus of the cross-examination was largely upon that list of allegations, although I allowed a great deal of leniency to both parties as to the issues they elected to explore. As I made clear, the role of the court is to assess the broad canvass of the evidence before it in order to form an impression of the parties’ behaviour as a whole. As it happens, the allegations made by the mother as contained within her written evidence have (almost without exception) been responded to by the father in great detail such that I am entirely satisfied that the mother has had the opportunity to evidence her case and the father to respond.
33. In preparing this judgment, as well as re-reading the entirety of the written evidence and listening to the audio recordings, I have read my detailed notes of the oral evidence heard over the course of two-and-a-half days as well as my notes of the closing submissions. I am very grateful to both Ms Cantor-Freedman and Ms Osborne for their assistance.

The Father’s Approach to Litigation

34. I note at this stage my concern as to the way in which the father has conducted litigation. While making what allowances I am able for his status as a self-representing litigant, I remain of the view that his preparation of evidence during the course of the proceedings to date has bordered on the obsessive. When I first heard the matter back in October 2022, I was faced with a densely typed 29-page statement and a collection of some 232 pages of exhibits. As I have said, permission was refused to rely on the same but I made clear that I was not making a criticism at that time, urging the father to provide a more focused and concise fifteen-page statement that would assist the court. What followed was his statement dated 11 November 2022, which (he says) totals just fifteen pages. While that is true, the font is miniscule,

densely packed, with minimal spacing and ribbon-thin borders; it contains some 13,000 words and, when transplanted to size 12-point font, 1.15 spacing, spans some 28 pages. It is, in short, a dissertation.

35. His second statement dated 10 February 2023, in response to the allegations of the mother, was limited to ten sides. Again, the document is ten pages in length but apparently in even smaller font. It includes over 10,000 words and, when adjusted to 12-point font, extends to some 21 pages. In addition to his statements dated 19 September 2023 (five pages), 31 October 2023 (fifteen pages plus exhibits) and 9 November 2023 (five pages), his written evidence totals some 74 pages of narrative statement. In many places, his lengthier statements simply copy and paste swathes of earlier statements such that I have read the same evidence at least twice. In addition to his multiple exhibits contained in the bundle, I was directed to ten exhibits said to have been omitted.
36. In my view, even allowing for a litigant in person, this is a disproportionate way to conduct litigation and must have taken the father many, many hours to compile. Notwithstanding a very clear steer given to him as to the expectations and needs of the court, he has continued to file excessively detailed statements. While I accept his answer to a point – that he will do what he needs to do to challenge what he perceives to be the mother’s false allegations – it is on any view an obsessive way to conduct oneself. Given the nature of the allegations made against him by the mother, his behaviour in this regard arguably reveals something of a lack of insight.

Findings of Fact: The Law

37. The legal burden of establishing an allegation as fact rests with the party asserting it. As stated in the case of *Re H and R (Child Sexual Abuse: Standard Of Proof)* [1996] 1 FLR 80 (in the context of care orders) at p. 95:

... The general principle is that he who asserts must prove. Generally, although there are exceptions, a plaintiff or applicant must establish the existence of all the preconditions and other facts entitling him to the order he seeks ...

38. It is now well established that, within family proceedings, the standard of proof is that of ‘*the preponderance of probability, usually referred to as the balance of probability*’: see *Re H and R* at pp. 95-96. Also known as the ‘civil standard’, it has been alternatively expressed as follows by Denning J (as he then was) in *Miller v Ministry of Pensions* [1947] 2 All ER 372:

If the evidence is such that the tribunal can say: “We think it more probable than not”, the burden is discharged but, if the probabilities are equal, it is not.

39. In determining whether or not a party has established their case to the requisite standard in seeking findings, I of course bear in mind the judgment of the Supreme Court in *Re B (Care Proceedings: Standard of Proof)* [2008] 2 FLR 141, in which Baroness Hale observed:

[32] In our legal system, if a judge finds it more likely than not that something did take place, then it is treated as having taken place. If he finds it more likely than not that it did not take place, then it is treated as not having taken place. He is not allowed to sit on the fence. He has to find for one side or the other. Sometimes the burden of proof will come to his rescue: the party with the burden of showing that something took place will not have satisfied him that it did. But generally speaking a judge is able to make up his mind where the truth lies without needing to rely upon the burden of proof.

[70] ... Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies ...

On this latter point, I also have in mind the helpful commentary of Peter Jackson J (as he then was) in *Re BR (Proof of Facts)* [2015] EWFC 41, in particular the reminder that ‘*the fact that an event is a very common one does not lower the standard of probability ... [nor] does the fact that an event is very uncommon raise the standard of proof that must be satisfied before it can be said to have occurred*’. Further, I remind myself that ‘*the frequency or infrequency with which an event generally occurs cannot divert attention from the question of whether it actually occurred*’.

40. That ‘suspicion’ is insufficient for the purposes of the court is well established, though findings may be made on the basis of inferences properly drawn from the evidence available. As was said by Baker J (as he then was) in *Re L and M (Children)* [2013] EWHC 1569 (Fam) at [48], any findings of fact made by the court ‘*must be based on evidence which includes inferences that can be properly drawn from the evidence and not on suspicion or speculation*’.

41. I remain aware of the need to avoid a process in which I evaluate or assess the available evidence in silos. As was said in the case of *Re T (Abuse: Standard Of Proof)* [2004] EWCA Civ 558 at [33], ‘*evidence cannot be evaluated and assessed in separate compartments*’ but, rather, the court is required:

... to have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward ... has been made out to the appropriate standard of proof.

There is perhaps a danger in any written judgment designed to assist the parties that, in appearance, the approach of the court might seem linear. I emphasise at this stage, therefore, that I have not simply looked at individual facts in isolation but considered the evidence placed before me in its totality. While it is true that findings in relation to one allegation *might* add weight to another, each allegation must be considered on its own merits.

42. I have also reminded myself of the recent approach to the *Lucas* direction as established by the Court of Appeal in *A, B and C (Children)* [2021] EWCA Civ 451. A deliberate lie, made before and/or during the hearing, *might* be probative of guilt. In the event the court finds that a party has lied deliberately, it must then consider the significant issue to which the lie or lies relate and consider on what basis it can be determined that the only explanation for the lie is guilt. The reality is that people lie for all sorts of reasons (for example, shame, humiliation, misplaced loyalty, panic, fear, distress, confusion or emotional pressure).

Controlling and Coercive Behaviour

43. This is a case in which the focus has been almost entirely on allegations of controlling and coercive behaviour perpetrated by the father. In that context, I remind myself of the guidance provided by the Court of Appeal in *Re H-N* [2021] and by Hayden J in *F v M* [2021] EWFC 4.
44. There is now a broad definition of ‘domestic abuse’ as enshrined in the Family Procedure Rules 2010 at Practice Direction 12J, para. 3, which includes ‘*any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse*’. As to what is meant by controlling and coercive behaviour, Hayden J observed as follows at [4]:

... The nature of the allegations included in support of the application can succinctly and accurately be summarised as involving complaints of “coercive and controlling behaviour” on F’s part. In the Family Court, that expression is given no legal definition. In my judgement, it requires none. The term is unambiguous and needs no embellishment. Understanding the scope and ambit of the behaviour however, requires a recognition that ‘coercion’ will usually involve a pattern of acts encompassing, for example, assault, intimidation, humiliation and threats. ‘Controlling behaviour’ really involves a range of acts designed to render an individual subordinate and to corrode their sense of personal autonomy. Key to both behaviours is an appreciation of a ‘pattern’ or ‘a series of acts’, the impact of which must be assessed cumulatively and rarely in isolation. There has been very little reported case law in the Family Court considering coercive and controlling behaviour. I have taken the opportunity below, to highlight the insidious reach of this facet of domestic abuse ...

45. Some guidance is provided within PD12J itself, which states that **coercive behaviour** ‘means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim’, whereas **controlling behaviour** ‘means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour’.
46. Finally, I note the observations of the Court of Appeal in *Re H-N* [2021] at [32], that not all directive, assertive, stubborn or selfish behaviour will be ‘abuse’ in the context of proceedings concerning the welfare of a child. Rather, ‘much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour’.

Impression of the Witnesses

47. I deal first with the third-party evidence. On what I understand were pragmatic grounds rather than wholesale admissions, none of the evidence of the third parties was tested in cross-examination and I must therefore consider carefully the weight to be applied to each. None of the witnesses are truly ‘objective’ in that they all hold allegiances of sorts to one parent or the other, either as friends or neighbours. The point is perhaps simply made that nobody can truly understand a relationship from the outside; relationships that may look altogether healthy on the outside may, in reality, be quite otherwise. The best evidence available, therefore, is what the parents themselves have told me.
48. The mother relies on two witnesses. First, L whose statement is dated 31 May 2023. L is a friend of the mother, although she has known the father longer. Her statement details a number of instances in which the father is said to have belittled or humiliated the mother, or else would ‘gaslight’ her. In particular, she gives the example of a children’s birthday party and details what she describes as the father’s ‘obsessions over the years’ including with atheism and the war in Ukraine. She provides an account of events post-separation and her own interactions with the father, including an occasion on 22 September 2022 when he sent her 31 messages. I approach her evidence with some caution given the allegation made in the final paragraph of her statement that she had sex with the father when she was aged 15 or 16 years old; that allegation is denied by the father albeit he has declined the opportunity to cross-examine her.
49. Second, the mother relies on the statement of P (undated). Again, she is a friend of the mother and her evidence must be weighed in that context. As with L, P describes several occasions (also undated) when the father is said to have deliberately humiliated the mother or admitted to tracking her. There are aspects of P’s statement that offer only her opinion, for example, that the father made her ‘feel uneasy’; with respect, her opinion carries no weight at all in this process and I have ignored all such views expressed by her and (I should add) by L.

50. The father has provided statements from R dated 17 May 2023 and B dated 8 October 2022. Both were neighbours to the family and both, I understand, have played a role at some stage during these proceedings in supervising the videocalls. I note that B speaks positively about her interactions with the family and was aware of the mother having problems with breathing which limited her ability to walk the dogs; otherwise, it seems that she has very limited insight as to the relationship behind closed doors.
51. R's statement similarly describes a positive relationship with the mother and the father, and makes the point that he and his wife '*never heard any shouting or arguments*'. I note of course that no allegations of verbal abuse or shouting are before me in any event. R describes acting as a witness to a written agreement between the parents in September 2022; in his view, the mother gave no indication she was acting under duress when she signed the same. Otherwise, his interaction with the couple appears to have been limited to sharing '*a glass of wine*' and observing the mother '*with a girlfriend chatting in the garden*'. He describes the father's videocalls with the children as being '*child friendly*'. Save for acting as a character witness for the father, there is relatively little if anything in the evidence of R that goes to the allegations which fall to be determined.
52. I turn now to the parties themselves. The mother presented as relatively anxious in the witness box although at times I found her capable of being assertive. There are aspects of her evidence in which I detect a real sense of exaggeration. For example, in her first statement filed in October 2022 in support of her *ex parte* applications, she alleges that the father had connected Apple's Find My application '*to everything I own*' and that he had '*invested in Air tags and attached these to everything I own including my car keys*'. In fact, there was only ever one Air Tag and it was connected to her keys. While I note that the mother rowed back from this allegation in later statements, she did not do so until several months later and only *after* the father had made the point that there was only ever one such device. I do not accept the mother's explanation that this was simply an error due to the urgency with which her first statement was drafted.
53. Similarly, there is perhaps a level of paranoia detectable within some of the mother's evidence. I note, for example, her concern that by posting online about the Ukraine war the father had caused her to be '*scared someone could find out where we live and post anthrax through the door*'. That strikes me as a somewhat extreme reaction, albeit not necessarily a dishonest one; it is perhaps revealing that the mother appears to have genuinely held such a belief, even if it was unreasonable for her to do so. All that said, I found her to be a fundamentally honest witness who answered questions under cross-examination as best she could.
54. The father comes across as a passionate individual with very strongly held beliefs. Indeed, he describes himself in not dissimilar terms. When I asked him if he agreed with the description used by others that he is '*obsessive*', he informed me that a friend of his who works as an educational psychologist has suggested he is "*highly functioning Asperger's*" with an IQ of 140. He told me that he sees things in "*black and white*" and spoke fervently about his wish

to have a normal relationship with his sons again. I accept that fervour was genuine and sincere.

55. At times, the father became agitated and impatient, talking over both Counsel as well as the court. There were parts of his evidence which I found to be didactic and evidencing a rigidity in his ability to see matters from the perspective of others. For example, when asked about the volume of his evidence before the court, he told me, *“I am not going to take things at face value, if I can prove she [the mother] is not telling the truth”*. Similarly, on the issue of his reported obsessions, he told me, *“I do not see shades of grey”* and went on to say (regarding Russia) *“I’ve got beliefs, on Ukraine, I am passionate that raping and killing is wrong”*. He seemed unable to step back and consider how his actions – and his passions – might impact upon others.
56. The father’s ability to become obsessive over certain topics is described by the mother in her written evidence and was reiterated by her in oral evidence. It is an impression that I have also formed over the course of this hearing. The main example concerns the father’s anxiety around the Russian invasion of Ukraine and his involvement with an organisation known as the North Atlantic Fellas Organisation (“NAFO”), with whom it appears to be common ground the father worked to combat online Russian propaganda. He describes this as a group *‘using humour to fight misinformation on Twitter’*. Both parties recall an occasion when the father spoke to the mother at 03:00 in the morning and informed her that the power plant at Zaporizhzhya, Ukraine had been shelled. That this discussion took place and at around that time in the morning is not disputed; the father explains that he *‘followed this story one evening and expressed concern to [the mother], I know individuals throughout Europe shared my concern over this and broader Russian nuclear threats’*. In cross-examination, he was asked why he was still awake at 03:00 and confirmed he was awake *“because I was up and following the news story with concern”*.
57. The point here is not that the father was anxious about Russian aggression; he was certainly not alone in that. What troubles me is the impact this very plainly had on the mother. Whether or not he awoke the mother deliberately (as she alleges) or she was already awake because she is a light sleeper, the parents were by then sleeping in separate rooms and it seems to me obvious that he made the decision to inform her – at 03:00 – that Russia had attacked a nuclear power station in Ukraine. Given his own worry, how did he expect the mother to react?
58. Having read and heard the accounts of both parties concerning the father’s involvement with NAFO, I prefer on balance the mother’s account that the father became obsessed and dedicated much time to this enterprise, at times drawing the children in; even allowing for some exaggeration by the mother, this was a sufficient feature of family life that it was noticed by others. In the days following separation in September 2022, for example, L observed in a text message to the father, *‘[p]ersonally, I think you’re scaring the shit out of [the family] about Russia is far more damaging’*. In his evidence to this court, the father offers no real denial that he shared both his passion to support Ukraine and his fears of

Russian aggression with the mother; indeed, if anything he doubled down and provided only justification for the same.

59. At times the father appeared either reluctant to accept the obvious or else genuinely lacked insight. Having made the order myself in August 2023 to resume online communication via in-game X-Box messages, I was surprised by the nature of some of those messages subsequently sent by the father to the children in September 2023. They include telling the children ‘*we will all keep fighting*’ for 50/50 care; telling them he cannot afford to keep ‘*paying mummy £658 a month to look after you*’; and questioning the children about the mother’s cooking, asking ‘*I imagine mummy doesn’t cook much?*’ before observing ‘*I thought she can’t cook, sorry*’. While all of those messages are plainly inappropriate, the only function served by the latter line of messaging – around the mother’s cooking – would appear to be to undermine the mother in the eyes of the children. When asked to agree that these messages were inappropriate, his first response was to say, “*in a usual context, yes*”. It took some prompting before he admitted, with some reluctance, the obvious: of course it was inappropriate.
60. As to the father’s honesty, I am not satisfied that he has been entirely honest with the court and give the following example. One of the core submissions he relies upon is that the mother has lied in her appeal to the Social Entitlement Chamber of the First-Tier Tribunal in order to receive PIP. In support of this argument, the court bundle includes, at the father’s request, the entire file of evidence provided by the mother to the Tribunal totalling some 230 pages. The father’s case is that the mother presented herself to the Tribunal as too unwell to work but, at the same time, minimises or denies those claims before this court so as to appear well enough to care for the children. Either she has lied to the Tribunal, he says, or she is lying to me.
61. In response, the mother points to the fact that her appeal hearing in November 2022 could not proceed, the reason given by HMCTS being that – after the parties’ separated – the Tribunal Judge had ‘*been made aware of a statement by your ex partner [the father] which means the Tribunal Judge is excluded from hearing the appeal*’. The statement in question is contained within the bundle and covers two sides of A4 paper in which the father states:

I was until recently [the mother’s] partner and representative at PIP appeal ... I had been reviewing the case file we were sent for the first time and had some concerns about claims being made in the pack which have come to light alongside other benefits and housing related false claims as we separated.

The statement goes on to explain how the mother had ‘*falsely accused*’ him of abuse and is ‘*benefits obsessed*’. It makes assertions regarding the mother’s physical health needs, deliberately contradicting the case in support of her appeal and accusing her of defrauding the DWP by not declaring income from private tutoring.

62. In a directions notice, the Tribunal Judge noted that the statement ‘*had been provided by [the father] after he had ceased acting as a representative for the Applicant and after his relationship with her had ended ... He was neither invited nor authorised to provide such evidence in these proceedings*’. Although this caused a delay in the PIP appeal being heard, I note that the appeal was allowed on 9 August 2023 by Tribunal Judge Ward sitting at Leicester.

63. It seems clear that the father retained papers from the PIP appeal, not least because he has exhibited much of them to his statements. On being asked what he had hoped to achieve in sending his statement to the Tribunal, he told me:

I was aware that [the mother] was saying her mental health was only recent and because it was my fault. But it was not, it was years old. She had told different stories to two different courts. I had written an honest statement. She was presenting a completely different picture. I was concerned about fraud and wanted to distance myself.

This answer is similar to that contained in his second statement, in which he expresses ‘*concerns regards being dragged into benefit fraud*’. I observe from that statement that he avoids using the word ‘representative’, instead describing himself as the mother’s ‘*nominated supporter*’.

64. The father was asked in cross-examination how his concerns had only ‘*come to light*’ post-separation when he had been named on the mother’s appeal papers as her ‘*representative*’ and plainly had access to the full evidence pack. He also referred to himself as the ‘*representative*’ in his letter to the Tribunal. In oral evidence, he sought to distance himself from that description, explaining how he was only there for “*emotional support*” and as a “*court buddy*”. When it was put to him that the statement was designed to discredit the mother’s PIP appeal, he maintained his answer: “*no, I did not want involvement with fraud*”.

65. Having read the father’s statement to the Tribunal and his statements to this court, and considering his answers under cross-examination, I am satisfied that he has not told the truth. He considered himself the mother’s representative and was named as such on the appeal documents. I do not accept the suggestion that he had no knowledge of the mother’s evidence filed in support of her appeal, rather, I find on a balance of probability that he had full knowledge of the same. In an e-mail sent to the mother on 19 September 2022, for example, he expressly refers to having gone through her forms and reading her ‘*testimonial*’.

66. I take a very dim view of his attempt to suggest retroactively that he was not the mother’s representative; indeed, I find his careful avoidance of that word in favour of terms like “*supporter*” and “*buddy*” to be a calculated attempt to justify his assertion that he had no knowledge of the evidence filed in support of the PIP appeal until post-separation. I am troubled by his insistence that his motive in writing to the Tribunal was to avoid fraud. I am quite satisfied that, in fact, the purpose of sending his statement to the Tribunal was to

undermine and discredit the mother’ appeal. It was a spiteful and short-sighted action, the outcome of which may well have been to reduce the financial resources available to the mother and, by extension, the children.

The Allegations: Pre-Separation

67. The mother’s Scott Schedule includes six umbrella allegations, each of which includes several sub-allegations. Notwithstanding how they are grouped in the schedule, it seems to me they can be divided into two broad categories: those allegations concerning the father’s behaviour during the relationship and those concerning his post-separation conduct. I now address those two groups of allegations in chronological order.

(i) The Air Tag

68. The first sub-allegation concerns the use of an Apple Air Tag. The mother alleges the Air Tag was attached to her keys and was used to track her location. I have already addressed above the clear exaggeration made in her first statement, that Air Tags were attached to ‘*everything*’. It is agreed that there was only ever one Air Tag and the father has evidenced that it was purchased in December 2021; we are therefore concerned only with the last nine or so months of the relationship.

69. In her second statement, the allegation is clarified as involving a single Air Tag but coupled with the use of an Apple Watch. She alleges these items were purchased by the father and that he ‘*would track my location when I was out running errands and then interrogate me upon my return home, to ask why I took so long or why I drove a specific way home*’. Those allegations are denied by the father.

70. There is little doubt that this was a family with a lot of “tech” in the house: a Ring doorbell, Apple HomePods and Apple TVs etc. None of that is uncommon or in any way sinister. The father explains that he purchased the Air Tag because the mother would often forget her keys. Indeed, he has provided a message sent by the mother on one occasion reading ‘*Just walked out without my keys!! Help!!*’. His very clear evidence was that the mother welcomed the Air Tag. At first blush, then, the father’s explanation might be perfectly reasonable.

71. The difficulty in this case, however, is that the purchase of the Air Tag must be seen in the context of the wider evidence:

(a) The mother describes how this narrative – that she was ‘*forgetful*’ or ‘*clumsy*’ – had developed over many years and that the father made her think she ‘*needed the gadgets by making [her] sound stupid*’. To that extent, she says, the Air Tag was an extension of that abuse;

(b) The mother’s forgetfulness is a narrative that has plainly continued into the written evidence of the father, who describes the mother as ‘*forgetful, clumsy, easily confused, disorganised*’. When asked about his description of the mother as clumsy he said, “*she is well known for it*”. On being asked if he had ever described her as

confused, he replied, “*it’s highly likely, given she was in a constant state of confusion*”. He later justified this by saying it was a description the mother herself would use;

- (c) The father himself accepts that there were times when he was able to track the mother’s location, albeit not necessarily using her Apple Tag. He described in his oral evidence an occasion when he opened location services on an iPhone and said to one of the children, “*look, there’s mummy*”;
- (d) In one of the audio recordings, the father can be heard explaining how the Apple Watch was a ‘*failsafe*’ in case her iPhone died, and that there had been an emergency situation when the mother collapsed while out walking and he had been able to track her location. He goes on to explain that he had ‘*panicked a couple of times and when she has been at the post office or something and she has been gone too long*’. It is unclear how many times the father admits to tracking the mother’s location but it is evidently more than twice; and
- (e) The mother gives a very clear account of an occasion when she arrived home to be asked why she drove down a particular street. P provides a similar account of an occasion when the father informed her that the mother was running late because she had driven the wrong way, which he knew from being able to track her. The father elected not to challenge P on this evidence.

72. At this point, I pause to note a theme in the evidence that will have some bearing on the facts as I have found them to be. In her oral evidence concerning the Apple Tag, the mother observed at several points that she did not feel the father had “*ever meant it for malicious reasons*” but that “*he just does not know when he goes too far*”. On that suggestion, there is perhaps some degree of acceptance by the father in a series of e-mails exchanged between the parties in September 2022, days after separation. In an e-mail on 17 September, the father observes, ‘*I know my faults, in trying to empower you I achieved the opposite*’. The mother responds, telling him ‘*I know your behaviour was never meant to be overpowering but it was*’. In a follow-up e-mail, the father replied:

I think every ambulance or hospital admission, every doctors [sic] visit, every dog walk in the cold or wind, every ‘she said she was just popping to the shop, it’s been an hour and a half, is she ok’ made me worse ... I got over protective [sic], nearly in permanent crisis mode.

By 2022, this was a family in crisis. At the same time, the father’s anxieties were such that – in his own words – they made him overprotective or (in the mother’s words) overpowering.

73. On the balance of probability and having weighed the evidence in its entirety, I find that the father did purchase Apple devices for the family and that they were used by him to track the mother’s location on occasions. I do not accept that the devices were purchased with a malicious intent but that the father later misused them, prioritising his own anxieties over the mother’s wellbeing and sense of agency. I find that his behaviour was oppressive and that the

mother – quite reasonably – experienced the monitoring of her location as controlling, causing her to be subordinate to the father. Such an outcome must have been obvious to the father and I find that his actions were controlling within the meaning set out in PD12J.

(ii) Sleepwalking

74. The mother alleges that she was psychologically abused by the father and that she was ‘gaslit’ into believing she was sleepwalking. That allegation is vehemently denied by the father, who maintains that the mother did in fact sleepwalk on more than one occasion.
75. In her statement, the mother explains how in around March 2022 she moved some sausages and milk into the fridge to defrost, ready for the morning. By morning, however, neither could be found in the fridge; the sausages were eventually located in a cupboard but the milk was never found. She recalls blaming herself and saying, ‘*I must have been sleepwalking*’. After that, she says, it became a running joke, with the father saying to the children, ‘*I wonder if we will ever find mummy’s milk?*’. She describes feeling mocked and stupid.
76. A few weeks later, in April 2022, the father was putting Y to bed ‘*when he found Bolognese sauce all down the side of Y’s bed*’. He went downstairs and informed the mother, suggesting it must have been her: ‘*you know what you’ve done, you’ve slept walked, you’ve taken out an extra portion of sauce and you’ve poured it on Y*’. The mother describes feeling ‘*terrified*’ that she could have hurt her son while sleepwalking and recalls the father on the phone to his mother saying, ‘*you won’t believe what she’s done now*’.
77. In oral evidence, the mother explained she had experienced sleepwalking on two occasions while at university, when she was aged around 19 years. To the best of her knowledge, however, it had not happened again until these apparent incidents in spring 2022. When the incident occurred with the Bolognese sauce, she “*could not work it out*”. It was the father who first suggested it had happened when she was sleepwalking. She now believes this was all a form of psychological abuse.
78. In his written response to this allegation, the father explains that there were ‘*at least three sleepwalking incidents in Summer 2022*’, consisting of the two events noted above as well as a further incident where the mother is said to have ‘*blacked out in a shop*’ in September 2022. He goes on to explain that ‘*[s]uch events started in her university days, when her Epilepsy began*’, before expressing concern regarding the mother’s driving, suggesting she might be experiencing ‘*potential petit-mal seizures*’.
79. In his oral evidence, the father was asked about the sleepwalking theory. He described finding “*chilli con carne*” and informed me that sleepwalking “*was the only thing we could come up with*”. When asked who first raised the suggestion that the mother had been sleepwalking, he answered, “*it very possibly was my suggestion. I thought it was the only logical explanation and she agreed*”. He was asked how the mother must have felt, to which he replied, “*I imagine ... worried. She could have harmed the children*”. I was not left with

the impression that he had given much thought to the impact these events must have had on his then-partner.

80. What to make of this somewhat bizarre set of occurrences? I am satisfied, having considered the oral and written evidence, that it was the father who first introduced the notion that these events were caused by the mother sleepwalking. I do not accept that sleepwalking was the “*only logical explanation*”, as the father asserts, not least as he had never seen the mother sleepwalk in all their years living together. Nor do I place any weight on the fact that the mother agreed with his theory; when considered against a backdrop of being called clumsy, forgetful and confused, it is not difficult to understand why the mother did not resist the idea she was to blame. I explored with the father the far more logical explanation that food found down the side of a child’s bed is more likely to have been caused by the child. His reluctance to even countenance that possibility was obvious, his thinking seemingly rigid.
81. I am equally satisfied that the impact of the father’s assertion – that the only logical explanation for the sausages and the spilled food was the mother during episodes of sleepwalking – had a material impact on the mother’s wellbeing. This was a form of psychological manipulation perpetrated by the father, which in turn caused the mother to doubt herself and to fear the harm she might cause to the children in her sleep. In colloquial terms, I would agree with the mother’s description of the father’s behaviour as “gaslighting”.
82. While there are aspects of her evidence which indicate she might be prone to paranoid thinking or exaggeration, that the mother would have been distressed by the father’s theory must have been obvious to him. Further, I note that the mother alleges the father would joke about the incident, saying to his mother ‘*you won’t believe what she’s done now*’. That phrase chimes with the evidence of L, that following a mix-up regarding a birthday party for one of the children the father told the other parents, ‘*you won’t believe what [the mother]’s done*’, suggesting the mistake was ‘*typical [mother]*’. I find on a balance of probability that the father did make jokes at the expense of the mother and that these left her feeling belittled and humiliated. To that extent, I find that the father’s behaviour was controlling and coercive.

(iii) Social Control

83. It is alleged by the mother that she was controlled as to who she could spend time with. That allegation is denied by the father.
84. In support of her allegation, the mother suggests this control was exerted in very subtle ways. For example, the father would make comments along the lines of ‘*don’t walk the dog, you could have an attack and if I can’t get help to you in time then you will die*’ or ‘*you don’t want to go out, it’s too risky for your immune system*’. He would remind her that her breathing might be too loud and, in the end, she would cancel social events. In other ways, she alleges, this control was far more overt. For example, he made clear that the mother’s friend, J, was not welcome. On occasions when she did go out, he would ‘*bombard*’ her with calls or place pressure on her to return home; that account is supported by L and P.

85. All of this is denied by the father, who points to the various friends who have filed statements in support of the mother. If anything, he says, she enjoyed a far more active social life than he did, such that she was “*spread out too thinly*”. As for J, he explains that she would swear and say “fuck” in the presence of the children, bringing Cannabis into the home. Any discouragement of her presence was, he says, entirely justified.
86. I remind myself that the burden of proof rests with the mother. I have been shown just one series of text messages consisting of a total of four texts sent between the parties on 3 August 2018, when the mother was out meeting L. The entire transaction reads:

The mother: Eat yours – going for a drink with [a friend] x

The father: Just got your message. No signal. I’ll wait.

The mother: Hi, it’s [L]. She could be a while ☺

The father: I’ve not eaten yet, [Y] cut finger and been screaming house down and [...] not settling well.

It appears the father had offered to wait for the mother to return home so that they could eat together. This represents the only specific example of the father’s alleged interference with the mother going out with friends. On balance, I am not satisfied that the mother was expressly prevented by the father from meeting friends and socialising.

87. Standing back and looking at the evidence in its totality, I remind myself of the father’s own reference in his e-mail of September 2022 to being overprotective and his admission that ‘*every ambulance or hospital admission, every doctors [sic] visit, every dog walk in the cold or wind, every “she said she was just popping to the shop, it’s been an hour and a half, is she ok” made me worse*’. Under cross-examination, he was asked if he had worried about the mother when she went outside in the cold, to which he replied, “*not just when it was cold, but especially then*”. I have already found that he was at times belittling of the mother and behaved in such a way as to place his own anxieties over her wellbeing.
88. Later in this judgment, I make findings concerning the father’s attitude toward the mother’s various health needs. Taken as a whole, I find on a balance of probability that the father did on occasion make comments about the mother’s health that were sufficient to cause her anxiety about leaving the house. This behaviour was designed to discourage the mother from feeling able to leave her own home; it was, therefore, behaviour designed to regulate her everyday behaviour and, to that extent, was controlling within the meaning of PD12J.

(iv) The Mother’s Health

89. It is alleged that the father manipulated the mother into worrying about her own physical and mental health, which allegation is denied by the father.
90. Set against the description of the mother's health needs as outlined by her GP, I am struck by the way that, throughout his written and oral evidence, the father refers to the mother and her health. For example:
- (a) He has repeatedly made the comment that her injury at work left her with a "*hole in her brain*" and refers in his statement to this having '*compromised her cognitive functioning*';
 - (b) Despite the mother's epilepsy having been well controlled for many years, with no seizures for a significant period of time, the father makes multiple references to the same as if it were a frequent cause for concern. In September 2022, for example, a social worker records (following a telephone discussion) that the father '*is of the view that [the mother] will not be able to cope on her own due epilepsy [sic] and without his support*';
 - (c) He refers to a diagnosis of '*severe*' depression (his word). When asked why he includes the word '*severe*', he simply said "*only because that is what is diagnosed*". The GP letter refers only to a diagnosis of depression;
 - (d) There are over fourteen references in the father's first statement alone to mental health or wellbeing, to the extent that he even suggests mental health is the root cause or driving force behind the mother's allegations against him; and
 - (e) In his written evidence, the father refers in multiple places to the fact he is concerned as to the mother's ability to care for the children in light of her health needs. In his first statement, on the first page, he states he is '*concerned about her presentation and conduct in respect of her health and ability to care for herself and our two boys*'. Similar comments are made at paragraphs 2, 11, 25 and 64.

All of this is said in a somewhat blasé, even flippant way, giving the distinct impression that these comments are not new but have been part of his discourse for some time.

91. Exhibited to his statement, the father provides multiple documents retained by him post-separation. I do not suggest any impropriety in *obtaining* these documents given his role as the mother's representative in the PIP appeal. His decision to retain the mother's private information, however, and then to exhibit (for example) evidence of her prescriptions seems to me to show a certain lack of boundaries and judgement.
92. In various places in his evidence, the father provides his own diagnosis of the mother with no medical evidence in support; for example, his suggestion that the mother may have experienced '*potential petit-mal seizures*'. In an e-mail to children's services on 12 March 2023, he suggested that '*Munchausen by proxy is a huge concern*', a point he claimed to be raising '*on the advice of several professionals*'. Under cross-examination, he confirmed that by '*professionals*' he meant friends and neighbours with professional qualifications.

93. The mother suggests that the father became obsessed with her medical history. For the reasons I have stated above, there is clear evidence of the father's ability to obsess over certain topics and, on a balance of probability, I agree with the mother that this extended to her health. I have already found as a fact that the father made comments about the mother's health sufficient to cause her anxiety when leaving the home. Given the manner in which he has consistently discussed the mother's health needs in his written evidence since 2022, adding exaggerating and '*serious*' descriptors, I find it more likely than not that this is a continuation of his behaviour during the relationship and that the father caused the mother to worry about her own physical and mental health needs.

The Allegations: Post-Separation

94. I now turn to the post-separation conduct of the father. As set out at paragraphs 60 to 66 above, I have already made findings concerning the father's decision to write to the Tribunal hearing the PIP appeal.

(i) Phone Records

95. One sub-allegation concerns the accessing of the mother's phone records and '*tracking who she was calling*'. It is important to note the mother's concession in the witness box that this allegation relates to a time post-separation when the father was still paying her phone bill; it is not alleged that this behaviour took place during the relationship itself.

96. Exhibited to his statement ahead of the hearing on 25 October 2022, the father had provided an annotated copy of the mother's phone bill. A copy now appears within the tab marked 'Respondent's Evidence' and extends a little over six pages, covering the period 18 August 2022 to 17 September 2022. The document shows annotation for almost every phone call made or received, sometimes with the duration of the call noted. The list of numbers identified includes '*Doctors*', '*Sills Legal*', '*School*', '*Council*' and '*Sunflower*' (a domestic abuse service). None of those names appear in the records themselves and have, therefore, been identified by the father via some form of research. It is the mother's allegation that he telephoned each number and asked anyone who answered what they had spoken about with the mother.

97. The father's case is neatly set out in his first statement:

[The mother] claimed at the 25/10/22 hearing I accessed her phone logs. This is untrue. [The mother] used an iPhone belonging to me and had been given 14 days' notice to return it because she did not want to take over the contract - I still had another year of the £70 monthly contract to pay. She has not yet returned this phone, or one belonging

to my employer. I changed the tariff and accessed a bill in late October, after the 14-day notice period. I highlighted to the court that calls to the police and a domestic abuse hotline began after [the mother's] private rental fell through 22/09/22.

In his oral evidence, the father was asked why he had annotated the records. He answered, “*to show the pattern of change since her private rental fell through*”.

98. Given it is accepted that this was an account arranged and funded by the father, I do not accept that there is anything sinister in his decision to access the records *per se*, at least not in the sense that he has somehow hacked the mother's account. I struggle to understand, however, why he went to the effort of going through a full month's worth of calls and identifying who the mother had been speaking to. The father appears to be of the view that his efforts were worth it, because they show that the mother only began to call the police and support groups *after* her private rental fell through, ergo (he says) she only made those complaints to get urgent housing. With respect, that is entirely beside the point.

99. In my view, such behaviour displays a degree of obsessive commitment for which no adequate explanation has been provided. I consider that this was behaviour designed to undermine the mother's sense of escape. To analyse the phone statement to this extent, then annotate it and send a copy to the mother via these proceedings, signalled to her that the father was aware she had sought support from Sunflower and other services. In that vein, I place this action in the context of his e-mail sent on 27 September 2022, in which he announced his discovery that the mother had obtained housing on a particular road. On a balance of probability, there is a clear pattern of behaviour perpetrated in the weeks following separation in which the father made clear to the mother that he knew what support she had sought and where she was going. I find that this pattern of behaviour was controlling within the meaning of PD12J.

(ii) The Mother's Mental Health

100. Here, I deal collectively with the mother's various allegations made in her Scott Schedule concerning the father's discussions with third parties around the topic of her mental health. It is alleged that, on 28 September 2022, the father informed the school that the mother was mentally unstable. A further allegation is made that the father made similar comments to the mother's friends, family and other professionals, including comments about the mother being an alcoholic. All of these allegations are denied by the father.

101. The mother has obtained no direct evidence from the school or from the teacher in question to whom the father is alleged to have made comments on 28 September 2022. On the day in question, the mother had arrived at the school to collect the children early and was told that she could not. She alleges that the school declined to release the boys into her care because the father had reported safeguarding concerns that she was mentally unstable. In an e-mail obtained by the father, the school note that the mother attended at 14:40 when staff ‘*were of*

the opinion, rightly or wrongly, that it had already been stated that [the father] was collecting the boys because [he] had dropped them off. The mother accepted in oral evidence that she had become upset during that discussion.

102. I remind myself that the burden of proof remains with the mother. Though there is some evidence to suggest that the father discussed the mother's health with the school within the context of a broader description of the problems facing the family, I am not satisfied on the evidence that the father deliberately informed the school that she was mentally unstable. I therefore decline to make a finding on the allegation as pleaded.
103. I do, however, find that there have been occasions post-separation when the father has weaponised the mother's health against her. I have already noted his comments made to this court, in which he states in terms that he is concerned the mother's ability to care is compromised by her health and that her allegations are likely a result of her mental health. That latter point seems to me to be in especially poor taste.
104. On 27 September 2022, the father sent an e-mail to the housing authority in which he stated, *'we separated on Monday the 12th September and this appears to be driven by a mental health crisis'*. On the day the mother vacated the family home, the father – having been served with the *ex parte* orders of 5 October 2022 – then sent an e-mail to the local authority in which he referred to the fact he had *'voiced to you [the social worker] serious safeguarding concerns regards [the mother's] physical and mental health and general ability to care for the children'*. In a note of their telephone conversation, the social worker records as follows: *'[the father] remains of the view that the view [sic] that [the mother] is not fit to be a mother due to health reasons'*.
105. In a text exchange with L in September 2022, a copy of which is contained within the bundle, the father sent a lengthy message in which he stated (amongst other things):

Her [the mother's] behaviour is irrational and erratic. She is struggling to cope mentally and physically, has been for a few years. Several hundred pages of assessments and testimonials to an appeal court (DWP PIP) from her, me, friends (including you), professionals etc testify to this and the reasons for it ...

... I've been told by legal advisors the best thing I could do is have a mental health team engage her urgently and get a court order, then go for full custody on safety grounds - I will NOT do that. I'll never want to ask for more than 3 night with my kids, because they need a mum AND a dad.

She needs to deescalate, stop the paranoia. How you respond to this, if at all, is up to you, I will ask for nothing.

This message is highly manipulative. It plainly seeks to undermine the mother's mental wellbeing, suggesting that urgent intervention may be needed and implying that safeguarding concerns were such as to justify placement of the children in his sole care. The father now offers little by way of explanation for the same.

106. There is little doubt on the available evidence that the father did make comments to professionals and the mother's friends regarding her mental health, in which he suggested she was unwell and, therefore, unfit to care for the children. To that extent, the mother's allegation is made out.
107. I do not make a finding on the mother's allegation that the father spoke to members of her family about her mental health and described her as an alcoholic. There is no direct evidence from the wider family to corroborate this allegation. While there is reference in the father's written evidence to the mother '*typically drinking a bottle of wine a night*', that appears to be referring to alcohol use in the past-tense and was not explored with the father in cross-examination; I am not aware of any documented instances of the father describing the mother as an alcoholic and do not, therefore, make any findings on that allegation.

(iii) Third Party Public Bodies

108. The mother alleges that the father approached a number of public bodies in order to exert economic control over her, including the First-Tier Tribunal hearing the PIP appeal and the local housing authority. I have already made findings regarding the former. As to the latter, the allegation is denied by the father.
109. It is not denied by the father that he contacted the housing authority. At the hearing in August 2023, I made an order for disclosure against that authority, the product of which is contained in the bundle. It seems that by 27 September 2022 the father was already aware that the mother was seeking urgent accommodation from the council. In an e-mail timed 12:24 that day, he informed the housing officers that the parties' separation was driven by the mother's '*mental health crisis*', commenting that the school would be in touch. He goes on to express his '*concerns*' that the mother's application for housing was '*fraudulent*' and that there were '*huge safeguarding issues*'. He refers to the mother's health limiting her '*capacity to care for the children*' and asks to speak urgently. This e-mail is lengthy, over two sides of A4. At 13:19, a housing officer responds to say she has received '*all three emails*'.

110. At 17:30, the father e-mails again to confirm he is aware that the mother has been provided with a property on a named road, attaching a Google Streetview screenshot of the house he believes it to be. The next morning, he sends further e-mails timed 07:25, 07:44 and 12:34. He again asks to speak to an officer, a request he repeats in an e-mail on 29 September at 07:41, he which he again suggests that the mother '*is not well, physically or mentally*' and that her housing application is '*highly irregular*'. I count a total of eight e-mails in three days. In a later e-mail provided to the mother, the housing officer confirms that she had '*started to block these*' messages from the father.
111. The father maintains that he held genuine motivations for sending these messages, not least that he wished to ensure there was sufficient support in place for the mother and the children in their new address. That is an explanation he provides both in his written and oral evidence. I reject entirely that explanation as disingenuous. Nowhere in his e-mails to the housing authority can one detect his concern for the mother's wellbeing nor an eagerness to ensure support would be in place. The first issue of concern raised in his e-mail is the alleged '*fraudulent*' nature of the mother's application, a point he addressed before even referring to the alleged issues of safeguarding. His language is critical and belittling of the mother.
112. I find on a balance of probability that the father did contact the housing authority and that he did so in an attempt to undermine the mother's application for housing. As with his statement sent to the Tribunal Judge, this was spiteful and done either with a reckless disregard for the economic needs of the mother and the children, or else with the deliberate intention of frustrating her attempt to exit the family home. There is no doubt in my mind that this was a controlling act, deliberately designed to deprive the mother of the means needed for independence, resistance and escape.

113. I make no finding on the mother's allegation that the father used the e-mail account of her late father to contact the DWP, an allegation firmly denied by the father. While I note the e-mail from the DWP dated 5 November 2022 confirming that a change of details had been requested via e-mail, there is no evidence of the original message which prompted that response and I am not satisfied, on a balance of probability, that the mother has discharged the burden of proof in this regard.
114. During the course of cross-examination, however, the father confirmed that he had completed an online form concerning the winter fuel allowance of the maternal grandmother. In his written statement, he recalls an occasion post-separation when he '*received a letter from DWP Winter Fuel team for [the grandmother] and used an online form to flag that she had never lived here giving a forwarding address in Spain*'. It is the father's evidence that the grandmother had continued to use the family's home address as her registered address with the DWP against his wishes and notwithstanding she resided in Spain, it being his understanding that she is not entitled to winter fuel payments while living there. When asked in cross-examination whether or not he believes the grandmother is a benefits fraudster, he answered, "*I think probably she is*". He repeated his account of completing an online form, alerting the DWP to the grandmother's address in Southern Spain.
115. In the weeks leading to the fact-finding hearing, the mother's solicitors received an e-mail from a senior caseworker at the Legal Aid Agency ("the LAA") on 12 October 2023. That e-mail confirms receipt of '*representations against the grant of public funding to your client*' and that such representations had been received from the father, who was alleging that the mother had '*withdrawn or revised the majority of the allegations made to secure the exparte [sic] non-molestation order*'. As is made clear by the contents of that e-mail, the father's assertions had jeopardised the mother's access to LAA funding, the continuation of which had yet to be decided. The father accepts that he made such an approach to the LAA.
116. The only substantial allegation that the mother had withdrawn was that of physical abuse of the child, a point I have already addressed at paragraph 4, above. That allegation had never formed part of the Scott Schedule filed as long ago as January 2023. The father, in my view, is guilty of a serious misrepresentation in that regard.
117. Taken together with his statement in the PIP appeal, his correspondence with the housing authority, the online form regarding the grandmother's winter fuel payments and, finally, his attempt to have the mother's access to legal aid curtailed, I am satisfied on balance that this represents a clear series of acts – a pattern – of controlling and coercive behaviour. I reject the father's explanation that he was just being a good citizen, reporting fraudulent claims. His actions were intended to punish the mother for her actions in removing the children from the family home and to cause financial hardship to her, cutting off her means of support. It was a process of harassment that included not just the mother but – in the case of the winter fuel payments – her family. When set against the father's multiple threats to report the mother's solicitors to the SRA, one cannot help but conclude that he has attempted to deprive the mother of the support of her solicitors along with the funding she needs to access them.

(iv) Alienation

118. The mother alleges that the father has sought to alienate the children by coaching them into alleging that the mother had smacked them; telling them that the maternal aunt would kidnap them to Spain; and telling them that the mother would not have enough money to feed them. All allegations are denied by the father. I make the point at this stage that I do not consider, even at their height, that the mother's allegations are properly categorised as 'alienation'. Rather, if true, such allegations might better be classed as emotional harm to the children caused by inappropriate and adult-orientated discussions.
119. The mother describes how, while transporting the children in the car on 15 September 2022, the boys told her that if she reported the father to the police for hitting X they would say it was the mother who hit them. The father admitted during his oral evidence questioning X, asking him "*Have I ever hit you?*" and "*Has mummy ever hit you?*", which conversation he recorded. He denies pressing either of the children further and/or coaching them. Given his admission in this regard, there seems little merit in exploring the issue further. It was plainly wrong of the father to have questioned any of the children in this way.
120. I turn next to the allegation regarding inappropriate conversations with the children around money. In large part, the mother's case relies upon hearsay evidence of matters she says were reported to her by the children. I do not make any findings on the specific phrases used by the mother in her written evidence, which she says are to be attributed to the children under the influence of the father.
121. I do, however, return to the in-game conversations with the children which took place in September 2023, as discussed above at paragraph 59. In those messages, in the face of clear warnings from the court as to the need to keep all communication child-focused, the father talks to the children about '*fighting*' for them, setting out what he pays to the mother and telling them '*I thought she can't cook*'. In other messages, he asks the children about the dog:

Father: Is he getting enough walks
Child: Yes
Father: Every day?
Child: Yes
Father: As long as he's okay. [Does] mummy still take him on long ones to borough hill and the country park?
Child: Yes
Father: Ok, I just worry about him, with mummy not being able to go outside

This line of questioning is entirely inappropriate and designed to inculcate in the children the father's infantilising narrative, that their mother is not capable of meeting their needs. It is controlling, manipulative and emotionally harmful to the children. I remain troubled that the father appears to show very limited insight into the impact that these messages must have had

on the children. The child's monosyllabic answers should, one would hope, have been a signal that he did not wish to engage.

122. Finally, I am not satisfied that the father told the children that the mother's sister would kidnap them. The burden of proof remains on the mother and, in this case, is not met. I am, however, satisfied that this allegation should be seen in the wider context of the behaviour of *both* parents in the days leading up to the mother's departure on 6 October 2022. I have listened to the audio recordings, which reveal quite clearly the extent to which the parents' toxic interactions were played out in the presence of the children. In one recording which was played in court, the father can be heard asking the mother questions around the issue of smacking; the children are plainly present and can be heard throughout the recording. While the conversation is very much led by the father, the mother engages for a time before saying '*right ... stop talking in front of them*'. At one point, one of the children can be heard to shout "STOP", apparently asking his parents to stop bickering, before saying '*I knew you would argue*'. Both parents have to take responsibility for the extent to which the children were exposed to the breakdown of their relationship.

(v) Torch

123. The final allegation pursued by the mother is that the father subjected her to abuse by shining the torch on his phone into her eyes while she was sleeping in an attempt to induce a seizure. She recalls an occasion on 21 September 2022 when she was woken by the father in the middle of the night '*shining the light on his phone in my eyes*'. This is denied by the father, who makes the point that – at the time in question – he was sharing a bedroom with one of the children while the mother remained in the main bedroom; the father's explanation is that he entered the mother's bedroom to get his pyjamas and used a torch to find his way across the room.
124. Having considered the written and oral evidence, I do not find this allegation proven. On a balance of probability, I accept the father's explanation as being the likely one.

Patterns of Abuse

125. The mother's first allegation, as pleaded in the Scott Schedule, is an overarching one: that she was subjected to controlling and coercive behaviour, as evidenced (she says) by the sub-allegations which have been addressed above. In assessing her umbrella allegation, I have attempted to take an aerial view of the case; to look at the entire sweep of the evidence and consider it holistically in order to view the quality of the father's alleged behaviour as a whole.
126. For all the reasons stated above, I have identified individual acts of controlling and/or coercive behaviour in the final years of the relationship which, when taken together, evidence a pattern of controlling behaviour that – if subtle in places – was nonetheless insidious. I do not find, however, that this was a relationship always characterised by such control and, in

fairness to the mother, she limits the timeframe of her allegation from 2019 onwards. It seems to me that, as the family found itself in crisis – from the mother’s accident, X’s challenging behaviour and the father’s own anxieties and sepsis – the father became increasingly controlling towards the mother in the final years before separation in September 2022. By the end of their relationship, his conduct was oppressive, controlling and psychologically abusive.

127. As for the father’s conduct post-separation, I am entirely satisfied that his actions – in his reports to professionals, his statement to the Tribunal Judge, his e-mails to the housing authority and (most recently) his communication with the LAA – were controlling and coercive. There is in my mind a clear pattern of malicious behaviour designed at first to prevent or frustrate the mother’s attempts to leave; then, once she had left, he embarked on a concerted campaign to punish her for doing so. That the children would later be brought into this via the in-game messages is deplorable and, I find, shows a lack of insight or else a sheer recklessness as to the impact his behaviour has had, not only on the mother but on the children.

Concluding Remarks

128. Those are the findings of the court. I will hear submissions on any matters arising from this judgment and as to further case management.