



Neutral Citation Number: [2020] EWFC 83

Case No: TA18P00358

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 27/11/2020

**Before :**

**THE HONOURABLE MRS JUSTICE JUDD DBE**

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**Between :**

**C**

**Applicant**

**- and -**

**D**

**Respondent**

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**Lucy Hendry for the Applicant**  
**Katherine Gittins for the Respondent**

Hearing dates: 9-11 November 2020  
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**Approved Judgment**

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....  
**THE HONOURABLE MRS JUSTICE JUDD DBE**

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

**Covid-19 Protocol: This judgment will be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down will be deemed to be 12 Noon on 27 November 2020. A copy of the judgment in final form as handed down will be automatically sent to the parties shortly afterwards**

## The Hon Mrs Justice Judd

1. This is a fact finding hearing within proceedings brought by a father for a child arrangements order with respect to his son aged 5. The child is living with his mother at a location some way away from where the father is living.

### Background

2. The mother and father met through mutual friends when the mother was about 17 years old and the father about 23. At that time they were both living in the north of the country, the mother with her father and his family, and the father in his own property by himself. By all accounts they commenced a relationship very quickly and very soon afterwards the mother discovered that she was pregnant.
3. The relationship appears to have been somewhat unstable from the start, with callouts to the police in June and September 2014. At some point during the pregnancy or very shortly after their son was born, the mother moved into the father's flat. In June the mother attended the police station with a friend, stating that the father had been violent and aggressive to her during her pregnancy, and on that day had shouted at her and told her not to come back to the flat. In September the father rang the police to say that the mother had stolen his mobile phone and the keys to his flat. This appeared to have been triggered by her leaving him, and taking keys and a mobile with her.
4. When the baby was a few weeks old the family relocated from where they were living to another part of the country, a considerable distance away.
5. In May 2015 there was an argument following which the mother contacted the police to say that the father had been violent to her. In her statement for these proceedings she stated that the father had pushed her, pinned her down with his knee and pulled her arm back. She completed a DASH assessment in which she said she was very frightened of him, that he had been rough to the child, violent to her and that she felt he might be further violent to herself and the child, and that he had taken her away from family and friends. She also said that the father had hit the dogs. The mother went to a refuge with the child, but later returned to the relationship. She states that the father's mother told her that he had either taken an overdose or was threatening to do so.
6. At some point shortly after this the family moved to another flat. The mother started attending a course at college, and when she attended there, the child was looked after by the father. The mother said she had to give this up because the father did not care for him properly. During the course of 2016 it appears that the relationship between the mother and father deteriorated further. In August the mother was having a drink with a neighbour and told her that the father had had sex with her when she did not want it. The neighbour encouraged the mother to contact the police. The mother had also told the neighbour that she wished to leave the father, and on 26<sup>th</sup> August that neighbour drove her down to the police station and reported that she (the mother) had been forced to have sex. The mother and child left the father then, and there has not been any contact between any of them since.
7. The mother was video interviewed on 30<sup>th</sup> August and made allegations that the father had refused to stop on one occasion in the middle of having sex when she asked him

to, and on another occasion that he had pulled her bottoms down and had sex with her when she was on the bed despite her saying no. She also made allegations about controlling behaviour, including his attitude towards her friends, his jealousy, his pressure on her to send sexual pictures to him, and that he was violent to her on one occasion and rough to the child.

8. The father was interviewed on 16<sup>th</sup> September with an appropriate adult present. He denied all the allegations, and gave the officers an account of the relationship between himself and the mother as he saw it (including saying that the mother slapped him and punched him in the testicles). He did say that the mother would sometimes have flashbacks when they were having sex and asked him to stop, and that he had done so. He said at the time of the separation they had not had sex for two or three months. The police have taken no further action with respect to the mother's allegations.
9. In October 2018 the father made an application for a child arrangements order. On 8<sup>th</sup> August 2019 there was a fact finding hearing before His Honour Judge Tolson QC. His decision was appealed, and on 5<sup>th</sup> December 2019 the appeal was allowed. This is the retrial of the fact finding hearing, which was originally listed in May and then July but was adjourned because of the Covid pandemic. All the parties agreed that this case was not suitable for a fully remote hearing, especially as the father has some difficulties with literacy and would have had to attend the hearing using a smartphone if he was not able to be in court.

#### The allegations

10. The allegations by the mother are grouped into 7 and set out in a schedule. The first allegation is that the father was extremely aggressive and intimidating towards the mother on a number of occasions when she was pregnant. It is said that he threw a number of objects to scare the mother, such as a toothbrush and shoes when the mother was packing to leave the family home to stay with a friend. The second allegation is that the father was controlling and emotionally abusive towards the mother throughout the relationship. It is said that the mother left the father on a number of occasions and had reported his behaviour to the police but that they reconciled thereafter. The third allegation is that the father shouted at the mother and called her a slag for what she was proposing to wear at an outing to go ice skating in March 2015, and the fourth that the father would repeatedly call the mother ugly and disgusting following the birth of their child, but that if she put on makeup he would accuse her of trying to attract other men and call her a slag. In the fifth allegation the mother says that the father pushed her and pinned her down, pulling her arm back during the course of an argument in May 2015. The sixth allegation relates to the allegations the mother made to the police in her interview on 30<sup>th</sup> August 2016, namely that there was an occasion when she asked him to stop in the middle of sex and that he refused (said to be about May 2016), and another occasion where he ignored her refusal to have sex and went ahead nonetheless (said to be in July 2016). Allegation 7 relates to the child. The mother says that on a number of occasions the father purposefully harmed the parties' child, by pinching and squeezing him, leaving marks.
11. The father denies all the allegations although he accepts that the relationship between himself and the mother was a toxic one. He makes some allegations against the mother himself – saying that she would assault him by grabbing his testicles – and

also states that she has demonstrated a pattern of making allegations. Of the two previous liaisons she had had, he said she has alleged that the first man groomed her and the second man had raped her. Further, she had alleged she had been assaulted during the course of an operation in hospital.

The law – fact finding

12. In determining issues of fact, the standard of proof is the balance of probabilities (Re B [2008] UKHL 35). The burden of proof lies upon the person or body that makes the allegations (in this case the mother).
13. Findings of fact must be based on evidence and not speculation (Re A (A Child)(Fact Finding Hearing: Speculation) [2011] EWCA Civ 12). Evidence must not be looked at in separate compartments and a judge must 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 as to whether the allegations are made out to the appropriate standard of proof (Re T [2004] EWCA Civ 558).
14. It is common for witnesses to tell lies in the course of an investigation and hearing. The court must bear in mind that a witness may lie for many reasons such as shame, misplaced loyalty, panic, fear and distress and the fact that a witness may lie about some matters does not mean that he or she has lied about everything. In any event, a lie should never be taken, of itself, as direct proof of guilt (R v Lucas [1981] QB 720, and Re H-C (Children) [2016] EWCA Civ 136 (paragraph 100)).
15. In Lancashire County Council v C, M and F (Children; Fact Finding Hearing) [2014] EWFC 3, Peter Jackson J (as he then was) stated

*“ To these matters, I would only add that in cases where repeated accounts are given of events surrounding injury and death, the court must think carefully about the significance or otherwise of any reported discrepancies. They may arise for a number of reasons. One possibility is of course that they are lies designed to hide culpability. Another is that they are lies told for other reasons. Further possibilities include faulty recollection or confusion at times of stress or when the importance of accuracy is not fully appreciated, or there may be inaccuracy or mistake in the record-keeping or recollection of the person hearing and relaying the account. The possible effects of delay and repeated questioning upon memory should also be considered, as should the effect on one person of hearing accounts given by others. As memory fades, a desire to iron out wrinkles may not be unnatural – a process that might inelegantly be described as "story-creep" may occur without any necessary inference of bad faith”. These words echo the words of Leggatt J in Gestmin SGPS v Credit Suisse (UK) Ltd [2013] EWHC 3560 as to the fallibility of human recollection, and the limitations of memory”*

16. In Re R (Children) [2018] EWCA Civ 198, the Court of Appeal made clear that the structure and substance of criminal law should not be applied in family hearings. The purpose of the family tribunal is not to establish guilt or innocence but to establish the facts as far as they are relevant to inform welfare decisions about children. I will therefore not stray into consideration of criminal law principles and concepts in my analysis below.

### Domestic Abuse

17. PD12J paragraph 3 defines domestic abuse as follows: “any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 years or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, psychological, physical, sexual, financial or emotional abuse. Domestic abuse also includes culturally specific forms of abuse including, but not limited to, forced marriage, honour-based violence, dowry-related abuse and transnational marriage abandonment”.

“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”;  
“Coercive behaviour means an act or pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim”.

### The hearing

18. I read all the papers in the bundle, including the statements by each of the parties and witnesses. I also read all the documents provided by the police and watched the mother’s police interview and listened to that of the father. I read the transcript of the previous proceedings before His Honour Judge Tolson. I should note at this point that I have had access to a number of documents that were not before him, including some significant text messages, and full transcripts and recordings of the police interviews. Also, both parties were represented before me so that it was possible for the mother to be properly questioned.
19. I heard oral evidence from the mother from a remote location by video link. At the last hearing she had given evidence from behind a screen but it had been difficult to hear her. The mother’s friend S gave evidence remotely from a different location.
20. Apart from the mother and S, everyone else, including the father and both counsel were in court and arrangements were made so that the father could not see the mother on the screen or she him. Very unfortunately, on the first day, arrangements for the mother to be accompanied to the remote location with her solicitor broke down and she attended alone. There were difficulties for her in obtaining access to the video room and logging on. This was obviously a very poor start to the hearing, and although efforts were made to find someone to join and support her, it was not possible or desirable to start her evidence that day, and so I adjourned the case. On the second day she was accompanied by someone from her solicitor’s office and also, I believe from a volunteer from Victim Support. The father gave his evidence from a side bench in court, not only to avoid him being face to face with the mother but also because he suffers anxiety and did not wish to sit in the witness box. No issue arose from this and I allowed him to do so.

### The evidence

21. The mother has filed two witness statements in these proceedings and also gave an interview to the police. In her first statement she stated that she met the father when

she was about 17 and he was about 23. She comes from a large family. Her parents separated when she was young, and she as a teenager she spent time living with each of them. When she first met the father she was living with her own father. At first she thought him to be a loving and charming man, thoughtful, and as she put it, 'amazing'.

22. She became pregnant very quickly, and moved in with the father. It was after that, she says that she realised that he had some violent tendencies. She saw him hitting the dog who had chewed some cream in a tube, and said that the dog growled and every time that happened the father hit him more. She said that she also realised that he took cannabis and supplied the drug to other people.
23. She said that she decided to leave the father when she felt his aggression was getting worse, and being directed at her. At first it was just him shouting and swearing, and if she went to see her friends he would accuse her of cheating on him and threatened to remove her belongings and throw her out. She felt she could not do anything without his approval.
24. It is of relevance to this case to note that the relationship with the father was essentially the mother's first, but that she had very distressing experiences with two different men beforehand. One of the men was much older than her and appears to have taken advantage of, and deceived her. The other sexually assaulted her. Those two experiences, particularly the latter, unsurprisingly, caused her to suffer from significant trauma and there were occasions when she self harmed. She was also prescribed anti-depressants. She said, however, that she overcame this to the extent that she was in a 'much better place' by the time she entered into a relationship with the father. She said, however, that he told her she was sick and twisted for seeing a man who was 40 when she was only 16.
25. She said that she decided to leave the father the first time when she was pregnant. She felt she was constantly making excuses for the way he was behaving towards her. He was constantly making her feel bad and was being aggressive and controlling. On that first occasion she said that he started throwing things in her direction, her toothbrush and shoes, for example. She said that he did not seem to care whether he hurt her or not, and could not see past his anger. She moved back to her father's house. She said she stayed there for a week, but the father became very charming once again and because she was so in love with him, she moved back. They spent a fortnight housesitting for his mother in another part of the country and things appeared to be idyllic. The father bought her a puppy, but she said that he then began to be horrible to him, grabbing him by the neck when he had urinated and pushing his nose into it and laughing. It made her scared, she said.
26. Shortly after the baby was born, they moved away from the area in which they were originally living. She said that the father was not happy to share attention with the baby, and would tell her that she looked ugly and disgusting, but also complained if she wore makeup. There was an occasion when she was dressed up to go ice-skating with friends, when he told her she looked like a slag and she had to go and change.

27. In May 2015 there was an argument about an image which appeared on the father's phone and the mother said she wished to leave. The father, she said, prevented her from going towards the child and said that she could not take him if she went. She said that the father had prevented her from getting her phone to ring the police and had pushed her, pinned her down and pulled her arm behind her back. She escaped from the flat and went to a neighbour and called the police from there. The police came and questioned them both, and let her leave, taking the child.
28. After that the mother said she returned to him again, after a call from the father's mother saying that he was very depressed and had taken or was threatening to take an overdose. She said at first he was charming again, but after a while the aggression and accusations started again. He accused her of sleeping with other men and taunting her. She said for her part she thought he was cheating too. She said at first she would shout back at him during arguments but then she stopped caring.
29. During the course of her relationship with the father, the mother struggled with sexual issues because of the assault she had suffered before she met him. In particular she said she suffered a number of flashbacks during sex which made her very distressed. At these times she asked the father to stop, and he did so. As time went on and their relationship began to deteriorate, their sexual relationship declined as well.
30. There was an occasion in about May 2016 when the parties had started to have sex but the mother once again began to suffer from flashbacks and asked the father to stop. She said she had started to cry, and had asked him several times to stop but he just carried on. She said she was quite sure that he had heard her, and that afterwards she had gone to the bathroom and continued to cry. After this event she went back to the area where they had used to live to see some friends for a few days, leaving the child with the father.
31. Then in July 2016 there was an occasion when she told him that she did not want to have sex with him, but that he went ahead anyway, removing her pyjama bottoms and saying 'well, I said yes'. She said that she continued to say no but it made no difference, and that she particularly remembered having her bottoms pulled off her, so that she could not have been wearing a nightdress. She did not tell anyone about this until she confided in a friend, who encouraged her to go to the police.
32. It was also the mother's evidence set out particularly in her second statement that the father never bought food, and would live off takeaways and junk food. As she had no money of her own, she went without food if she was not there when the takeaway arrived. This changed when the father's cousin stayed with them, but happened again when he had gone. She said that he would object to her going out with friends, and would make them feel unwelcome when they came around (this related mostly to the time before they moved for the mother had fewer friends after that). She said that S had seen the father behave in this way and being unpleasant to her. She said that on one occasion when she had gone out with S the father had threatened to throw her belongings out when she was not there. She also said that the father would text her when she went out, suggesting that she preferred to spend time with people other than him, and that she was looking for, or with, other men. She also said that the father sent her offensive texts, accusing her of masturbating, and pestering her for sexual pictures. She said that when she was away visiting friends and asked him to send a



picture of the child, he had said he would only agree to this if she sent her sexual pictures of herself.

33. The mother also said that the father could not deal with the child's needs and would pinch him and squeeze him if he cried. She said that when she went to college (which she did for a while after the birth) she would come back to find that the father had done nothing for him all day.
34. The mother told the police that he had been violent to her only once. Although she did not elaborate on that in the interview, in her evidence in these proceedings she has described an incident in 2015 when there was an altercation with the father over a message on his phone when she says he pinned her down with his knee and pulled her arms back causing red marks (there is also a contemporaneous police record of her complaint about this in the bundle).
35. Although there are references to the mother complaining that the father was abusive and controlling to her in the various contemporaneous police records in 2014, 2015 and 2016, the detail of these allegations did not form part of her police interview, and has been set out in her statements for these proceedings. There are examples given of the father depriving her of food, of calling her names, and being emotionally manipulative.
36. The mother was cross examined at some length, and entirely properly about the allegations she had made against the father. It was particularly suggested to her that she had made a previous allegation of rape against one of the men she had seen before the start of this relationship, and also that she had claimed she had been groomed by the older man. Also, at various points when giving a history to the police or others, she had failed to mention matters that she later wished to rely on, or had mentioned something once without saying it again (for example she told the police once that the father had punched her around the head, and did not tell them in her interview something she had said before, namely that the father had grabbed her around the throat). The mother explained this by saying that sometimes she simply did not recall some things when talking to the police, and also that she had been worried that the child might be removed from them if she revealed too much.
37. The mother stood by her allegations when she was cross examined, although there were many occasions when she became distressed when talking about specific matters, particularly those which were of a sexual nature, and also when recounting the father's treatment of the dog.

#### The father

38. The father has also filed two statements in the proceedings and was interviewed by the police. He said he was very shocked by the mother's allegations. They had met through his brother, and she had told him about the difficulties she had had and he genuinely believed that he could help her. He said she told him that she had been raped, and at another stage that she had been improperly touched by her doctor.
39. In his first statement (compiled when he was not legally represented) he said that their relationship had ended because she was sleeping with his best friend and got caught

red handed. He said it was the third time she had been unfaithful and that it did cause arguments and that her allegations against him were a lie.

40. He said that the argument in May 2015 had been caused by an unsolicited photo he had received on his phone (spam) and that she wanted to go back to her father's. He said she knew he did not know the woman in the photo and she calls the police when she does not get her own way. In his second statement he said the photo was from an old friend. He elaborated on the row and said that the mother was very agitated and he had refused to give the child to her because he was concerned about her behaviour and that she might have post natal depression. He said that the mother threw a punch at him when he had the child in his arms and then said she was calling the police, threw the house telephone to the floor and went to the neighbour's. He said he was arrested and questioned, then released on bail. It was the mother who had contacted him through his brother and said that she wished to drop the charges.
41. In the first statement he also explained that the mother would have a lot of flashbacks due to being raped and that it would break his heart to listen to her crying about this in bed. He said that she would accuse him of thinking she was ugly and of cheating on her, which he never did. It was she who had cheated, and indeed he caught her fondling his best friend in the kitchen whilst he was sitting at the table.
42. In his second statement he went into more detail about the various incidents as alleged by the mother. He particularly denied being aggressive to the mother and pointed out that they had different friendship groups and he did not stop her from seeing her own friends. Indeed he said it was they who did not like him. He denied that there was ever an incident where he had thrown shoes or a toothbrush at the mother, or that her friend S had been there.
43. The father denied depriving the mother of food, and trying to prevent her from seeing his friends. He said that he had once been annoyed when the mother was outside talking to friends in the car because she had left him asleep in the flat with the very young baby on his chest. He felt she had gone out without making the child safe by putting him in his moses basket. He also said that the mother spent a lot of time on the phone to S and others and he thought that she was prioritising that rather than meeting the child's needs. He said that her friends did not have children and did not like the fact that the mother had changed after having the baby. He said that equally, the mother did not like his friends.
44. The father particularly denied being aggressive to the dog. He said that he had been taught to house train a puppy by putting its nose in or near to where it had urinated or defecated in the house. He said that the RSPCA had visited his home when the mother left (she had contacted them) and they had confirmed that the pets were in good health.
45. In his statements he also denied sending the mother text messages accusing her of masturbating or that he requested naked or intimate photos of her. He said that she rarely asked for photos of the child when she was away. He said he had not been abusive to her or critical of her appearance, saying that she looked attractive with or without makeup. He had not criticised her outfit when she went skating – she wore a

Christmas jumper because she was going ice-skating. In fact he said that he had paid for her to be able to go on the outing, which demonstrated that the suggestion by the mother that he resented her going was wrong, as was her suggestion he kept her short of money. He also pointed out that the house they moved to was decorated according to the mother's taste which showed that it was wrong to suggest that he was controlling.

46. He denied ever continuing or forcing the mother to have sex when she said no and said that he always respected her if she asked him to stop. Once this had happened when his cousin was there and he told him that the mother had suffered a flashback (he says that his cousin does not recall this). He also said that they had only had sex once in the position she described, and in fact because of his weight and size she would always be on top. He said that there had never been an incident such as she described as taking place in July 2016 and that he had never forced himself on her. In his evidence to me he said he recalled an occasion where they were both watching TV and turned it off but they had simply gone to sleep thereafter. He said in his oral evidence that sex in the position she described (behind her) was impossible because of his weight and the size of his stomach.
47. The father also suffers from some mental health problems, and in his second statement explained that he suffers from ADHD and Switch Personality disorder, which he says means that his moods can be extreme. He suffers from anxiety for which he is on medication. In his oral evidence to me he said that he had attended a special school and had never passed any exams, and said that although he could read, his intellectual ability is low. I should state that it has never been suggested by those that act for him that he does not have capacity or that he should undergo a cognitive assessment.
48. When questioned about police logs relating to two former girlfriends, he accepted he had had issues with anger in the past (although he did not accept the reports were fully accurate) but said that things had changed before he met the mother. The relationship before her and the one he had now had not featured such rows and police call outs.
49. During his oral evidence he pointed to the fact that the mother had attended college during the course of their relationship (including after A was born) and stated that it was she who had wanted to move away from the area in which they were originally living. The mother had been able to have the new property decorated according to her wishes. During the course of the relationship that they both had trust issues. He was very overweight and he said he lacked confidence – asking himself why the mother would be attracted to him, and this is what made him sometimes wonder. On being asked about his suspicions about one person who had given the mother a lift to and from the area where her family were living, he said he thought it a 'bit strange' that he had not asked for any funding.
50. In the hearing before His Honour Judge Tolson the father also denied allegations put to him that he had sent the mother abusive or humiliating texts such as saying "if you don't shut up, I will stick my cock up your ass", or "you are playing with yourself. I

can smell it”, saying that he would never do that, and that such was disgusting. Now the messages have been disclosed and they do demonstrate the father sending such texts. In his evidence to me the father said that he deeply regretted sending such texts, and had done so at the time because he was stupid, and he had misguidedly intended them as a joke.

51. The father also denied ever having been rough with the child, saying that he had looked after him for three weeks at a stretch, and that, had he ever grabbed him as was suggested the nursery would have seen some marks.
52. The father was an anxious witness, and struggled at times to answer the questions directly, not through his own fault but because of his anxiety and ADHD. He gave a vivid account of a specialist telling him that whilst most people were able to travel directly down a particular track when talking or answering questions, his condition led to him being diverted along different tracks as he did so. He also told me that he had attended a special school and struggled with reading and writing.
53. Apart from hearing from the mother and father, I also heard oral evidence from the mother’s friend, S. She had made a statement to the police in March 2017 and also in these proceedings. She told the police that the father made her and the mother’s other friends feel uncomfortable when they went around to the house, but the rest of her statement simply demonstrates that the mother was complaining to her about the father at the time (although she said that the mother did not tell her about the father having sex without consent until after the mother had confided in her neighbour). In her statement for these proceedings S said that the atmosphere in the home was unpleasant when she visited and she thought that the mother was always on edge. When they were out, S said that the father would constantly message the mother causing her anxiety and upset, and constantly accuse her of being untruthful. She also said that she had been present when the father threw the mother’s things at her, in what she said was a quite aggressive and angry manner and in her oral evidence explained that this had not been mentioned in the police statement, she thought because the statement had been a lot shorter and it might have been something she forgot in the absence of being asked questions about it.
54. S also recalled that when the mother was visiting the area in May 2016 that she had sent a photograph of them together because (as the mother told her) the father was suspicious as to who she was with and she recalled the father constantly texting the mother. She said that the mother told her at the time that the father was refusing to send her pictures or videos of the child. It was only after the parties had separated that she told S about sexual matters, and in the statement and her oral evidence she thought this had happened a few times, more than twice. S recalled during the relationship that the father would mock the mother and make fun of her.

#### Discussion

55. I am conscious that at this hearing (and indeed the previous one) both parties were being required to remember events that had taken place several years beforehand. No doubt the effect of being asked to recollect matters on more than one occasion, and reading both earlier descriptions and the descriptions of others will have blurred the

lines between what actually happened, and what they remember. I also thought that the father was somewhat defensive and found it hard to be open about events.

56. Fortunately I do have the benefit of a number of contemporaneous records compiled by the police, including call out records, statements and interviews of the parties conducted in August and September 2016.
57. In my judgment there is an overall consistency to the mother's evidence. This does not mean that she has been consistent about absolutely everything or in her descriptions of every incident (and I think it is not realistic to expect this of either party). What it means is that she has been consistent with respect to the major issues over time. I accept that she will have remembered some things at some times and also forgotten others, and also that she harboured some worries about the local authority getting involved.
58. In addition to the consistency of her accounts such documentary evidence as there is appears to me to be corroborative of the mother's evidence, albeit there is a limit to the weight that I can place on the accounts of witnesses who have not given evidence to me or whose words are reported in the police records. The mother is also corroborated in respect of some of the evidence by her friend, S (whose evidence is also supported in the messages and records).
59. The incident in June 2014 where the father was said to have thrown items towards the mother when she was packing to leave was corroborated by S, so too was the way he behaved towards the mother's friends. S's evidence confirmed the way in which the father repeatedly sent the mother texts when she was out, causing her to be stressed as to what she would find when she went back home. The police call outs show that in September of that year the father called the police after the mother had left to report that the mother had stolen a phone and the flat keys, something they considered a rather spiteful act on his part. In his oral evidence the father accepted that he had sometimes wanted a breathing space after an argument and that he had told her not to come back. This reinforces the mother's case that she was led to worry that she would lose her home.
60. Amongst the mother's allegations of aggression by the father is an account of his behaviour to the dog. She was visibly distressed whilst recalling this in her evidence, saying;  
"He used to really hurt xx, and hit him on the back of the legs all the time. He would wee and chew something up and he would get a smack...the dog would growl at him and he would hit him more because he would back into a corner".
61. The allegation that he was aggressive to the dog appears in several places in the evidence, and again, it is very consistent. It is also corroborated by other evidence in the papers. Whilst I have to be very careful as to the weight to be placed on hearsay evidence where I have not heard the witness or the evidence tested, there is a record in the police documents of a previous girlfriend of the father making a complaint in 2011 which was recorded as follows "female party was at home texting a male friend.

Male party took exception to her texting a male and took her phone off her throwing it to the floor. He then picked up the dog and threw it into the kitchen. He then followed the puppy, grabbing it by the throat suggesting he would kill it". These two women do not know each other and have had no chance to compare notes, yet there is a similarity in their complaints.

62. Although I am conscious that I only have a limited number of the messages that would have passed between the mother and father, the ones that have been disclosed provide support for the mother's contention that the father would repeatedly accuse her of having relationships. They also show that he placed emotional pressure on her when she was out or away. For example in May 2016, when she was away seeing friends and family, there are text messages from the father suggesting that she is not missing him or the child, and that she is loving life away. He also asked her whether she was seeing someone else.
63. There is also support for what the mother says about accusations of cheating in the father's own evidence. In his first statement in these proceedings he said that the mother had been sleeping with his best friend and also that she repeatedly told him she had been cheating on him. Another assertion he has made is that the mother and his friend were fumbling with their hands under the glass topped table in his presence.
64. So far as the allegation of an assault in May 2015 is concerned, this episode commenced because of the mother's belief that the father was cheating on her. She said that a picture from another woman appeared on his phone. The father seems to accept that (certainly at one point) he received a sexual image from a woman, but that this was spam, or unsolicited. The accounts of the parties differ, but there was certainly an altercation and the father refused to let the mother take the child. She escaped to a neighbour and telephoned the police. There is very little to corroborate the account given by either of the parties so far as this is concerned. The mother's accounts of this event have also, again, been relatively consistent, at least as much as that of the father (his original account did not include his having the child in his arms).
65. Looking at sexual matters, the messages we have demonstrate the father placing emotional pressure on the mother to send him pictures (which I believe to be sexual pictures of herself not selfies as the father suggested at one point). As part of his assertion to her that she is not missing him, he complains she has not sent him pictures and repeatedly asks her for them.
66. In May 2016 one of the messages from the mother to the father (in response to one of several requests for pictures) states that 'you know how I am feeling about the whole sex issue'. In July 2016 the messages show further signs of tension about sex between them (albeit I repeat that I am conscious we do not have them all, nor are they all dated). On one occasion the father sent the mother the message already referred to earlier 'did you have a nice play and don't say you didn't, I can smell it'. The mother's response shows that she took offence. In another message the father makes reference to the mother being moody because he had 'looked at your pussy' and in another again he made a sexual suggestion to her to which she replied no and

asked him to leave her alone. His response was 'Fine, block me then'. Amongst the messages there are more requests for pictures and then, in the middle of an exchange between them when the mother was telling the father he was a 'grumpy git' and a 'drama queen' he retorted by saying 'cock up your ass if you keep talking to me like that'.

67. It was during this period (May and July) that the mother says there were two occasions when the father had (or carried on) sex with her when she had said no. The details of this including the contextual detail such as the positions she was in, what she was wearing and what the father said ("I say yes", although there has been a minor variation "no means yes") have remained very much the same. It is true that at earlier times she has said that there have been further occasions when there had been non-consensual sex but that she is now saying it happened twice. It seems to me that these matters are not always very clear cut, and I do not think this undermines the veracity of her account.
68. The mother's allegations about the father being rough with the child appear in various places in the police records. I am also referred to the statement of another witness, A, who has not been traced and who has therefore not given evidence. I note that A chastises the father for leaving the child crying rather than anything else, and also that there are no documents to support the allegation that the child suffered a bruise whilst in the father's care.
69. The father's evidence is not always easy to follow through not fault of his own. Even making allowances for this and the anxiety he must feel about the allegations against him, his accounts do not have the same level of consistency as the mother, and in some respects has been directly contradicted by the documentary evidence. He completely denied some events that I consider happened (throwing items), suggested he only ever 'tapped' the dog's nose which really would not distress anyone and suggested he might only have been asking the mother to send him 'selfies' rather than intimate photos. There is some variation in his accounts as to whether he and the mother had sex at all on the second occasion alleged by the mother or whether they had sex consensually. His responses to other matters whilst intending to reject allegations against him have sometimes been revealing.
70. I do accept the points made on the father's behalf that the mother was able to attend college (for a while, anyway), that she was able to choose the decorations in the home, that the father would buy her presents sometimes and pay for things, and that he did try to manage the mother's distress when having sex including stopping in the middle when she asked him to. I also accept that the mother accused the father of cheating too. These matters suggest that the mother's behaviour was not totally controlled by him, nor indeed that he was always indifferent to her feelings about sex and unable or unwilling to control himself. They also suggest that the problems in the relationship were not solely caused by him.
71. Notwithstanding these matters, surveying the evidence as a whole, I consider that the mother's evidence about the father's behaviour during the relationship is truthful and reliable. I also find her evidence about the allegations of non consensual sex

compelling. It is the mother who has shown consistency over the accounts she has given of various matters and her evidence rather than his which is for the most part corroborated by the records. When giving her evidence, her emotional affect was noticeable too. She has always said the father had a side which could be charming and loving, and accepted that she too had some issues with trust.

72. I will set out my findings in relation to the different allegations below.

Allegations 1 to 4

73. I have concluded that these allegations are made out, and that what is of greatest significance here is the persistent pattern of behaviour rather than specific events such as throwing shoes or a toothbrush at the ground in an argument or objecting to a particular item of clothing. I accept the mother's evidence that the father was frequently aggressive and intimidating to her, that he accused her of cheating on him and that he would make it difficult for her to see her friends by being difficult or rude when they visited or texting her constantly when she was out. Additionally he would say unpleasant things to her and run her down.

74. I also think that the behaviour of the father to his dog was aggressive, and he obviously repeated it despite the clear distress it caused the mother. What she described went beyond normal (even old fashioned) house training or chastisement for chewing harmful items. I entirely accept the father's evidence that the RSPCA took the view that the pets were well cared for, and the dog concerned is still alive and doing well, but the behaviour described would not leave obvious signs or marks.

75. I recognise the fact that the father is of limited intellectual ability (he told me he has never passed any exams and attended a special needs school), and that this can make it difficult for him to express himself. I can also accept that he felt that it was the mother's friends who did not like him rather than the other way around. Whatever the underlying reason, however, the father lacked self control and resorted to angry and manipulative behaviour if he felt he was not being properly treated or his needs were not being met. I consider that this comes within the definition of coercive and threatening behaviour as defined in PD12J.

76. As part of the mother's case with respect to controlling behaviour, she alleges that the father deprived her of food and money. Having heard and read the evidence about this, I think this is a reflection of the father's disorganised lifestyle and inability to budget rather than any deliberate action on his part. It demonstrates, however, an inability to prioritise the needs of his family.

Allegation 5

77. This relates to May 2015. In this instance I suspect that each party behaved in an unedifying manner in front of their child. The father is, however, a very large man, much bigger and stronger than the mother, and I have little difficulty in believing that she had red marks on her arms where he had held her and that she was frightened and distressed as a result. I also note that he told the police that the mother had suffered from mental health problems and had self harmed in the past.



Allegation 6

78. Allegation 6 comprises two occasions where it is said that the father had sex with the mother without her consent. These allegations are the same ones that the mother made to the police in her interview on 30<sup>th</sup> August 2016. I emphasize here that this is not a criminal court. I am considering the behaviour itself, not whether or not the particular ingredients for a criminal offence have been met.
79. I have set out above how I have found the mother's evidence to be consistent with respect to these allegations. The accounts also contain surrounding detail. I note that the text messages sent by the father to her in May and more particularly in July 2016 demonstrate the tension between the parties over sexual matters, and that they show the father, on occasion, pestering the mother to send him pictures. He also suggested sexual activity which she made clear she did not want. Sending a message to her about her 'playing with herself' in the way he did was offensive and no doubt humiliating. So too was sending this young woman that he knew suffered from trauma over a previous sexual assault a message saying 'cock up your ass if you speak to me like that'.
80. I note the mother's obvious distress when recounting these events in her evidence. Of course I must be careful in relying too much on the demeanour of a witness, especially where the distress exhibited could relate to a subjective feeling rather than objective abuse, but taken together with all the other matters the way in which she gave her evidence was consistent with the content.
81. I accept the mother's evidence of both events. First, I accept that she asked the father to stop in the middle of sex on an occasion in about May and that he did not and carried on. It is not possible to say how long this went on for, but it led to the mother becoming yet more distressed.
82. So far as the second event is concerned I accept the mother's evidence that the father began to nudge her to ask her for sex when they were lying in bed, and that when she said no, he said something to the effect of 'well I say yes' and proceeded to carry on by removing her pyjamas and having sex with her from behind. I reject his assertion that this position was an impossibility due to his size.
83. In coming to my conclusions about this, I also reject the father's assertion that the allegations made by the mother against him form part of a pattern of making complaints of sexual or other misconduct. The complaint about the hospital amounted to little more than a query (he made the initial phone call) as to why she had scratch marks on her back, and as far as I know the mother did not make any complaint about the older man although she was understandably hurt by what had happened. She therefore made one previous complaint of sexual assault which plainly affected her during her relationship with the father.
84. It hardly needs to be spelt out that the father's conduct to the mother in this regard was sexually and emotionally abusive within the definition of PD12J.

Allegation 7

85. The final allegation made by the mother relates to the parties' son. She states that the father deliberately harmed him by pinching and squeezing him, leaving marks on him. Given her concerns about the father's temper and his unwillingness to pull his weight in caring for him it is not difficult to believe that the mother was worried about leaving the father in charge when she went to college. The mother states that a family support worker saw a bruise when she referred it to her, although I have not been provided with any documentary evidence of this.
86. Looking at the material in this case, I do not think there is sufficient evidence to suggest that the father deliberately tried to hurt his son. The father is prone to temper and frustration, and being a big man, I do accept he may well have held him tightly to try and change the child's nappy or put clothes on, but I am not persuaded that this caused injury or that it was deliberate. The father was left in charge for quite a few days in May 2016 and at other times without the child suffering any apparent ill effects. In saying this I make clear that in saying this I am not suggesting that the father does not pose a risk; the findings I have made above require anxious consideration at the welfare stage in order to determine whether contact could be safe.

Conclusions

87. It follows from this that I have made a number of findings with respect to the father and his behaviour towards the mother. These are proceedings brought by the father in which he is asking to have some contact with his son, and therefore the case must now proceed to the next, welfare stage. This matter should be set down for further directions and consideration of the assessments that will be necessary to determine the outcome.
88. I conclude by thanking solicitors and counsel for their assistance in this difficult case.