



Neutral Citation Number: [2023] EWHC 2983 (Fam)

Case No: FD22P00638

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/08/2023

Before :

MR JAMES EWINS KC
SITTING AS DEPUTY HIGH COURT JUDGE

Between :

A MOTHER
- and -
A FATHER

Applicant

Respondent

Ruth Cabeza (instructed by **Dawson Cornwell**) for the **Mother**
Jacob Gifford (instructed by **AI Law Associates**) for the **Father**

Hearing dates: 24 - 28 July 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on 18 August 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JAMES EWINS KC

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.

MR JAMES EWINS KC :

INTRODUCTION

1. This is a fact-finding hearing in the context of an application by the Father, against the Mother, for an order for the organising or securing of effective rights of access with their two children pursuant to Article 21 of the Hague Convention on the Civil Aspects of International Child of Abduction (“the 1980 Hague Convention”).
2. I will call the two children Peter (not his real name; he was called “V” in the previous proceedings, which I refer to later in this judgement), a 10 year old boy who is in good health, and Stephen (“W” in the previous proceedings) an 8 year old boy. Stephen has been diagnosed with a number of developmental disorders. Stephen also wears glasses.
3. The Father, the Mother and the children are all Lithuanian citizens, both children having been born and brought up there. The Mother met the Father in 2011 they formed a relationship in 2012. It was in 2012 when the Mother was working away from home that she discovered that she was pregnant with Peter (the Father being the father). She informed the Father of her pregnancy and that he was a father. Upon returning to Lithuania, it was agreed that she and the Father would live together in the Father’s property. They did not get married. The nature and quality of their relationship is the subject of a number of the allegations which are before the court. After the birth of Peter in 2013, the Mother soon became pregnant by the Father with their second child, Stephen. The circumstances of that pregnancy are also the subject of some of the allegations.
4. The Father and the Mother ceased living together on 28 April 2015 in circumstances which are disputed and to which I will refer below. Following their separation, the Mother wrote to the Child Rights Protection Service on 26 June 2015. She referred to having been “chased out” of the home on 28 April 2015, and also referred to the lack of financial resources that she had to look after the children. She wrote,

“After chasing us out, I did not forbid the father or paternal grandparents to visit the children. On the contrary, I told that they can see the children whenever they want and as long as they want, just they should call and warn me in advance.”
5. In summer 2015, the Mother and the Father entered into what appears to be a child arrangements consent order in Lithuania, providing that the children live with their mother, spend time with their father, and that the father paid child maintenance to the mother. The Mother asserts that on that occasion she was too scared to disagree or negotiate with the Father and simply consented to the terms he sought.
6. Over the next 4 years or so, the child arrangements appear to have continued quite well, subject to a few notable incidents: in June 2016 there was an incident where Stephen would not calm down and the mother needed to call an ambulance resulting in his admission to hospital. In spring 2018, the mother sought treatment from a psychologist for herself and Peter. In winter 2018, the previous child arrangements consent order was varied by agreement, contact being varied to every other weekend with an increased level of child support. In spring 2019, Stephen’s behaviour was deteriorating and he was taken by the mother to see a psychiatrist. In summer 2019, Stephen was hospitalised for 16 days because of some of the behavioural issues he was displaying. In autumn 2019, there was an incident when the children were staying with their father: Stephen was left in the care

of the paternal grandfather who was not directly overseeing Stephen when he and his stepsister left the property where they were staying, and went to a neighbouring property. There appears to have been some genuine worry and concern at the time until Stephen was found.

7. However, it was an incident during summer 2020 that led to a number of serious consequences. The circumstances of what occurred are highly contested. It is not in dispute that the children were spending time with their father. It does not appear to be in dispute that while there, Stephen soiled his pants. The Father's reaction to this is disputed. He says that he and his wife helped Stephen clean himself and his underpants. When they returned to the care of their mother a few days later, the mother reports that the children told her that their father had twisted Stephen's ear during contact, that the father had shouted at Stephen when he soiled his pants, had hit him on the back, and had made Stephen clean himself and his soiled underpants in the shower.

8. The Mother immediately e-mailed the Father about her concerns:

"... it's not the first time the children tell me about it when they come back and how you dealt with it, when Stephen soiled his pants you hit him on the back and told him to wash his pants. This time Stephen didn't want to go to you, saying that if he does something wrong, you pull his ear and hurt him. I think we talked about violence against children on Friday, and that can't happen (...). Once again, there can be no violence against a child. Especially if a child gets involved into such accident, you should speak to him nicely, gently and not to be rude"

9. The Father replied:

"Don't make up stories about violence. If a child soils his pants, it's normal for me to tell him to take a shower and wash his underwear. Because Stephen is already 6 years old and needs to be independent."

10. The Mother reported her concerns to social services in a letter shortly after the children had returned to her care. That letter ended as follows:

"The current situation has to change immediately. Would you be able to improve the children's welfare, so that it doesn't happen again in the future? What actions could be taken in the situation?"

The child has been talking about the fear all week, that no one is standing up for him, how father is abusing him, he's even hiding under a car.

The children will go to their father's for a holiday for two weeks 10-08-2020 to 23-08-2020. It's the first time they'll be spending this long with their father. I'd like to feel calm knowing that the father will not use any violence against the children and if a problem arises, all the questions will be solved by dialogue and the children will feel safe in his surroundings and won't be scared. Also, Peter, the other son, has said that when they are at their father's, Stephen is always asking when they are going back

to mum's. When I phone the children to ask how their day went, Stephen always says he wants to go home. What should I do in that case?"

11. As a result of raising these concerns with social services, a pre-trial criminal investigation was commenced and the father was remanded on bail with conditions not to attend the mother's property or to contact Stephen, and a support plan was subsequently put in place on in autumn 2020.
12. The father accepts that on not long after the bail conditions were imposed, he attended the property where the mother and children were living, but says he was doing so to have contact with Peter, not Stephen. He asserts that he had obtained the express permission of the police to attend. The mother alleges that the father attended, shouted, punched doors and windows, and made threats to her parents and neighbours and that the police were called. Following this incident, the father applied to vary the contact under the 2018 child arrangement order, such that he could spend more time with the children. The bail conditions remained in place, and it was clarified that the father was not to have contact with either of the children pending the conclusion of the pre-trial investigation. A social services report, in autumn 2020, was filed within the father's application, making reference to the allegations of violent and non-violent behaviour of the Father against the children. It did not recommend that the children spend more time with the father.
13. The bail conditions were amended in early November 2020 (contact between the Father and his children was permitted, but the prohibition on attending the mothers address was maintained). The Father contacted social services in late November 2020 to ask the social worker to revise her recommendation. He also raised concerns as to the whereabouts of the children and stated his intention to apply for the children's residence to be transferred to him.
14. It was a consequence of the fear that the Mother felt when the bail conditions were lifted that, without informing the Father, she abducted the children to England in December 2020 where, except for a short visit back to Lithuania in January 2021, they have remained. In December 2020, the Lithuanian court made an order on the application of the Father to enforce the terms of the child arrangements 2018 order, the court finding that the Mother was not facilitating daily contact by telephone. The Father appealed this order successfully; the appeal decision was given in Spring 2021 to the effect that the Mother was found not to be complying with further aspects of the 2018 child arrangements order.
15. In the meantime, in January 2021, the criminal court in Lithuania had confirmed the decision to terminate the pre-trial investigation. The conclusion of the decision stated,

"...taking into account all the circumstances established during the investigation, it is concluded that there is insufficient evidence to establish reliably that [the father] committed the acts referred to in [the mother's] statement, i.e. he beat, or committed any other type of dangerous acts of violence, in order to be held criminally liable pursuant to Art. 140(3) of the CC. "
16. The Father applied in February 2021 for a change of residence order so that the children live with him and have contact with their mother. The Mother responded to that application and sought that the children remain living with her and do not have contact with the Father. Those applications were determined by the Lithuanian court on 25 May

2021 (the Mother having attended that hearing remotely) and the court ordered that the children's residence change from the Mother to the Father, with the Mother being subject to consequential maintenance obligations in favour of the Father. The court also made contact arrangements for the children to spend time with the Mother. The Mother was ordered to pay the respondent's costs. The Mother appealed.

I. ENGLISH PROCEEDINGS

17. On 25 October 2021, the Father applied in England for a summary return order under the 1980 Hague Convention. In March 2022, that application was dismissed by Poole J, who gave a judgment reported under neutral citation [2022] EWHC 739 (Fam). Poole J found that the Article 13.b. exception was established and could not find any reason why it would be appropriate to exercise his discretion to order a return.
18. Poole J noted in that judgment at para. 7:

“A distinctive feature of this case that there have many, applications, hearings and decisions involving the Lithuanian courts and authorities in the last two years, including on 25 May 2021, a decision of the District Court that the children, who had been living with the mother, should be removed from her care and residence transferred to the father. That decision is under appeal with judgment expected on 7 April 2022.”
19. In April 2022, shortly after the Father's application for summary return was dismissed by Poole J, the Lithuanian appeal court gave its decision on the Mother's favour, annulling the decision of 25 May 2021.
20. The Lithuanian appeal court put in place provisions to gradually restore the children's connection with the Father. However, in October 2022, mother's application to vary these contact arrangements was dismissed by the Lithuanian court on the basis that the children were by then habitually resident in the UK, and that the English court therefore had jurisdiction in relation to their welfare. It was in that context that the Father subsequently applied under Article 21 of the 1980 Hague Convention. As was made clear in *Re G (A Minor) (CA)* [1993] 1 FLR 669, *“the provisions of Art 21 were exhausted once the plaintiff got to court”* and the Father's application is properly framed as an application for child arrangements order under s.8 of the Children Act 1989.
21. In his judgment on the summary return application, Poole J had noted, at para. 7:

“In these Hague Convention proceedings the mother has made a number of very serious allegations of sexual and physical abuse by the father against her when they were together and has alleged coercive and controlling behaviour by the father. Her allegations include sexual assault, rape, and strangulation. None of these allegations were made in the Lithuanian proceedings and they have not been considered by the courts in that jurisdiction.”
22. Upon the Father's Article 21 application (i.e. for a child arrangements order), CAFCASS were invited to express their views as to whether the children should be joined as parties. In response to that request, CAFCASS wrote, on 23 November 2022:

“Cafcass respectfully suggests that the matter is listed for a Fact Finding hearing to determine the allegations of abuse made by the mother against the father that were not put before the Lithuanian Court. Cafcass considers that these allegations need to be determined to a settled factual matrix prior to welfare recommendations being able to be made.”

23. Consequently, Williams J gave directions on 29 November 2022 for the Mother to file and serve a schedule of the domestic abuse allegations or alleged patterns of behaviour she pursued, with specific reference in an accompanying narrative statement each alleged incident or pattern of behaviour and to whether or not each allegation or pattern of behaviour had been raised before, or subject to a determination by, the court in Lithuania and if not, why not. The Father was directed to reply. Interim indirect contact was provided for as well as the provision of certain information, including in relation to the children’s medical and educational welfare, to the Father. The Mother established a separate e-mail address and private Instagram account to facilitate such communication.

24. At a further directions hearing on 4 April 2023, Williams J considered the Mother’s position that a fact-finding hearing may not be necessary and may be disproportionate in the light of the children’s reported wishes not to have contact with the Father. However, Williams J recited on the face of the order:

“... the court confirming that it was not a straightforward issue and in particular given the gravity of allegations of the consequences if they were established, or were found to be fabricated, that it was necessary for there to be a fact-finding hearing.”

25. The court also recited on the face of that order of 4 April 2023:

“... the Court having considered the Schedule of Allegations and considering (on a provisional basis) basis that that the following 'Facts' are likely to be considered at the Fact Finding:

(a) Emotional and psychological abuse of the Applicant (Item 2)

(b) Financial Abuse of the Applicant (Item 3)

(c) Physical abuse of the Applicant (Item 4)

(d) Sexual abuse of the Applicant (Item 5)

(e) Coercive control on 28 April 2015 (Item 6)

(f) Emotional and psychological abuse of the children (Item 7 and Part Item 8)

(g) Physical abuse of the children (Item 8)”

26. At the PTR on 13 June 2023, William J gave clear directions for special measures and participation directions. In relation to the hearing before me, the Mother had the use of a separate conference room, but confirmed in advance of the hearing that she was content to give her evidence in court rather than via a video link. In compliance with Williams J’s directions, and in the absence of any request by either party for further or other special measures, the curtained are of the court was used by the Mother (and by the Father when

the Mother was giving evidence) to ensure that the Mother was effectively screened from the Father throughout.

II. THE PARTIES' POSITIONS

THE MOTHER

27. The Mother alleges that she has been the victim of the Father's:
 - 27.1. stalking and controlling behaviour;
 - 27.2. emotional and psychological abuse;
 - 27.3. financial abuse;
 - 27.4. physical abuse;
 - 27.5. sexual abuse, and
 - 27.6. physical abuse and coercive control.
28. The Mother also alleges that she and the children have been victims of the Father's emotional and psychological abuse.
29. The Mother also alleges that the children have been victims of the Father's physical and emotional abuse.
30. The specific allegations and the patterns of behaviour upon which she relies, which it was clarified by her counsel, Ms Cabeza, are alleged to constitute coercive and controlling behaviour, date variously from 2012 to 2022.

THE FATHER

31. The Father's position is that all the allegations made by the Mother are false: some are fabricated; and other incidents have been misrepresented and/or exaggerated such that, while he admits the behaviours complained of, he denies that such behaviour was abusive.
32. He also asserts that there have been no findings of abuse in the Lithuanian civil or criminal proceedings which have been ongoing since 2015.

III. LEGAL FRAMEWORK - FINDINGS OF FACT

33. First, I remind myself of the purpose of the fact-finding hearing and refer to the decision of Peter Jackson LJ in Re HDH [2021] EWCA Civ 1192, at para. 24

“Every fact finding hearing must produce something of importance for the welfare decision ... the question is whether on the individual facts of each case, it is right and necessary to conduct a fact finding exercise”

34. In Re K and K [2022] EWCA Civ 468, Sir Geoffrey Vos MR said at para. 65:

“A fact-finding hearing is not free-standing litigation. It always takes place within proceedings to protect a child from abuse or regarding the child's future welfare. It is not to be allowed to become an opportunity for the parties to air their grievances. Nor is it a chance for parents to seek the court's validation of

their perception of what went wrong in their relationship. If fact-finding is to be justified in the first place or continued thereafter, the court must be able to identify how any alleged abusive behaviour is, or may be, relevant to the determination of the issues between the parties as to the future arrangements for the children. [emphasis mine]”

35. As I indicated to the parties at the conclusion of the hearing, the fact-finding exercise is not intended to be a post-mortem on the breakdown of their relationship. It is firmly focused on such allegations as are relevant to a determination of the issues between the parties regarding the future arrangements for the children.
36. In determining whether the allegations made by the Mother have been proven, the burden of proof is on the Mother. It is for her to satisfy me, on the balance of probabilities, that she has made out her case in relation to the alleged abuse, all of which is denied by the Father.
37. The Father does not have to prove anything, and I must be careful to ensure that I do not reverse the burden of proof.
38. The standard to which the Mother must satisfy me is the balance of probabilities. I must apply this with common sense. Whilst the inherent probability or improbability of an event is a matter I must take into account when weighing probabilities and deciding whether, on balance, the event occurred or not, I cannot decide that something might have happened. I may decide that it did or that it did not. If the Mother has not proved that it happened, I must proceed on the basis that it did not happen.
39. Any findings of fact must be based on evidence, and the inferences that can properly be drawn from the evidence. I may not rely on speculation or suspicion. The decision about whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence. I must survey “a wide landscape” and avoid compartmentalising the evidence. Nonetheless, the evidence of the parents is of the utmost importance.
40. I must take account of the credibility and reliability of the witnesses and the inferences that can properly be drawn from their evidence. I must consider all the evidence and I must consider each piece of evidence in the context of all the other evidence in order to come to a conclusion.
41. I must be alive to the fact that it is not uncommon for witnesses in cases such as this to tell lies in the course of the hearing. I must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear, and distress. The fact that a witness has lied about some matters does not mean that he or she has lied about everything (see *R v Lucas* [1981] QB 720). I must weigh any lies told by a person against any evidence that points away from them having been responsible for harm to a child (see *H v City and Council of Swansea and Others* [2011] EWCA Civ 195).
42. I must ensure that I do not rely upon any conclusion that an individual has lied on a material issue as direct proof of their guilt. I adopt the approach of the criminal court, namely that a lie is capable of amounting to corroboration if it is (a) deliberate, (b) relates to a material issue, and (c) is motivated by a realisation of guilt and a fear of the truth (*Re H-C (Children)* [2016] EWCA Civ 136 at paragraphs 97-100). I was reminded by Ms Cabeza of the case of *Re A, B and C* [2021] EWCA Civ 451 in which Lady Justice Macur, giving the leading judgment, stated that it would be good practice when a tribunal is

invited to proceed on the basis, or itself determines, that a *Lucas* direction is called for, to seek Counsel's submissions to identify:(i) the deliberate lie(s) upon which they seek to rely; (ii) the significant issue to which it/they relate(s), and (iii) on what basis it can be determined that the only explanation for the lie(s) is guilt.

43. Several years have elapsed between some of the events alleged by the Mother and this hearing. I must be alive to the fallibility of human memory; the sincere and honest but mistaken recollection in particular. I have considered the decision of Jackson J (as he then was) in *Lancashire County Council v C, M & F (Children - Fact-finding)* [2014] EWFC 3 (Fam), concerning "story-creep". I have also reminded myself of the words of Leggatt J (as he then was) in *Gestmin SGPS SA v Credit Suisse (UK) Ltd and Another* [2013] EWHC 3560 (Comm) regarding the fallibility of human memory.

44. I have taken on board the warnings against an assessment of witness's credibility solely by virtue of their demeanour in the witness box. At paragraph 25 of *Re B-M (Children: Findings of Fact)* [2021] EWCA Civ. 1371, Peter Jackson LJ stated,

"No judge would consider it proper to reach a conclusion about a witness's credibility based solely on the way that he or she gives evidence, at least in any normal circumstances. The ordinary process of reasoning will draw the judge to consider a number of other matters, such as the consistency of the account with known facts, with previous accounts given by the witness, with other evidence, and with the overall probabilities. However, in a case where the facts are not likely to be primarily found in contemporaneous documents the assessment of credibility can quite properly include the impression made upon the court by the witness, with due allowance being made for the pressures that may arise from the process of giving evidence. Indeed in family cases, where the question is not only 'what happened in the past?' but also 'what may happen in the future?', a witness's demeanour may offer important information to the court about what sort of a person the witness truly is, and consequently whether an account of past events or future intentions is likely to be reliable"

45. Finally, I have reminded myself that all evidence given in connection with the welfare of a child is admissible notwithstanding its hearsay nature. I must give any hearsay evidence the weight I consider appropriate, and have regard to the provisions of section 1 and 4 of the Civil Evidence Act 1995 which sets out a range of factors that the court should consider in assessing the weight to be given to and the reliability of hearsay evidence, including the circumstances in which the statement was made and whether the circumstances suggest an attempt to prevent proper evaluation of its weight.

46. I bear all these factors in mind in reaching my conclusions upon the evidence. In accordance with PD12J r.29, my findings of fact will record the nature and degree of any domestic abuse which is established and its effect on the children, the children's parents and any other relevant person.

47. The allegations by the Mother are grouped under eight headings including emotional, psychological, financial, physical and sexual abuse. It is also alleged that the Father's behaviour has been coercive and controlling. I adopt the definitions of such abuse within the Domestic Abuse Act 2021 and the definitions of coercive and controlling behaviour as set in PD12J at para. 3. as follows:

"Behaviour is "abusive" if it consists of any of the following—

(a) physical or sexual abuse;

(b) *violent or threatening behaviour;*

(c) *controlling or coercive behaviour;*

(d) *economic abuse (see subsection (4));*

(e) *psychological, emotional or other abuse;*

and it does not matter whether the behaviour consists of a single incident or a course of conduct.

Section 1(4)

“Economic abuse” means any behaviour that has a substantial adverse effect on B’s ability to—

(a) *acquire, use or maintain money or other property, or*

(b) *obtain goods or services”.*

48. 46. Para.3 of PD12J of the Family Procedure Rules 2010 contains further useful definitions:

“‘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;

‘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;”

49. Although grouped under eight headings, the alleged “facts” are made up of 43 separate specific allegations as set out in the schedule provided for in the order of 29 November 2022. The grouping of the individual allegations under eight headings, or ‘clusters’ is helpful and appears to align with the decision of Cobb J in *Re B-B (Domestic Abuse: Fact-finding)* [2022] EWHC 108 (Fam) at para. 6:

“This hearing, and the preparation of this judgment, has highlighted...The benefit of considering the evidence relevant to each different form of alleged domestic abuse in ‘clusters’: thus, it was useful to ‘cluster’ the evidence which went to the issue of alleged physical abuse; separately I considered the evidence of the allegations relevant to sexual abuse, separately emotional abuse, separately financial abuse and so on.”

50. I posed the question to counsel at the beginning of the hearing as to whether I needed to determine each of the 43 separate allegations. It was emphasised to me by Ms Cabeza that she was in effect seeking only eight findings (i.e. the headings of each cluster) and was relying on the 43 specific incidents as evidence of each such finding. Accordingly, she was not necessarily seeking 43 separate findings where fewer were in fact necessary to make the headline findings. Mr Gifford Head was content to proceed on that basis,

however in his closing he was critical of the mother for pursuing various of the individual allegations on the basis that they were not pursued in cross-examination.

51. Although the separate allegations in this case are framed under separate heads of abuse (physical, emotional, psychological etc.) albeit with specific examples relied upon, I must be alive not just to the individual incidents but also to any coercive and/or controlling patterns of such behaviour which, if proven, are identifiable and likely to be relevant to a live issue relating the children's welfare.

IV.EVIDENCE

52. Pursuant to the various directions orders of Williams J, the Mother has filed a statement, dated 10 January 2023, as well as statements from each of her mother and father (the maternal grandparents), both dated 2 May 2023 which I have read. In her statement, the Mother refers to her two earlier statements in the summary return application dated 6 January 2022 and 14 March 2022, which I have read.
53. The Father has filed a statement dated 29 March 2023, in which he too refers to his earlier statements (dated 28 January 2022 and 21 February 2022) which I have read as well as statements from his wife and mother, both dated 1 May 2023.
54. The bundle is 1512 pages long. The statements in this Article 21 application, including exhibits, extend to c.700 pages. The bundle also contains a further c.170 pages from the summary return proceedings. It contains over 500 pages of document from various Lithuanian civil and criminal proceedings and social services investigations as well a significant number of document in Lithuanian, some of which are translated elsewhere in the bundle. I was provided by the parties with pre-reading lists, the contents of which I have read, and was taken to various specific documents and passages from documents during the course of the hearing. However, there are documents in the bundle which I was neither asked to read, nor taken to during the hearing. I consider this a fair and proportionate approach in the context of this limited fact-finding hearing.
55. I heard oral evidence from the Mother, the Father, the maternal grandmother, and the Father's wife. All these witnesses had the benefit of Lithuanian interpreters. Although some required their assistance more than others, I am satisfied that each was able to understand the questions posed of them and to give clearly intelligible answers, either directly in English or through the interpreters.
56. The provision of interpreters was less than straightforward. Two interpreters, one for the Mother and one for the Father were ordered by Williams J at the PTR on 13 June 2023. On the morning of day 2 of the hearing (day 1 having been a reading day) it became clear that no interpreters had been booked and the evidence was not able to start until 2pm. M's evidence was not completed as had been planned in the witness template. I asked, and it was agreed, that would start early on day 3 in attempt to make up some of the lost time, however, the Father's interpreter was not present at the beginning of day 3 and the start was delayed while another interpreter was requested. The mother's evidence continued until mid-afternoon on day 3, when the Father was sworn in. On day 4, I asked, and it was agreed, that we start at 10:00 again, but there was yet further complication with the interpreters, and we did not resume evidence until 11:20. the Father concluded his oral evidence until shortly before 5 pm. On the final day, I heard oral evidence from the maternal grandmother, and the Father's wife, and helpful closing submissions from Ms Cabeza and Mr Gifford Head.

57. At the conclusion of the hearing I asked counsel for submissions as to the likely case-management directions that they would each seek upon my fact-finding decisions. It was agreed between counsel that they would jointly seek, upon receipt of my written judgment, permission to provide a copy of the same to Cafcass, as well as providing translated copies to the parties, with the intention of convening a two-hour directions hearing thereafter to consider the future progress of the case, in particular, whether or not a rule 16 direction for the children to be joined and guardian appointed would be sought by Cafcass or the parties. I reserved my judgment on that basis.

MOTHER'S ORAL EVIDENCE

58. Under cross examination by Mr Gifford Head, the Mother was challenged as to whether she had raised in the Lithuanian proceedings the various allegations upon which she now relies. The Mother's evidence was that she had raised the allegations in various ways in Lithuania, either to the police, to the Child Rights Protection Service (i.e. social services in Lithuania), on indeed in court, but that, save as to the findings in the context of the pre-trial investigation, the Lithuanian courts had not made any determinations of the allegations. The Mother's evidence was that she only felt safe enough once in England to raise in this court various allegations that were not heard when she raised them in the Lithuanian courts or with other Lithuanian authorities.
59. Mr Gifford Head challenged the Mother that she had either fabricated the allegations, or had deliberately exaggerated or otherwise misrepresented them with the intention of stopping the children having a good or indeed any relationship with their father. The Mother's response was that she had tried to promote the relationship between the Father and the children, and she pointed to various messages and e-mails exhibited to her statement that she had sent to the Father in this regard, stating that it was the Father who did not pursue a relationship with the children rather than her not encouraging it. She referred to a separate e-mail account as well as a private Instagram account that she has more recently set up for the Father to receive pictures of and updates regarding the children.
60. The Mother gave clear and cogent evidence under cross-examination. At times she became very emotional, and on one occasion, when it was clear that she needed to have a break from giving evidence, she suffered what Ms Cabeza described as an anxiety attack. She was able to resume giving evidence after a short break. There is no doubt that the subject matter she was, quite properly, cross-examined about was triggering to her and touched upon issues of profound concern to her. I was left with the clear impression that she believes she was abused by and is still afraid of the Father, of her firm belief that that the children were abused and traumatised by him, that neither she nor the children were safe in Lithuania, and her genuine concern that the children would not be safe in their father's care and that even communication between the Father and the children will be damaging to them in circumstances where she says they are adamant that do not wish to communicate with him.
61. The Mother gave evidence of her recollection of, and reaction to, various aspects of and events from her relationship with the Father, including the events that led to its breakdown in 2015. She demonstrated a clear understanding and detailed recollection of the subsequent civil proceedings in the court in Lithuania in relation to the children, from the consent order in 2015 all the way through to the hearing in May 2021 (which she attended remotely), after she had brought the children to England, when the Lithuanian

court ordered that the children live with their father, and her successful appeal against that order in 2022 (the hearing of which she also attended remotely).

The Mother gave evidence of the events of August 2020 which led to a termination of contact between the Father and the children, the subsequent pre-trial criminal investigation and her dissatisfaction with the outcome of that investigation which was the catalyst for her decision to abduct the children to England.

62. As Dr Campbell reported in the summary return proceedings, there is no doubt these events, and specifically the prospect of her and/or the children's return to Lithuania, caused her a high level of stress, as did her giving evidence in court before me of the alleged abuse by the Father of herself and the children. The Mother concluded her evidence by stressing that if the Father is to have a relationship with the children, any reintroduction should be subject to professional oversight and assessments, taking into account the trauma that she and the children have suffered.
63. I will address her oral evidence on the specific allegations below.

CLUSTER 1 - STALKING AND CONTROLLING BEHAVIOUR

64. The Mother gave evidence that when she was pregnant with Peter, the Father's controlling behaviour was "very big". She described the circumstances of his demand that she go to England to sign papers as an example. The Mother also stated that the Father did not permit her to undertake any modelling work when she lived with him. She also alleged that the Father has watched her parents' house after she had left for England and contacted her modelling agency manager in attempt to locate her in August 2021.

CLUSTER 2 - EMOTIONAL AND PSYCHOLOGICAL ABUSE OF MOTHER

65. The Mother gave evidence of how the Father deliberately used the term "*mergaite*" to insult and demean her, because he knew what it meant to her, and that this was a term that he used when he was controlling her when they lived together, in particular if she refused to have sex with him. She also referred to the father's frequent references to her being "sick" or a "sick mother", as well as suggesting that she was an "escort" as further attempts by him to demean and control her.

CLUSTER 3 - FINANCIAL ABUSE OF MOTHER

66. The Mother was adamant that while she was heavily pregnant with Peter, the Father had printed her airline tickets and given her €150 and told her to go to England where she would meet someone she did not know and sign some documents. Her evidence was that she felt compelled to go.
67. She told of how, when she moved to England, she received a letter from HMRC stating that she owed c.£6,000 in overpayments. She explained that when she challenged the overpayment, she was asked to prove that she did not live in England for the period when the benefits were paid. She says she did so, and explained that she was coerced by the Father to make a tax credit claim in August 2013. She said that HMRC subsequently confirmed that the monies had been paid to the Father between 10 December 2013 and 16 June 2014 into a Lloyds bank account.
68. The Mother also stated that when she became pregnant, she had to give up work, that she gave the Father all her money, save about €250, and that when she needed money she had to prove to him what she needed. She denied making excessive requests of €1,000 or

€2,000 and stated that she bought her clothes from second hand shops, did not own any branded clothes and had no need of expensive things.

69. She stated that when she had brought the children to the UK and the Father had obtained an order in Lithuania that the children reside with him and that the Mother pay child maintenance, he had sought immediate execution of the order which resulted in a bailiff freezing her bank accounts and seizing her property in Lithuania, requiring her to go to court. She stated that, even though the children were living with her in England, she paid the child maintenance due to the Father under the Lithuanian order. She also stated that when the appeal court annulled the May 2021 decision and required the Father to pay the money back, she had to apply for a bailiff to enforce the repayment.

CLUSTER 4 - PHYSICAL ABUSE OF MOTHER

70. It was put to the Mother that the incidents under this head did not happen. The Mother was adamant that they had, and that she raised them with social services in 2015 and in court in Lithuania in 2021 and 2022.

CLUSTER 5 - SEXUAL ABUSE OF MOTHER

71. In relation to the allegation of sexual abuse (including rape), the Mother was clear that she was alleging rape and that although she did not raise it in court before 2021 or with the police at all, she had raised it in a conversation with social services in Lithuania in 2015. She stated that although they understood the nature of her allegation, she was advised that it was better if she did not pursue it because she would need to deal with the Father (as the father of their children) for rest of her life, and it would make that very difficult, on top of the shame and embarrassment she would experience, especially in a small town where everyone knows everything. The Mother said that, in those circumstances she chose to stay silent.
72. The Mother said that she did not believe she would be protected by the law in Lithuania because the sexual abuse occurred within a relationship. There is no evidence before me as whether or not that belief is correct. The Mother said she spoke about the allegation of sexual abuse in the appeal court in Lithuania (which she attended remotely from England) but that the issue was ignored. The Mother gave evidence that she only felt able to raise the allegation in these proceedings because she felt safe in England.

CLUSTER 6 - PHYSICAL ABUSE AND COERCIVE CONTROL OF MOTHER

73. The Mother stated that the incident on 28 April 2015 began with an argument in which the Father stated that he no longer wanted the Mother and the children to live with him. It was put to her that the Father left the property in order to diffuse the tension, but the Mother stated that in fact he left to find a friend to bring back and scare her into leaving. It was put to her that by the time the Father got back, she had left. She was clear that the Father had come back aggressively, told her that his friend was outside, had grabbed her arm and dragged her out. I have no doubt that giving this evidence was extremely traumatic for the Mother. In fact, she clearly needed to take a break from giving her evidence at was at that point that she suffered what Ms Cabeza described as an anxiety attack.

CLUSTER 7 - EMOTIONAL AND PSYCHOLOGICAL ABUSE OF MOTHER AND CHILDREN

74. With regard to an incident in summer 2015, it was put to the Mother in cross-examination that the Father had in fact attended the property on that date but that he did not come shouting or punching doors. The Mother disagreed and said she reported it to the police the next day.
75. With regard to the incident in summer 2020, it was put to the Mother that the Father attended to see Peter and that the bail restrictions only applied to Stephen. The Mother replied that in attending her property at all, he was in breach of the protective measures that were in place. When it was suggested that he merely came to the door, knocked on it, and subsequently left to take advice as the children were not at home, the Mother stated that he had showed controlling aggression. She described how his attendance showed his “nature” that he was aggressive, shouting, brought other people in his car, filmed the situation, created noise and disturbance and threatened her family and the neighbours and that she reported it to the police that day.

CLUSTER 8 - PHYSICAL AND EMOTIONAL ABUSE OF CHILDREN

76. Much of the cross examination in this regard focused on the status of the findings in the pre-trial investigation. As to the incidents on the weekend of the last direct contact in summer 2020, the Mother stated that she believed what her children told her and she had seen what they suffered. She accepted that Peter did not say he had been hit by his father, and she had not suggested that he had. She also accepted, when asked if he had been hit, that Stephen sometimes said yes, and sometimes said no. However, she was critical of the context in which these responses were elicited from Stephen, bearing in mind in particular his special needs. She expressed her firm belief that the Father had twisted the children’s ears and had hit Stephen on his back or bottom.
77. In re-examination, she stated that the Father discriminated against Stephen because he required a lot more attention, and she considered that Stephen’s specific behaviour triggered an inadequate behaviour from the father, shown by his inability to control his emotions. She was also clear that the children had told her that they had been given beer.
78. She remained adamant that the Father was not encouraging of Stephen, and that she was the one who was pursuing medical treatment for him, not the Father. She stated that the Father often bought Stephen home without his glasses and did not return the glasses for a few days afterwards. She considered this abusive behaviour.
79. In relation to the incident in September 2019, she was critical of the Father for having left Stephen in the care of his father (the paternal grandfather) who had left Stephen outside with no adult supervision, allowing Stephen to leave the property and make his way to a neighbouring property when there was a lake nearby.

V.FATHER’S ORAL EVIDENCE

80. The core elements of the Father’s evidence appear to me be as follows: he asserted that from the outset of his relationship with the Mother he was neither controlling, violent nor frightening. He described the time he was together with the Mother as joyful and happy, but he also said that she ran away or escaped from him from him a lot. This appears inherently inconsistent. He says that it was never apparent that she was upset about having been raped, and even asked to resume their relationship in 2016.

81. He asserted that after the relationship broke down in 2015, he had always followed court orders regarding the children, that the Mother had no cause to, and in fact did not, complain about him breaching court orders. He stated that, for much of the time, they managed the arrangements for the children effectively, for example swapping contact dates to fit in with their respective schedules. He denied that he cancelled contact at short notice or that he dictated that contact took place on his terms.
82. His evidence was characterised by his expressed belief that the Mother's actions, especially since August 2020, have been intended by her to damage his relationship with the children. He alleged that the Mother was repeatedly trying to obstruct his relationship with the children. Although his evidence on this point was less specific, he did suggest that the problems became greater from 2018 when he started living with the woman who is now his wife, and this was because the Mother was jealous.
83. His evidence was that the Mother was repeatedly relying on small unimportant matters to try and create difficulties, for example when he was a few minutes late to collect or return the children, or when Stephen was not wearing his glasses. He categorically denies all the allegations of abuse, including physical, psychological, sexual, emotional and financial abuse and alleged that the Mother is using the children as a weapon against him.
84. The Father was adamant that he had not been convicted of a criminal offence in Germany. He denies threatening the Mother if she spoke about his criminal activities.
85. I am bound to note that, although the Father used some emotive words in his evidence, referring to his "sadness" that the Mother was making the allegations against him; his "love" for his children, and his "tears" when he went to the Mother's parent's house in summer 2015, the manner in which he delivered his evidence appeared to lack any reflection or remorse for the obvious distress that the children have suffered, irrespective of the perpetrator.

CLUSTER 1 - STALKING AND CONTROLLING BEHAVIOUR OF MOTHER

86. The Father denied that he ever stalked or controlled the Mother and emphasised that she was always free to travel where she wanted, and that she did indeed travel wherever she wanted during their relationship. He said that he was not a scary person and asked rhetorically if the Mother was scared, why she did not seek help from her parents, or simply leave him?
87. He put forward a case that the Mother was frequently leaving him and travelling abroad during their relationship.

CLUSTER 2 - EMOTIONAL AND PSYCHOLOGICAL ABUSE OF MOTHER

88. The Father denied the allegations under this head. Although he accepted that he referred to M as a "*megaitte*", he did not do so in an abusive way. Although he accepted that he made references to the Mother's mental health, he said he did so believing that she was mentally unwell. And he accepted that he referred to the Mother as being an "escort" (or prostitute) but did so because a friend told him that she was or had been one. He has not sought to adduce any evidence of the allegation or the basis for it.

CLUSTER 3 - FINANCIAL ABUSE OF MOTHER

89. The Father denied any financial abuse of the Mother. Although he accepted that he arranged for various benefits referable to the children to be paid into his sole account, it

is his case that the funds were shared with the Mother because they lived together. He denied any involvement in her travel to the UK to sign documents which were later shown to be a fraudulent benefits claim. His case was that the Mother travelled abroad to earn money while they were together. He regarded his involvement of the bailiff to obtain funds from her as nothing more or less than due court process.

CLUSTER 4 - PHYSICAL ABUSE OF MOTHER

90. The Father denied any physical abuse of the Mother. He referred to a police investigation into the events of summer 2015 which decided there was no need for the police.

CLUSTER 5 - SEXUAL ABUSE OF MOTHER

91. The Father's evidence was that he was always taking the Mother's views into consideration in matters of their sexual relationship, and in particular, her desire to have two children relatively close together in age. He denied rape or any sexual abuse.

CLUSTER 6 - PHYSICAL ABUSE AND COERCIVE CONTROL OF MOTHER

92. The Father does not deny that on the parties separated in Spring 2015, there was an argument and that the Mother and the children left the house where they were then living. His case was that the Mother had argued over money and that it was her decision to leave; that he left the property for several hours to give her time to calm down, and that by the time he returned, she had either left, or was leaving and that he met her in the garden, but she did not speak to him. He denied that he forced her to leave, denied punching the wall and shouting, denied dragging her down the stairs, and denied bringing a friend to threaten her to leave.

CLUSTER 7 - EMOTIONAL AND PSYCHOLOGICAL ABUSE OF MOTHER AND CHILDREN

93. The Father denied that he was acting aggressively at the Mother's parents' house in June 2015. He specifically denied shouting, banging the doors and windows and behaving in a threatening manner. His case was that he had arrived about five minutes late to see the children, and that the Mother called the police without any justification.
94. He asserted that he had obtained permission from the police to attend the property in August 2020, but it was acknowledged by his counsel that no such permission was in the bundle. He also denied being aggressive on that occasion.
95. The Father denied being involved in any criminal activities.

CLUSTER 8 - PHYSICAL AND EMOTIONAL ABUSE OF CHILDREN

96. The Father denied that he ever twisted Stephen's ears. He denied twisting Peter's ears. He denied hitting Stephen on the back or bottom. He denied giving them beer. He specifically denied hitting Stephen on his back on an occasion when he soiled his pants, and he denied forcing Stephen to wash his soiled pants in the shower between 31 July and 3 August 2020. He relied repeatedly on the police investigation into these matters in Lithuania which resulted in a decision to terminate the pre-trial investigation and not proceed with any criminal charges.

97. He denied making the children stay in a bedroom while strangers came to the house, he denies leaving the children alone in the house. He denied being naked in front of the children, either walking around or in bed.
98. With regard to the allegation concerning Stephen leaving his house and becoming lost near the lake in September 2019, the Father's case is that he left the children in the care of his father, and that whilst his father and Peter were inside the house Stephen, and a younger step-sibling went to the property next door to look at the rabbits. It is the Father's case that his father called him as soon as he realised the children were no longer at home, that he returned and quickly found the children in the neighbour's property, which was "connected" to the property they were staying in.
99. He denied any responsibility for Stephen's psychological distress.

MATERNAL GRANDMOTHER'S EVIDENCE

100. The Mother's mother gave evidence through an interpreter. It was clear from her evidence that she loves and cares for her daughter, and her grandchildren Peter and Stephen. She was very clear in her evidence that she had heard the children directly relate to her the events of July/August 2020, and that she believed them. She accepted that there were certain events that she could only have known about because she was told about them, as opposed to her having witnessed them directly. She denied that her evidence was tainted by a desire to support her daughter's case.
101. Her dislike and suspicion of the Father also came through clearly in her evidence.

FATHER'S WIFE'S EVIDENCE

102. The Father's wife also gave evidence through an interpreter. Her loyalty to her husband was clear throughout her evidence. Concerning the incident in September 2019 when Stephen and his step-sibling went missing from the Father's parents' lakeside property, she said that she was only worried for a few minutes until they went to the neighbour's property and found the children. She stated that the two properties were detached.
103. She gave an account of an incident where Stephen had soiled his pants, and she was involved in helping him to shower and clean himself and his soiled underwear. She was also clear that Stephen soiling his underwear happened quite frequently.
104. She described the first aid treatment that was given to Stephen when he had an accident on the swing. She denied that she had ever heard the Father speak disrespectfully to the mother. She said she and the Father had taken Stephen to see doctors, but recounted one occasion where she says that the Mother caused chaos.

VI. THE VOICE OF THE CHILDREN

105. The children have been interviewed on numerous occasions in Lithuania, by social services and the pre-trial judge in the criminal investigation concerning the events of July/August 2020. I have various reports of what they have said in those interviews, as well as the Mother's concerns and criticism of some of the interviews. I have also read extracts for the reports of various psychologists and an art-therapist who have interacted directly with the children.
106. I have also read the Guardian's report dated 11 January 2022, which refers to Ms Magson's interview with the children on 17 December 2021. I note that by the time the

children spoke to Ms Magson, they had recounted various events many times, creating a risk of “story-creep”, especially since they have been in the sole care of their mother some time which may, consciously or sub-consciously, have reinforced a specific version of events. These concerns do not apply with as much if any force to the more contemporary accounts from the children.

VII. OTHER WITNESS EVIDENCE

107. I have read the statements of the maternal grandfather and the paternal grandmother. Neither was called to give evidence so neither was cross-examined. This was because Williams J gave each party permission to call on one witness to give evidence at the hearing before me. I do not read anything into the Father’s decision to tender his wife rather than his mother for cross-examination. I bear in mind that, because these witnesses’ evidence has not been tested by cross-examination, I must be cautious as to the weight I give to them.

VIII. ANALYSIS AND FINDINGS

108. I have borne in mind the full extent of the evidence to which I have been referred, including witness statements and exhibits; oral evidence; and extracts from the Lithuanian proceedings and the summary return proceedings in this jurisdiction. My findings as to the eight clusters of abuse, and any controlling and/or coercive behaviour, alleged are as follows.

CLUSTER 1 - STALKING AND CONTROLLING BEHAVIOUR OF MOTHER

109. I do not find the allegation of stalking made out on the evidence. The incidents relied upon by the Mother related to occasions when it is likely that the Father was reasonably concerned as to the whereabouts of his children. That the Father contacted the Mother’s model agency manager, or attended on occasions outside her parents’ home is not, in the circumstances of an admitted abduction, sufficient to demonstrate that he was stalking the Mother.

CLUSTER 2 - EMOTIONAL AND PSYCHOLOGICAL ABUSE OF MOTHER

110. I find that the Father used the term “*mergaite*” in an abusive and controlling way. In his evidence, the Father accepted that the word meant a “girl”, not a “woman”. Whilst I accept that there may be contexts in which its use is not abusive, I accept the evidence of the Mother that it was used by the Father towards her during their relationship, in particularly in the context of their sexual relationship, and I find that the Father was deliberately reminding the Mother of that context, which he knew she found difficult and sensitive, when he chose to use that word after their relationship was over. He could have chosen a more appropriate word for a grown woman of the Mother’s age, but he did not. I find that he did so deliberately to subordinate, demean and humiliate her.
111. I find that the Father’s repeated references to the Mother being “sick” or a “sick mother” were also abusive and controlling. Even if, as he stated in evidence, the Father believed the Mother to be mentally unwell (and I am far from convinced that he genuinely held that belief), I find that it was nonetheless abusive to refer to any such concerns in this way. It is clear from the report of Dr Campbell dated 17 February 2022 that, whilst anxious, the Mother is not mentally unwell and it caused her harm for the Father to

repeatedly allege otherwise. I find that he called the Mother “sick” deliberately to subordinate, demean and humiliate her.

112. I find that the Father’s various suggestions that the Mother worked as an “escort” were deliberately abusive and controlling. His case at its highest was that he had heard from an ex-partner of the Mother that she had worked as an escort and he thought that person was not lying. Without more, the Father had no reasonable basis to state to social services or in court that the Mother was or had been, in effect, a prostitute. I find that he called the Mother an “escort” to cause her emotional harm and deliberately to subordinate, demean and humiliate her.
113. I consider that these findings are necessary to make because they inform the nature and quality of the Father and the Mother’s relationship as parents of Peter and Stephen. These findings will help guide any decisions as to how the Father and the Mother and their future relationship as co-parents will need to be supported. They will also guide how the Mother may need to be protected from further such abuse in future for the benefit of the children’s welfare.
114. I do not find any of the other allegations under this head made out on the evidence.

CLUSTER 3 - FINANCIAL ABUSE OF MOTHER

115. I find that the Father did coerce the Mother into travelling to the UK and signing documents with the effect of fraudulently procuring UK tax credits and that this constituted financial abuse of a controlling and coercive nature. I find that the Mother was heavily pregnant at the time, and therefore was in a position of vulnerability, dependent upon the Father financially and emotionally. I accept her evidence that she did not have any prior contacts in the UK and that the Father printed the airline tickets and gave her €150 with instructions to go and meet someone and sign documents in the UK. I accept that the effect of the correspondence with HMRC in 2023 is to confirm that the documents she was coerced into signing perpetrated a fraud upon HMRC and that this was confirmed when she was pursued by HMRC for the overpayment in 2023, who accepted that the payments were made into an account that was not in her name.
116. I consider that this finding is necessary in the context of the best interests of the children, because the parents’ future relationship as co-parents will necessarily have a financial aspect to it.
117. Whilst I accept, on the balance of the evidence (including the Father’s own solicitor’s statement in the summary return proceedings), that the Mother did not work abroad during her cohabitation with the Father, there is insufficient evidence to determine whether or not this was a decision reached by coercion as opposed to consent and as such I do not find that the Mother not working was as a result of her being directly prevented, by coercion control or otherwise, from doing so by the Father.
118. Nor can I find that the financial arrangements during the party’s relationship constituted financial abuse because there is insufficient evidence to determine the details of their finances at the time or the extent to which the arrangements may or may not have been consensual.
119. I find that the steps taken by the Father to attempt to enforce the maintenance obligations put in place in May 2021, including the instruction of a bailiff, constitute financial abuse of a coercive and controlling nature. The obligation to pay maintenance was obviously consequent upon the children being resident with the Father and him incurring cost as a

result. It is not in dispute they have not in fact stayed with, or seen, him since August 2020. The Father had, by May 2021, commenced an application with the Central Authority to locate the children and have them summarily returned to Lithuania. I consider that for the Father to enforce the maintenance obligation - which in fact required that the Mother pay the Father over €2,500 - and to instruct bailiffs to seize the Mother's property and to freeze her bank accounts in Lithuania when he was self-evidently not incurring any costs in relation to the children, was deliberately intended to cause the Mother financial harm and was abusive in the circumstances. It also had a coercive and controlling character, in that it was intended to harm and exploit her resources.

CLUSTER 4 - PHYSICAL ABUSE OF MOTHER

120. I do not find any of the allegations made under this head to have been made out. The allegations made are serious and specific and, whilst I accept that such allegations sometimes have to be determined on the basis of one person's word against another's, I do not have sufficient or sufficiently specific evidence of the incidents complained of by the Mother to make a finding that any of the events was more likely than not to have occurred. It is not sufficient for me to find that they might have happened and I therefore find that they are not proven on the evidence before me.

CLUSTER 5 - SEXUAL ABUSE OF MOTHER

121. The allegation of rape is extremely serious. It is accepted by the Mother that she did not raise the allegation with anyone until 2015, and I accept her evidence that, having heard the attitude and approach of social services in Lithuania in 2015, she decided to stay silent until she felt safe in the UK in 2021. Nonetheless, an allegation of rape, even in the context of a fact-finding hearing as opposed to criminal proceedings, can only be based on clear, cogent and compelling evidence. The Mother has not adduced sufficient such evidence in this case. In particular, she has not adduced evidence as to the specific circumstances of the alleged non-consensual intercourse. Neither has she adduced evidence of the occasion or occasions upon which intercourse, consensual or not, was conducted in circumstances in which the Father refused to use, or to allow the Mother to use, contraception. I therefore find that this allegation is not proven.

CLUSTER 6 - PHYSICAL ABUSE AND COERCIVE CONTROL OF MOTHER

122. I find that, on 28 April 2015, the Father did grab the Mother's arm, drag her down the stairs and use the presence of his friend to threaten her in order to expel her and the children their home. I find that this constituted physical abuse as well coercive and controlling behaviour. I find that this incident was traumatic for the children, and was abusive, causing them emotional and psychological harm.
123. The Mother gave a clear and consistent account of what happened, and there is a contemporaneous record dated only a few weeks later on 26 June 2015. Whilst this account does not give details of the physical abuse, I accept that the Mother was dissuaded from making such allegations for the reasons set out above. I accept that her application to the court in Lithuania in June 2015 for a child arrangements order is consistent with this account. I also note that her account shares key elements (argument, the Father's departure and return with a friend, the arrival of her parents and her never going back) with the Father's account and her parents' account.

124. I find the Father's contrary account of what happened on that date unreliable. In his witness statements he said that there had been an argument about money, but that he left to try and diffuse the situation and when he returned, the Mother had left with the children. However, in his oral evidence he substantially changed that story and stated that he came back at about 7 or 8 pm and that the Mother and the children were still there, in the garden, that he tried to speak to them but they did not answer. I find this version not only materially inconsistent with his previous written evidence, but inherently unlikely. The timing of his return does not accord with the evidence of the Mother or her parents, and I find it implausible that he would have been mistaken in preparing his written evidence about such an important point as to whether the Mother and the children had, or had not, left before he returned. I therefore find that the Father's alternative accounts are unlikely to be true and that the Mother's account is more likely than not to be true.

CLUSTER 7 - EMOTIONAL AND PSYCHOLOGICAL ABUSE OF MOTHER AND CHILDREN

125. I accept the Mother's evidence that in June 2015, the Father attended at the Mother's parents' house when the children were being put to bed and trying to sleep and that the Father started to shout loudly, knock on the doors and windows, became angry with the Mother and shouted at her, waking the children and frightening them. Her account is consistent with her subsequent referral to social services.
126. The Father admits that he attended the property on that occasion, that he was upset and that resulted in the children crying. His explanation was that the Mother had refused to allow him to see the children when he was just three minutes late and that she was exercising control over him. I do not accept the Father's evidence as to being only three minutes late: the Father's attitude to timings, as he described it in oral evidence, was very casual, referring as he did to an occasion when he was 51 minutes late (when the Mother had an appointment booked for the children) as having "no big impact". I also find it inherently improbable that the Mother was attempting to exercise any control over the Father at that date, just weeks after she had been forcibly removed from her home and especially as her parents were not at home with her. It is more likely that she was acting in what she perceived as the children's best interest in allowing them to stay in bed and sleep. In those circumstances, I find it more likely than not that the Father attended the property, became angry (and I note my finding that he had been angry and aggressive towards the Mother in expelling her and the children from their home only a few weeks before) and acted as described by the Mother. I find that this behaviour constituted emotional and psychological abuse of the Mother with a coercive and controlling nature, and emotional and psychological abuse of the children, who became distressed as they saw and/or heard what was happening.
127. I also find that the Father's attendance at the Mother's parents' home in August 2020, his aggression and anger, his filming of the situation and threats constituted emotional and psychological abuse of the Mother with a coercive and controlling intention.
128. I accept the Mother's evidence that on that occasion the Father got out of his car and walked around the yard, filmed, made noise and, when he did not find the Mother or the children at home, he threatened her parents and a neighbour. The account was clear, cogent and corroborated by the fact that it was reported to the police the same day by the Mother and by a neighbour who witnessed the Father at the property who gave a statement to the police. The Father does not deny that he attended, nor did he appear to deny that he knew that such attendance was contrary to the remand conditions that were then in place. His assertion, made for the first time in oral evidence, that he had obtained

special permission of the police to attend, but had not produced a copy of that permission, was not credible. This finding is necessary because it goes to the risk of the Father not obeying court orders regarding the children.

129. I do not find that the Mother has proven her other allegations under this head concerning the Father's criminal behaviour and the children's exposure to strangers or threats to kill.
130. However, I do find that the Father committed an offence of "theft after unlawful entry to a private area" in Germany in August 2011 of which he was convicted in 2014 and I find that he has lied about this. I consider this finding is necessary because it impacts upon the extent to which he may or may not tell the truth to authorities in the UK concerning matters which impact upon potential risks of harm to the children.

CLUSTER 8 - PHYSICAL AND EMOTIONAL ABUSE OF CHILDREN

131. These are the allegations that bear most directly upon the children. I have carefully considered all the evidence. In reaching my findings in relation to the allegations of ear twisting and hitting Stephen's back and bottom, I have focussed in particular on the contents of the pre-trial investigation report dated 12 January 2021. I focus on this report because it contains evidence that is more contemporaneous than the evidence given directly in these proceedings and I bear in mind the real risk of "story-creep" over time, especially in circumstances where the parties, witnesses and children have been asked to recall the events of July/August 2020 on numerous occasions to numerous individuals and organisations. That report included evidence from the children, the Father, the Mother, the Father's wife and both sets of grandparents. The pre-trial investigation concluded that there was insufficient "*objective, irrefutable and sufficient*" evidence to establish "*with certainty*" or "*beyond doubt*" the constituent elements of the criminal offences by the Father which were under consideration. However, I am faced with a different task: I must consider the totality of the evidence before me and consider whether the specific allegations of abuse made by the Mother are proven on the balance of probabilities. I do not consider that any of the findings of the Vilnius District Court dated 25 May 2021 can be relied upon because that decision was annulled upon the Mother's successful appeal on 7 April 2022.
132. Furthermore, I do not read the decision of Appeal Court as making any findings of fact (as is entirely usual on an appeal). I was specifically referred by Mr Gifford Head to §47 of the Appeal Court decision in this regard. My reading of that paragraph and its conclusion is not that it made a new finding of fact: rather, the panel of appeal judges were commenting upon the arguments put forward on the part of the Mother and merely concluded that the Father's behaviour towards the children post-dated the photographs referred to, since his behaviour "was constantly changing". Since I do not consider that this constitutes a finding of fact, I do not need to consider the implications of *Re E* [2014] EWHC 6 (Fam). I bear in mind, too, that the entirety of §47 of the Appeal Court decision was in relation to the pre-trial investigation to which the criminal standard of proof - or at least a similar standard - appeared to apply.
133. I find that the Father did pull or twist Stephen's ear on at least one occasion, that doing so caused Stephen pain and that this constituted physical abuse of a controlling nature. I reach this finding on the basis that I accept the Mother's evidence that Stephen had told her that his father did this to him, that she raised the issue with the Father before the last direct contact took place in August 2020 and that the Father admitted that he did so because Stephen did not obey him, but said he would not do it again. The Mother referred to this behaviour again in her letter dated August 2020. I also accept the evidence that

Peter has provided to various individuals and authorities, including the pre-trial judge, regarding the Father pulling Stephen's ear. I accept that in the first interaction with social service on 9 August 2020, Stephen referred to his father having "pulled him by the ear" and he repeated this to social services on 12 August 2020. I acknowledge that there was some inconsistency in Stephen's evidence to the pre-trial investigation, but consider that this was due to the circumstances of the various interviews and to Stephen's age and vulnerability. I do not accept the Father's bare denial that he did not twist Stephen's ear, which appeared to me to be more focussed on him finding fault with the Mother for raising this allegation rather than addressing why his children had reported to social services and the pre-trial judge that he had pulled or twisted Stephen's ear.

134. I find that the Father did hit Stephen on the back or bottom during the last direct contact visit in summer 2020, and that this constituted physical abuse of Stephen. I reach this finding primarily upon the contemporaneous evidence of the children referred to in the pre-trial investigation report, as given to the pre-trial judge and the psychologist. Stephen was clear, when interviewed by a social worker on 9 August 2020, that his father had hit him. Peter admitted that he had not seen Stephen being hit, but that he had heard shouting and that Stephen had told him afterwards that his father had hit him. This account was consistent with what the children reported to their mother at the time and with what Stephen told the pre-trial judge and his grandmother and I find it more likely than not to be true. I find that Stephen's fear of the Father repeating this behaviour has caused him psychological harm.
135. I find that during the last direct contact in summer 2020 the Father did make Stephen shower himself and clean his own underwear when he soiled himself and that this constituted emotional abuse of Stephen. I accept the Mother's evidence that when she first raised the issue of the Father having made Stephen take a shower and wash his underwear when he had soiled himself during that weekend, the Father admitted that he had done so because Stephen "*is already 6 years old needs to be independent*". In his evidence to the pre-trial investigation, the Father told the prosecutor that "*he [the Father] told him [Stephen] to go to the shower and wash his pants*". I have borne in mind the evidence of the Father's wife that she helped Stephen clean himself and his underwear, but accept the possibility noted in the pre-trial investigation, and the submission of Ms Cabeza, that she was referring to a different incident, which appeared to me to be confirmed in oral evidence in which she referred to there having been a BBQ immediately before the incident to which she was referring, whereas the incident in question was preceded by a car journey in which Stephen wet himself while in his car seat.
136. I find that the above abuse of Stephen by his father was either witnessed by Peter, heard by him, or reported to him by Stephen and that that caused emotional abuse to Peter.
137. I make these findings because they are in my opinion necessary in the context of considering the risks to which the children may be exposed when in their father's care and the extent to which he may need support in exercising his parental responsibility.
138. With regard to the balance of the allegations under this head:
 - 138.1. I do not find that the Father twisted Peter's ear.
 - 138.2. I do not find that the Father gave the children beer.
 - 138.3. Save as set out in my findings above, I do not find that the Father humiliated or discriminated against Stephen or talked negatively about him in front of him.

However, as is clear from the positive findings above, all of which relate directly to Stephen, the Father's abuse have been directed more at Stephen than Peter.

138.4. I do not find any of the further allegations of emotional abuse of the children are made out.

IX. CONCLUSION

139. In conclusion, I summarise my findings as follows:

139.1. the Father's use of the terms "*mergaitė*", "*sick*", "*sick mother*" and "*escort*" to or about the Mother was emotionally and psychologically abusive. This was controlling behaviour, intended by the Father to subordinate, demean and humiliate her.

139.2. the Father was financially abusive to the Mother in forcing her to go to the UK in 2013 to make a fraudulent tax credits claim. This was coercive behaviour.

139.3. the Father was financially abusive to the Mother in seeking to enforce the payment of child maintenance by her, including instructing a bailiff to freeze her assets, when the children were living with their mother. This was deliberately coercive and controlling behaviour.

139.4. On 28 April 2015, the Father grabbed the Mother's arm, dragged her down the stairs and threatened to have his friend force her to leave their home. I find that this constituted physical abuse as well as coercive and controlling behaviour. I find that this incident was abusive to the children, causing them emotional and psychological harm.

139.5. The Father's behaviour when he attended the Mother's home in June 2015 and August 2020 constituted emotional and psychological abuse of the Mother with a coercive and controlling nature; and, in respect of the behaviour in June 2015, the Father's conduct amounted to emotional and psychological abuse of the children, who became very distressed as they saw and/or heard what was happening.

139.6. I find that the Father has lied about not having a conviction in Germany in 2014 for theft after unlawful entry to a private area.

139.7. I find that the Father pulled or twisted Stephen's ear on at least one occasion, that doing so caused Stephen pain and that this constituted physical abuse of a controlling nature.

139.8. I find that the Father did hit Stephen on the back or bottom on the last contact in summer 2020, causing him pain and fear and that this constituted physical abuse.

139.9. I find that during the last contact in summer 2020 the Father did make Stephen shower himself and clear his own underwear when he soiled himself and that this constituted emotional abuse.

139.10. I find that the above abuse of Stephen by his father (at §§139.7, 139.8 and 139.9) was either witnessed by Peter, heard by him, or reported to him by Stephen and that that was abuse by the Father which caused emotional harm to Peter.

140. I have found the remaining allegations unproven and this case will proceed on the basis that those facts did not happen - see *Re B (Children)* [2008] UKHL 35 per Lord Hoffman at §2.

141. These findings will form the factual basis upon which the parties and professionals will work with this family and will inform the decisions by the parties and the court in respect of future child arrangements. Equally, consideration of those arrangements must proceed on the basis that those allegations which I have not found to be proved did not occur.
142. The Mother and the Father need time to reflect on this judgment and the findings that have been made. I give permission (once any corrections have been made) for this judgment to be translated and provided to the parties.
143. I will reserve this matter to myself and list it for a 2 hour directions hearing.
144. I also give permission for this judgment to be sent to CAFCASS High Court Legal Team who are invited to attend the adjourned hearing or, by no later than 11 am 7 days before that hearing, to provide their views to the Court and to the parties' counsel in writing as to whether the Children should be joined as parties and, if so, whether Ms Magson is able to be appointed as Guardian, and/or what further directions they propose with regard to the scope of a s.7 report or otherwise.
145. By no later than 11 am on the day before the adjourned hearing, both parties' counsel shall file with me a position document setting out what directions they seek, including a draft composite directions order containing both the agreed and any unagreed directions.

James Ewins KC (sitting as a Deputy High Court Judge)

14 August 2023

