

**IN THE FAMILY COURT**

**Neutral Citation Number: [2025] EWFC 79 (B)**

Date: 28<sup>th</sup> February 2025

**Before :**

**DJ O'Hagan**

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**Between :**

**A**

**Claimant**

**- and -**

**B**

**Defendant**

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Hearing dates: 19<sup>th</sup>-21<sup>st</sup> February 2025

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**Approved Judgment**

This judgment was handed down remotely on 28<sup>th</sup> February by circulation to the parties or their representatives by e-mail and by release to the National Archives

**[DJ O'Hagan]:**

## A v B Judgment

19<sup>th</sup> – 21<sup>st</sup> February 2025

- 1) This judgment was given in private. The judge gives permission for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of this judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.
- 2) No party to these proceedings objected to this judgment being published in an anonymised format.
- 3) I am dealing with proceedings in respect of two children. They are:
  - (i) K now aged 4; and
  - (ii) M now aged 2
- 4) In the course of proceedings, the respondent mother made allegations of domestic abuse against the applicant father. The allegations were sufficiently serious, and sufficiently relevant to the decisions that have to be made about the welfare of the child, that the need for a fact-finding hearing was recognised by the Court. So it is that the case has come before me for a factual determination of the alleged abuse.

### **Background**

- 5) The mother of the child is Mrs B. The father of the child is Mr A. Mrs B is a British national. Mr A is a national of Pakistan.
- 6) The parties met in Pakistan in December 2018 after their families sought to arrange a marriage between them. They were married in December 2018. Mrs B returned to the United Kingdom in January 2019. Thereafter, she maintained contact with Mr A, and she visited him in Pakistan in August 2019.
- 7) Mr A was granted limited leave to enter the United Kingdom, and thereafter to remain, as a spouse. He entered the United Kingdom in January 2020, and he has lived here ever since. He has returned to Pakistan for visits, including a lengthy stay between February 2021 and September 2021
- 8) Mr A's spousal visa expired in September 2022. By that time, the marriage between the parties was breaking down. They separated in November 2022. Because of the breakdown of their relationship, Mrs B was no longer willing to continue sponsoring Mr A's application for leave to remain in the United Kingdom. He is currently seeking leave outside the immigration rules on human rights grounds.

- 9) On 11<sup>th</sup> January 2023, Mrs B signed a statement in support of an application for a non-molestation order. A final order was made by the lay justices on 29<sup>th</sup> September 2023. The order remained in force until 29<sup>th</sup> September 2024. It was made with Mr A's consent on the basis that he did not admit any of the allegations made against him, and the Court did not make any findings of fact.
- 10) Mr A applied for a child arrangements order to spend time with the children. He reported in his application that he had not seen them since 28<sup>th</sup> March 2023. The application was dated 22<sup>nd</sup> August 2023, but it seems to have been earlier than that since the initial gatekeeping order was made on 28<sup>th</sup> June 2023. The Cafcass report dated 2<sup>nd</sup> February 2024 states that the application was made on 17<sup>th</sup> July 2023, a date which is again problematic since it is after the date when the initial gatekeeping order was made. On 17<sup>th</sup> August 2023, Mrs B applied for a child arrangements order to ensure that the children lived with her.
- 11) On the same date that Mrs B made her application, District Judge McQueen made what appeared to be a final prohibited steps order forbidding Mr A to remove the children from Mrs B's care. An order in identical terms was made by Deputy District Judge Hadley (as he then was) on 5<sup>th</sup> September 2023. The making of these orders is somewhat difficult to understand in that there are two almost identical orders which were made less than three weeks apart, one of which purported to be a final order, at a point when there had been no first hearing dispute resolution appointment.
- 12) The first hearing dispute resolution appointment took place on 19<sup>th</sup> September 2024 when the justices' legal adviser directed Cafcass to prepare a section 7 report, and he also listed the case for a dispute resolution appointment. At the next substantive hearing on 24<sup>th</sup> March 2024, the lay justices reallocated the case to the district judges.
- 13) The case came before me for the first time on 18<sup>th</sup> April 2024. I reserved the case to myself at that hearing, and it has been before me since then. The main issue at that hearing was whether a fact-finding hearing was needed given the allegations of domestic abuse made. I directed discursive witness statements from the parties, and I made various case management directions to ensure that the information needed was before the Court. Unfortunately, there was delay in the production of information, and the hearing that had been listed on 3<sup>rd</sup> July 2024 was vacated as a result. On 2<sup>nd</sup> July 2024, I made an order by consent to address the non-compliance, and to retimetable the case.
- 14) At a hearing on 2<sup>nd</sup> September 2024, I listed the matter for a fact-finding hearing before me from 19<sup>th</sup> to 21<sup>st</sup> February 2025, and I also listed a pre-hearing review on 9<sup>th</sup> January 2025. The case has now come before for the fact-finding hearing.

### **The matters in respect of which facts need to be found**

15) At the hearing on 2<sup>nd</sup> September 2024, with the assistance of the parties' advocates, I was able to identify the issues that I would need to determine at the fact-finding hearing. They were limited to those which it was necessary and proportionate to determine on the basis that these were the matters which would be relevant for any future welfare analysis. They were:

- (i) whether Mr A engaged in a pattern of coercive and controlling behaviour towards Mrs B;
- (ii) whether Mr A was physically violent;
- (iii) whether Mr A was sexually violent; and
- (iv) whether Mr A threatened to remove the children from the United Kingdom.

### **The fact-finding hearing**

16) When the matter came before me for the fact-finding hearing from 19<sup>th</sup> to 21<sup>st</sup> February 2024, Mr A was represented by Ms Ketley of Counsel. Mrs B was represented by Mr Spollon of Counsel. I am indebted to both for their calm and professional advocacy. They put their competing cases robustly to the parties in their cross-examinations, but both did so with care, and neither strayed outside the bounds of appropriate questioning of the evidence.

17) I heard evidence from the parents. Mrs B, who is British and has lived in this country her entire life, gave her evidence in English. Mr A gave his evidence in Urdu through an interpreter whom he confirmed at the outset he understood. She, in turn, confirmed that she understood him. There was a concern raised by Mrs B and her support worker early in his evidence that the interpreter was not interpreting accurately. I spoke to the interpreter about the need for a full and exact interpretation of what was said. No further concerns were raised.

18) Quite understandably, the parents both found giving evidence difficult and emotional. This was particularly so for Mrs B. As a result, there was a need for breaks during both parents' evidence. It was entirely right that they were both given the time they needed to enable them to give the best possible evidence, but it did have the unfortunate impact of prolonging the time that each of them spent in the witness box.

19) I heard submissions on the final day. As I needed time to consider the written and oral evidence, I reserved judgment. I set a date, 10<sup>th</sup> March 2025, for a notional hearing to hand down judgment, but I made it clear that I would endeavour to get it done sooner if I could. I also listed the matter for a case management hearing to follow the handing down of judgment with both parties to file position statements beforehand.

### **Participation of the parties and making accommodations**

- 20) I endeavoured to ensure that all parties were treated with dignity and respect. I was mindful that of the parties' needs. I accommodated Mrs B's wish for separate waiting areas, and to use screens when she was in Court. I also permitted her to have a support worker present with her throughout. In doing so, I was not indicating any view as to the veracity of the allegations, but I was seeking to ensure that all parties could participate in the hearing.
- 21) I was conscious of the guidance set out in the Equal Treatment Benchbook throughout. As set out above, I was conscious of the parents' vulnerabilities when they gave evidence. I ensured that they were both treated with consideration and respect, and I made it clear to them both that I would accommodate them in every way that I could to ensure that the process of giving evidence was made as comfortable as possible.
- 22) Mrs B raised the point that she has additional needs. It was her case that she suffers from anxiety as a result of the abuse to which she alleged Mr A subjected her. I was mindful of the vulnerabilities described, and I was alert throughout the hearing for signs that Mrs B was distressed or struggling. I ensured that she was given breaks when she appeared to be struggling emotionally. I should say that nothing in her evidence suggested to me, as a lay person in medical terms, disordered or irrational thinking.
- 23) Although Mr A did not report vulnerabilities of the kind reported by Mrs B, it was clear that he found the hearing stressful. Given the nature of the allegations made against him, and the consequences that might flow from them, that was understandable. I was mindful, as I had been with Mrs B, that, whatever the factual basis of the allegations, he had been through the stress of a difficult and acrimonious marital breakdown, and subsequent Court proceedings. That, in itself, would be difficult for anyone. I again took care to ensure that the hearing was as comfortable as I could make it, and I ensured that he, too, was given breaks as needed when he appeared to be struggling emotionally. As with Mrs B, I should say that nothing in his evidence suggested to me, as a lay person in medical terms, disordered or irrational thinking.

### **Fact-finding – the burden and standard of proof**

- 24) In considering the issues before me, I have reminded myself of the basic principles. The burden of proof in respect of each of the allegations lies with the person making it. The standard of proof is the balance of probabilities. I follow the guidance in **Re B (Children) [2008] UKHL 35** in saying that (i) neither the seriousness of the allegations nor the consequences arising from the findings made alters the standard of proof, and (ii) if I am satisfied that an alleged fact is more likely than not to have occurred, then it is made out and shall be treated as a fact, but if an alleged fact is not more likely than not to have occurred, then it is not a fact, and it shall not be treated as such.
- 25) I have further reminded myself that decisions must be based firmly on the evidence, and that speculation and suspicion have no place. I have also reminded myself of the principles set out in **R v Lucas**. The fact that someone has lied about some things does not mean that person has lied about

everything. People tell lies for many and varied reasons, including fear, shame and embarrassment. I have been mindful of the guidance in **Re A, B and C (Children) [2021] EWCA Civ 451**, and I gratefully adopt the formulation of Macur LJ at paragraphs 57 and 58 about the correct approach to issues of alleged dishonesty. In brief, where I find that a party has lied, I must consider the significance of the lie, and the reasons for it.

26) I have been careful not fall into the trap of considering evidence in isolated silos. Rather, I have considered each piece of evidence in the context of the evidence as a whole seen in the round.

27) In assessing the credibility of witnesses, I have reminded myself of the need to be cautious about drawing conclusions from demeanour. People respond differently in the stressful setting of a Court hearing. The witness who laughs inappropriately may be disrespectful and contemptuous, but may equally be highly nervous, and doing so out of fright. The witness who appears over-confident and emphatic may be lying, but may be telling the truth whilst being anxious that the truth will not be believed. That is not to say that demeanour is irrelevant. It is not. It is a part of the evidential picture before the Court, but only a part.

28) In many ways, this case was an exemplar of the dangers in relying overly on demeanour. It was a striking feature of both parents' evidence that they were both highly convincing in the way that they gave it. Thus, Mrs B's demeanour when describing the sexual, physical and emotional violence that she said she had experienced in her relationship with Mr A was, when viewed in isolation, convincing. The difficulty was that Mr A denials were, when viewed in isolation, no less convincing. Since the allegations and the denials could not both be true, what it demonstrated was the need for caution, and for care in evaluating the evidence as a whole.

29) One element, to which I was invited to attach weight in the assessment of her evidence by Mrs B, was that she had sworn on the Holy Quran. She said that I should believe her account because she would not do other than tell the truth as a devout Muslim having sworn to do so on the Holy Quran. The difficulty with that was Mr A is also a Muslim, and he too swore to tell the truth on the Holy Quran. It did not seem to me that I could make any safe determination about the reliability of the parties' evidence on this basis.

### **Fact-finding – The correct approach**

30) The understanding of domestic abuse has developed in recent years. In broad terms, there has been a shift from seeing the issue as one in which the emphasis is on determining whether individual incidents of alleged abuse did or did not occur. Instead, the Courts now focus on whether there has been a pattern of abusive behaviour. This is reflected in the decision in **Re H-N and others [2021] EWCA Civ 448**, and also in PD12J. The Court does not need to consider each and every allegation.

31) It is not the role of the Court to unpick everything that went wrong in the relationship. Rather, the focus must be on determining those matters which are relevant to the welfare decisions that must ultimately be made for the children as **K v K [2022] EWCA Civ 468** makes clear. Regrettably, this case was an exemplar for the need for a clear focus. Despite my making the need for a focused approach clear from the outset, Mrs B's first statement contained ten allegations, and then sought to add a further four in her second statement.

32) PD12J includes the following definitions, each of which refer to a pattern of acts or incidents:

"...domestic abuse' includes any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, psychological, physical, sexual, financial, or emotional abuse. 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..."

"...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."

33) As part of this shift in understanding, there has been an increased awareness that Scott Schedules can be of limited utility, and even actively harmful to a proper understanding of the case. The essential difficulty is that they require the parties to present their case in terms of a number of alleged incidents which the Court is invited to find either did or did not occur. The problem is that, in focusing on the specifics of the alleged incidents, the Court may risk losing sight of the broader patterns of behaviour that underpin them. What is lost is the understanding that abusive, coercive and controlling behaviour is likely to have a cumulative impact upon its victims which would not be identified simply by separate and isolated consideration of individual incidents. Moreover, there is the risk that the Court may proceed as if the individual incidents under consideration represent the sum of what was concerning in the relationship.

### **Alleged sexual violence and coercion**

34) One feature of the case was that the allegations included allegations of incidents when Mr A was said to have forced or pressurised Mrs B to engage

in sexual activity. The word “rape” was used in connection with this. As I pointed out to the parties earlier on, words and concepts from the criminal jurisdiction should be avoided in cases of this kind. Unfortunately, the word “rape” continued to be used. I was careful to treat this as a descriptive label for what was said to have happened without importing criminal law concepts.

35)I reminded myself of the guidance of Hickinbottom LJ in **Re R (Children) (Care Proceedings: Fact-finding Hearing) [2018] EWCA Civ 198**. He observed that “what matters in a fact-finding hearing are the findings of fact”. [paragraph 67]. The Family court should be concerned to determine how the parties behaved and what they did with respect to each other and their children, rather than whether that behaviour does, or does not, come within the strict definition of ‘rape’, ‘murder’, ‘manslaughter’ or other serious crimes. Behaviour which falls short of establishing ‘rape’, for example, may nevertheless be profoundly abusive and should certainly not be ignored or met with a finding akin to ‘not guilty’ in the family context. For example, in the context of the Family Court considering whether there has been a pattern of abusive behaviour, the border line as between ‘consent’ and ‘submission’ may be less significant than it would be in the criminal trial of an allegation of rape or sexual assault.

36)In evaluating these allegations, I have been aware of the need for care. As the Equal Treatment Benchbook makes clear:

Rape complainants may be reluctant to report crime because they fear that they will be blamed for the attack.

Sexual and rape offences are vastly underreported and where complainants do go to the police, cases often have to be dropped, in part because the victims do not support further action.

Research suggests that deployment of rape myths remains a key part of defence strategy.”

The phrase “rape myths” replies to the plethora of misunderstandings about how women who have genuinely experienced sexual violence and abuse will behave before and whilst being subjected to the abuse, and what they will do in response afterwards. The danger of rape myths is that they can lead to the wrongful rejection of genuine accounts because the individual’s behaviour does not conform to the mythical view of how someone in that position would or should behave.

37)I am also conscious of the barriers to reporting sexually abusive behaviour. Not only is there the fear of not being believed, but also there is the shame and stigma that many who have experienced such behaviour feel. I recognise that the prospect of having to describe what happened may be experienced as retraumatising.

38)An added factor of which I was aware was that, in evaluating the allegation, I was not considering a dispute about what physically happened between the parties. They agreed that sexually intimate acts took place between them. That was not the issue. The issue was whether those acts were consensual

as Mr A said, or whether they were coercive as Mrs B said. The task of the judge in such cases is to consider the evidence in the round to decide what was likely to have been the reality of the situation.

### **The evidence**

39) In reaching my decision, I have had regard to all the written evidence, to the recordings that were provided, and to what I heard over the course of the hearing. It is neither necessary nor helpful for me to refer to every piece of evidence in this judgment, but I have considered all the evidence to which I was referred, and I have had regard to it in reaching my decisions. I have not, as was discussed at the pre-hearing review and the outset of the fact-finding hearing, troubled myself with evidence to which neither party directed me. That was particularly important because, regrettably and despite my urging the parties to be focused, a great deal of evidence was adduced that had little or no relevance to the issues before me.

### **The documentary and recorded evidence**

40) I will not deal with every element of this here. With some documents, it will be more appropriate to consider them in the context of the allegations to which they are said to relate. There are some matters that do need to be addressed in more general terms.

41) Much of the physical evidence consisted of screenshots of text/WhatsApp messages, and transcripts of recordings. It was a feature of her evidence that Mrs B challenged the reliability of these on numerous occasions during the course of cross-examination. She asserted that documents had been edited and otherwise changed by Mr A. Although not explicitly stated by her in these terms, the alleged objective was to support his case, and to undermine hers. Mr A denied having done so, and indeed of having the technical skills to know how to do so.

42) I was cautious about Mr A's assertions that he would have lacked the technical capability to edit documents and recordings as claimed. Firstly, I had no expert evidence to assist me in understanding how much technical capability would be required. Secondly, I had only Mr A's word for how technically capable he is. If the allegation were well founded, he would have every incentive to deny having the capacity to do these things. Thirdly, I take judicial notice of the point that there are a range of apps available online that enable people to edit documents and recordings. Looked at in the round, I recognise that Mr A could possibly have had the capacity to tamper with the documents and the recordings. To determine whether it is probable that he did so, as claimed, I turned to the broader canvass of evidence.

43) I have considered the written documents with care, and I have also listened to the recordings. There was nothing obvious in either that suggested to me that these were documents and recordings that had been tampered with in some way. I readily acknowledge that I am not an expert in such things as the technical means by which recordings and documents may be edited.

Nonetheless, I am used to assessing evidence, and there was nothing in the presentation of this evidence to suggest to me that it was unreliable beyond Mrs B's assertions that it was.

44) There were two factors which, in my view, undermined Mrs B's claims that the documents had been tampered with. They were:

- (i) The account given was inconsistent. An instance of this was the screenshots of text messages on page C156. When Ms Ketley cross-examined her about these in the context of the alleged sexual violence, Mrs B said that they had been edited, and that she could not recall sending them. Earlier she had been referred to the same texts in a different context, and she had accepted them as authentic. It did support the view that Mrs B accepted documents which were favourable to her case whilst seeking to reject them when they were unfavourable.
- (ii) The alleged unreliability of documents was not confined to documents provided by Mr A. An example arose from Mrs B's medical records. There was a letter (page G39) dated 24<sup>th</sup> February 2021. The letter referred to Mrs B's attendance at the GP surgery on 19<sup>th</sup> February 2021 when she had behaved in a way that staff there had perceived to be unacceptable. The behaviour was such that the surgery warned her that she would be removed from their list if there was a repetition. There was also a recording of the incident made by the surgery which appears in the medical notes (page G23). Mrs B told me that she could recall neither the incident nor the letter. It seemed improbable that anyone at the surgery would have tampered with the documents. They had no discernible reason to do so. The professional consequences of behaving in such a way could be serious. The following day, Mrs B instructed Mr Spollon that she did recall both, and that she regretted the incident.

45) Pulling these threads together, it seemed to me to be unsafe to accept Mrs B's view that the documents and recordings had been tampered with. I found it more probable that the documents were reliable. That is subject to the caveat set out below in respect of the police evidence.

46) In the course of her cross-examination, Ms Ketley explored with Mrs B apparent discrepancies between elements of her account and matters recorded in the police notes in the bundle. Mr Spollon submitted that the notes should be treated with caution since they were not verbatim recordings of what had been said, but rather the police officers' account of that, and things may have been lost, and the words used may not have been accurately recorded. It seemed to me that care needs to be taken in this. I fully accepted that the recordings of interviews that appeared in the papers were notes of them rather than full, verbatim records of what was said. There was reason, therefore, to accept that the precise words used may not have been accurately recorded. That said, the purpose of police recording interviews is to provide a working tool for the officers investigating alleged offences. The need

for accuracy and reliability will be important to the police. It seemed to me that the likelihood was that the records were generally reliable, but caution was needed. This was particularly in considering the account of what was said, given the real possibility that the recording set out the officers' understanding of what they were being told rather than the exact words used.

### **The evidence of the parties**

47) It is worth spending some time at this point in considering the evidence of the parties in broad terms to consider its general reliability before considering the specific details of the allegations that I am asked to determine.

48) Before I turn to the individual parties, there are some overarching themes which were usefully set out by Mr Spollon in his closing submissions. The first of these was that Ms Ketley had referred to the lack of independent corroborative evidence for what was being said by Mrs B. Mr Spollon submitted that this was not the correct approach. In broad terms, I agree. As is so often the case in matters of this kind, the things alleged to have happened were said to have done so behind closed doors when no one was present other than the parties themselves, and sometimes also the children, both of whom were too young to provide evidence. It goes with the territory that there were many matters where corroborative evidence would have been difficult to provide.

49) I have been careful not to assume that the absence of corroborative evidence was sufficient, in itself, to undermine the account given. That does not mean that the absence of corroborative evidence was wholly irrelevant. There were matters where it was reasonable to expect some supporting evidence. Its absence was something to which I could properly have regard in assessing the broad canvass of the case. I will give instances of that below.

50) Mr Spollon reminded me of the importance of remembering the cultural context. This is a Muslim family of Pakistani heritage. Mrs B told me many times in the course of her evidence that there were religious and cultural pressures that came into play, and had shaped her actions. I have been careful to have bear in mind the family's cultural and religious heritage in considering the evidence. It forms part of the broad canvass to which I must have regard.

51) The final general point made by Mr Spollon was that this was a toxic marriage in which feelings often ran high between the parties. In these circumstances, he said that it would be difficult for parties on occasions accurately to remember the details. To my mind this submission raised two distinct matters as follows:

- (i) The general fallibility of human memory is widely understood. Any judge should, in my view, be careful to have regard to that when evaluating evidence. Inconsistencies in the account given of a particular incident may be a sign that the account is unreliable, but it may be no more than normal human fallibility. It all depends. It is a

point which highlights the need to consider the evidence as a whole rather than taking individual points in isolation.

- (ii) Traumatic and emotionally heightened incidents can be particularly problematic. Sometimes, those are precisely the factors that lead an individual to recall matters with a particular vividness and clarity. Sometimes, they are the reason why an account is fragmentary and poor. Again, the need is to consider the evidence as a whole.

#### Mrs B

- 52) In general terms, I found Mrs B to be a witness prone to embellishment, exaggeration and outright fabrication at times. There were instances where she vehemently denied something put to her only to concede, when shown the documentary evidence, that the thing put to her was true. That is not to say that I did not accept any of her account about Mr A's behaviour. As set out below, there were elements that I did find were made out, but there was much that I found was not, and some which I found was simply untrue. I will set out the detail of that in dealing with the specific matters that I have to grapple with, but that was the general impression that I formed of her evidence.
- 53) The starting point in considering Mrs B's evidence was that she is an intelligent woman. The fact that she has worked in a human resources management role for a local authority for 21 years clearly points to that. Having heard her evidence, I observed directly her obvious verbal acuity and intellectual ability. She was also in a position of power over Mr A in that she is a British national whereas he is not, and so her immigration status in this country was certain throughout the marriage whilst his was not. She had secure employment whilst he did not. She had the benefit of familiarity with the culture whilst he did not. She speaks English fluently. Mr A also has a level of understanding of spoken English. He must have understood it sufficiently to have satisfied the requirements of the immigration rules when seeking entry clearance and leave to remain in the United Kingdom. Nonetheless, it is not his first language, and this was another disparity between the parties.
- 54) There was an obvious tension between these factors, and Mrs B's apparent willingness to stay in a relationship which, on her case, was characterised by physical, emotional and sexual abuse. On occasions, this extended to making long trips from Walsall to Oldham to be with Mr A. I was conscious of the need for caution on this point. Intelligent people can make mistakes, and they can become entrapped in difficult and abusive situations. People with a knowledge of abuse may struggle to apply that knowledge to themselves, and to their own situations.
- 55) The difficulty in this case was that the level of abuse described by Mrs B was at the extreme end of the spectrum. Her account was that Mr A's abuse was severe and pervasive. She also alleged that he was controlling of, and abusive towards, the children. In those circumstances, her actions are more

difficult to understand. Ms Ketley put that point to her several times in the course of cross-examination. Her replies essentially focused on the religious, cultural and familial pressures to make her marriage work, and the stigma and potential consequences of being divorced. She told me that the pressures had been extreme, including the risk of social shame and ostracism, and difficulties remarrying as a divorced woman, particularly one with two children.

56) I acknowledge that cultural and familial pressures can be a powerful factor. That has to be weighed against the severity and extent of the behaviour alleged. Nonetheless, there were, to my mind, fundamental difficulties with this evidence:

- (i) While I recognise that cultural pressure is a real factor, the number of cases that regularly come before the Courts involving Pakistani heritage Muslim families suggests an element of exaggeration on this point. Again, it needs to be seen in context of the extreme control and abuse alleged here. In that context, it is perhaps more difficult to understand why, even in the face of cultural pressure, Mrs B would have engaged with Mr A in the way she did, particularly after he moved to Oldham in March 2022. Even if she felt willing to expose herself to the risk, I have to question why she was also seemingly willing to expose the children if matters were as described.
- (ii) I have already made the point, but it bears repeating, Mrs B had the intelligence to recognise the risks to herself and the children from the kind of extreme abuse alleged, and she had the resources to take protective steps. I have already observed the imbalance of power between the parties which was firmly in her favour.
- (iii) There was evidence that Mrs B enjoyed the support of her own family. An example of that was that, on 17<sup>th</sup> November 2022 when the marriage finally broke down entirely, her own account was that her mother was advising her to leave. That was not suggestive of a situation where her family were unsupportive or worse.

57) I have been mindful of the evidence that Mrs B has engaged in CBT since separating from Mr A. She says that this was because of mental health problems that she experienced because of the abuse within the relationship. It was accepted in the course of cross-examination that she had attended only two sessions as documented on page G31. She said that she had sought help from other organisations.

58) I considered whether the fact that Mrs B had been referred for CBT, even if she actually attended only two sessions, could be said to be probative of her allegations. In my view, it was not. The evidence confirmed that she suffered from some mental health difficulties. She attributed that to her relationship with Mr A, but that was her self-report, and the medical evidence was not an

independent source of evidence as to the causal factors. At most, it showed what she had said. I was also conscious that she had experienced the stress of the breakdown of her relationship, and of these proceedings, over the relevant period. I treated her engagement in therapy as a neutral factor that neither supported nor undermined her allegations.

- 59) I was concerned by the clear tendency in the evidence for the allegations to become more serious over time. This can be seen for instance in the police records. The police conducted a risk assessment on 25<sup>th</sup> February 2023 (page F100). The document records that Mrs B refused to answer questions, and she made no positive allegations against Mr A. The police officer expressed the view that:

“I believe the IP [Mrs B] is not scared of the offender however is worried about her future and the further emotional abuse he may cause. The IP is not being prevented from disclosing information as she is very forthcoming and doesn't want to deal with the offender no longer [sic]. One factor is that they have two young children together however the offender does not seem to want anything to do with them.”

- 60) Asked about this in cross-examination, Mrs B's evidence was that she would have been happy to talk to the police, and that she would not have declined to do so. She was unable to explain why the police had recorded that she did decline. Challenged as to whether she was saying that the police had lied about this, she pulled back from making such a claim, but she reiterated her incomprehension.

- 61) Undergoing an identical risk assessment a little over a month later on 29<sup>th</sup> March 2023 (page F34 forwards), Mrs B presented a markedly different account. There she said that Mr A had abused her. She referred to emotional abuse, and she said that there had been two sexual assaults. She denied other forms of physical violence, harm to the children, or use of household implements or knives to hurt her. She explained her answers in terms of the police officer telling her to talk about what was happening at that moment in time. Pausing there, that answer made little sense. As a statement of the obvious, any professional conducting a risk assessment, in the context of an allegedly abusive relationship, will need to form a view of what happened over time. Mrs B was unable to give any explanation for why she had not mentioned harm to the children given what she later alleged.

- 62) Mrs B undertook a further assessment on 1<sup>st</sup> May 2023, again a little over a month after the previous one (page F158 forwards). By this time, she alleged that she was afraid of being murdered by Mr A. On this occasion, she alleged that physical violence, and use of household implements and knives, to hurt her took place all the time. She alleged that he had harmed the children. She said that the situation was worsening. Asked about this, she attributed the changing accounts to two factors: (i) the way in which the questions were posed, and (ii) her mental health creating difficulties in her remembering everything. I found these answer to be unsatisfactory. So far as the first was concerned, this was a standardised risk assessment form. The questions on

the form were the same each time even if different officers were asking them. In respect of the second, I recognise that memory is fallible and imperfect, and that poor mental health can have an impact on that. There are limits, however. It is reasonable to assert that the details may be disordered or confused, but not to use that as an explanation for entirely omitting such matters as whether there was physical violence, or harm to children.

- 63) Looked at in the round, there was a clear process of narrative inflation with the allegations becoming more serious and extensive over time. It would be going too far, and it would also be overly simplistic, to say that these concerns are such that I should simply dismiss everything that Mrs B has to say. They are matters to which I can legitimately have regard in assessing the reliability of her evidence, however, and in assessing the reliability of the allegations in particular.

#### Mr A

- 64) In general terms, I found Mr A to be a more satisfactory witness than Mrs B. In many matters, he gave clear, considered and, in my view, honest answers. That said, there were points in his evidence when I found that Mr A minimised the impact of behaviours on his part that were, on any reasonable analysis, unkind. In response to the more extreme allegations made by Mrs B, his evidence was clear and credible. It was when he was challenged about the less extreme allegations, that he struggled. As I will discuss below, I concluded that this was because the more extreme allegations were unfounded whilst some of the lesser ones were well-founded, and Mr A knew that in relation to them he had done things that he ought not to have done. There was also a tendency to depict himself as a passive bystander in his own marriage, as someone to whom things happened whilst he had no agency. Even allowing for the power imbalance between him and Mrs B, I found that difficult to accept.

### **The allegations**

- 65) I have set out the matters that I am considering above. In addressing the various allegations, I have been mindful of the need to consider the tapestry of the case as a whole. Nonetheless, for ease of reading and writing, I will break them down into the four areas of alleged (i) coercive control, (ii) sexual violence (iii) physical violence, and (iv) threats to remove the children from the jurisdiction. In my analysis of them, I have borne firmly in mind the overarching points that I have made about the evidence above. I do not need to repeat that material, but it should be read into my analysis below.

#### Coercive control

- 66) There were many aspects of the alleged pattern of coercive and controlling behaviour. This was set out in Mrs B's statement dated 7<sup>th</sup> May 2024. In that, she gave a number of instances of allegedly abusive behaviour:

- (i) from the time when Mr A arrived in the United Kingdom in January 2020, he wanted her to move with him to Oldham where his sisters lived, despite the fact that her family, friends and work were in Walsall;
- (ii) he sought over time to isolate her from her family;
- (iii) he insisted that she wear a head scarf, despite the fact that she had never done so, and he stopped talking to her if she did not;
- (iv) he expected her to undertake all the household tasks and duties;
- (v) he forced her to delete the numbers of other women whom she met in Oldham, isolating her;
- (vi) he damaged her self-esteem by accusing her of being fat, and ugly unless she wore make up;
- (vii) he spent prolonged periods with his sisters in Oldham, including when she was pregnant and shortly after she gave birth to K;
- (viii) he went to Pakistan for a period of about seven to eight months from February 2021 until late September 2021, and he refused to allow her or K to come with him, forcing her to cancel their tickets;
- (ix) he failed to provide financial support; and
- (x) from March 2022, he moved to Oldham permanently, leaving her and K behind.

67) There are two other matters that I will consider under this heading. The first is the allegation that Mr A was exploiting Mrs B to enable him to obtain indefinite leave to remain in the United Kingdom. In support of this, Mrs B pointed to two aspects of Mr A's behaviour: (i) the amount of time he spent away from her following his arrival in the United Kingdom, including his prolonged visit to Pakistan in 2021 and his frequent trips to Oldham, and (ii) his desire to ensure that she became pregnant as swiftly as possible.

68) The second is the allegation that Mr A refused to wear condoms when the couple had sex, claiming that it was un-Islamic to do so, to ensure that Mrs B became pregnant. I will address that here, rather than in dealing with the allegations of sexual violence. That is partly because Mrs B herself treats it as an element of coercive control rather than as a form of sexual violence. It is also partly because it is so interlinked with the allegation that he was exploiting her for immigration advantage, and so he wanted to ensure that she became pregnant as swiftly as possible not as an end in itself, but to enable him to remain in this country. As such it interlinks with the alleged exploitation and coercion. That is, however, a matter of trying to sequence the allegations logically, for ease of analysis and reading, and not because I have placed them into silos.

69) A fundamental difficulty with several of these claims is that the reality of the relationship lies in its chronology. Mr A did not enter the United Kingdom until late January 2020, some 13 months after the marriage. Thereafter, he spent a period of seven to eight months in Pakistan from February 2021. He spent frequent and sometimes prolonged periods in Oldham apart from Mrs B. He moved to Oldham permanently in March 2022. In the period of almost four years between the parties' marriage on 25<sup>th</sup> December 2018 and their final separation on 17<sup>th</sup> November 2022, they actually lived together for about three to four months.

70) It follows that many elements of the alleged coercive control would have been difficult for Mr A to achieve since he was not there. He was not engaging in the relationship, and so he was not in a position to exert any form of control, coercive or otherwise. It is difficult to see how, for instance, how he could have isolated her from her family, or sought to compel her to wear a head scarf. As a matter of fact, as Mrs B herself accepted, she never wore a head scarf.

71) I turn to the sexual elements of the allegation. The nub of Mrs B's case is that Mr A was desperate for her to become pregnant whilst she wanted to wait to start a family so that they could have time to get to know each other better. There are two problems with this narrative:

- (i) The evidence from Mrs B's medical notes shows that she wanted to be pregnant. At page G25, there is a recording made by her GP on 12<sup>th</sup> September 2019. It states, "Tearful...pt [patient] very low in mood after not being pregnant, tearful and uupset [sic] as wanted to get pregnant to expedite her husband's visa." There was a further appointment on 14<sup>th</sup> September 2019 which again records that Mrs B was upset about not being pregnant, and that she was anxious about the situation with her husband. These recordings were put to Mrs B. She said that she could not recall telling the GP that she wanted to be pregnant. I do not accept either that she did not say these things to the GP, or that she could not recall having said them. The GP's recordings are clear and precise. They were made at a time when Mr A was in Pakistan awaiting entry clearance, and so it may sense that Mrs B would have been focused on his obtaining his visa. Moreover, the dates of the recordings in September 2019 ties in with the fact that Mrs B had been to visit Mr A in Pakistan in August 2019. It is understandable that she had taken a pregnancy test in the September, as recorded by the GP, to see whether she had become pregnant whilst they were together the month before. This is difficult to reconcile with her account to me that Mr A wanted her to become pregnant whilst she did not.
- (ii) The difficulty with the account that Mr A wanted her to become pregnant to secure his status in the United Kingdom is that it was, as a matter of immigration law, irrelevant at that time whether he had a child in this country or not. For so long as he had a British wife who was willing and able to sponsor his application, there was no advantage to him in having a British child. It was only after their relationship broke down to the extent that Mrs B was no longer willing to sponsor him that having British children became important. From that point on, Mr A was dependent on his being the father of British children, but that was not the case at the time when he was still in a relationship with Mrs B. It might be said that Mr A was planning ahead from the start, that he envisaged the marriage breaking down from the time that he arrived in this country, and so he wanted to ensure that he had children in readiness for that. The difficulty with that is that it required a degree of foresight and planning that is at variance with his behaviour generally.

Had he shown that level of cynical anticipation, it might reasonably be supposed that he would have taken greater care to keep Mrs B on-side until he had secured indefinite leave to remain, and so he was no longer dependent on her for his immigration status.

- 72) For these reasons, I do not accept that these sexual allegations have been made out to the requisite standard. I find it more likely that it was Mrs B who was anxious to become pregnant as Mr A said.
- 73) I turn then to consider the allegation that Mr A exploited Mrs B to obtain leave to enter and remain in the United Kingdom. In my judgment, that allegation is made out. There were elements of this case which struck me on hearing the evidence, all of which support this view of events.
- 74) The first of these was that Mrs B was plainly committed to this relationship throughout. Before Mr A came to the United Kingdom, she invested time in the relationship, and in sponsoring his application for entry clearance. She also spent money to that end. The point was made several times in the course of evidence that she had spent something in the region of £7,000 in legal costs and fees to secure his entry to this country. She also travelled to Pakistan in about December 2018 when she married Mr A, and again to visit him in August 2019. I do not know how much those two visits would have cost her, but I take notice of the obvious points that the air fares to travel such a distance would not have been cheap, and that the trips required an investment of time and effort as well as money.
- 75) There were other points that demonstrated Mrs B's commitment to the relationship. I have already referred to the entries in her medical records that show that she was anxious to be pregnant in September 2019 because she believed that this would expedite his entry to the United Kingdom. She was mistaken in the belief that it would do so, but that does not detract from the point that she was doing all that she could to procure his arrival here as soon as she could, and that she wanted to have children with him.
- 76) That commitment could still be seen in the final stages of the relationship. Mrs B moved to Oldham to be with Mr A in September 2022. In doing so, she did precisely what she had not wanted to do earlier, moving to a different part of the country, leaving her family, friends and work behind. She would have been in the last stages of her pregnancy with M at the time, and so particularly vulnerable. She told me that she did so because of familial and cultural pressure. There may well have been an element of that. Having heard the evidence, I think that there was also a desperate desire to make the relationship work. In my judgment, the explanation for that was the obvious one: she loved her husband, and she wanted to be with him. The whole tapestry of her behaviour throughout the relationship pointed to that.
- 77) In contrast, Mr A showed little commitment to the relationship. It is striking how little time he spent with Mrs B after he arrived in this country. Mr Spollon cross-examined him on the point. He accepted that he had family and friends in Oldham, but he denied that his primary concern was to move there to be

with them, rather than to build a life with his wife in Walsall. I did not believe him. This was an instance when actions did indeed speak louder than words. The reality of the situation was that, from the point when he came to this country, Mr A spent more time away from his wife than he did with her. It bears repeating that in the period from January 2020, when he first came to the United Kingdom, until their final separation in November 2022, there was some 34 months of which he spent only three to four months living together with Mrs B.

78) I heard much about the trip that Mr A took to Pakistan in 2021. He was there from February until late September. His account was that he went because his father had become ill, and he died very soon after Mr A arrived. He said that he then remained there because his mother was ill, and because the family was receiving condolences. The original plan had been that Mrs B would go to Pakistan with him. That did not happen. On his account, that was because her mother was ill, and she chose to remain behind. On her account, it was because he forbade her to go, forcing her to cancel the tickets she had bought for herself and for K. She said that he told her that, if she were to go, his mother would not allow either her or K to enter the house, and that they would be forced to remain outside.

79) I do not accept Mrs B's account of why she did not go to Pakistan. As was established on cross-examination, her mother was indeed ill at the time. There was a wealth of documentary evidence to support that which was put to her. In essence, she maintained that this was a fabrication. For the reasons already given, I do not accept that. It seems to me more likely that she could have gone had she chosen to do so. She did not choose to do so for a valid reason, her mother's illness, but that does not detract from the fundamental point that it was her choice, and not the act of ostracism that she claimed it was before me.

80) The matter does not end there, however. Mr A's account of why he went to Pakistan, his father's illness, his sad death and his funeral are not in dispute. I accept that. I have found that Mrs B's account of why she did not go is untrue. The real reason was her mother's illness. There, my acceptance of Mr A's version of events ends. None of the matters he put forward explain why, having gone to Pakistan, he remained there for eight months. He sought to explain it in terms of the restrictions in place at the time because of the covid pandemic. I accept that the pandemic was a factor at the time, but I take notice of the fact that there were still flights to and from Pakistan. Mr A could have returned to this country and quarantined here on arrival had he chosen to do so. He chose not to do so.

81) There are further points that reinforce this view of the situation. The first is that there were at least two occasions during the period that he was in Pakistan when Mr A blocked Mrs B's phone. He said that this was because she was bombarding him with calls and questions about his activities. On his case, this was an example of her controlling him. In my view, the position was rather more complex than that. Mrs B was in a position where, a little over a year after he came to this country, her husband absented himself from her and her

very young daughter. There was a lack of communication from him which fed her anxieties about the situation, and so she persistently tried to make contact with him only to find herself ignored and, on occasions, blocked.

- 82) Indeed, this pattern persisted throughout the relationship. Mrs B was criticised on cross-examination for bombarding Mr A with calls and texts, and for being at times frantic to find out where he was, and what he was doing. Maybe so, but the corollary of that was that she had a husband who was seemingly indifferent to her, and often absent.
- 83) The point is reinforced by what happened after Mr A returned to this country. He immediately went to Oldham. When asked about this by Mr Spollon, he told me that he did so with Mrs B's active support. I do not believe him. That flies in the face of the evidence about her desperation to contact him when he was in Pakistan, her almost frantic anxiety to resume their life together. Even without that evidence, it would be difficult to believe that Mrs B, so early in her married life and with a young child, would be supportive of Mr A going to Oldham following his return from a prolonged time away in Pakistan.
- 84) A similar point arises in respect of the parties' sexual relationship. In cross-examination, Mrs B was directed to the documentary evidence of an instance where she sought persistently to initiate sex with Mr A whilst he protested that he was tired. There are also instances where she sent messages expressing her physical desire for him. This was characterised as her being "sex crazed". I objected to that language during the hearing on the basis that it was needlessly offensive. Reflecting on it in preparing judgment, it seems to me that there is a deeper reason for rejecting this description of Mrs B. It was simply untrue. The impression that I have formed, having considered the evidence as a whole, is that Mrs B was desperate for affection and love from a husband who was often absent, and seemingly indifferent to her and to their child.
- 85) One of the allegations made by Mrs B was that Mr A criticised her appearance, telling her that she was ugly without make up, and that she was overweight. He denied having said any such thing. In my view, it does not particularly matter whether he said those things or not. Whether he did or did not, it is scarcely to be wondered that Mrs B felt anxious and insecure about her attractiveness when he absented himself so often and for so long, and his behaviour was so plainly that of someone with no commitment to her or to their relationship. If further evidence was needed of this, it came from an exchange during Mr Spollon's cross-examination. On being asked about what discussions there had been between the parties about starting a family and birth control, he told me that there had been none. That was frankly astonishing, and it bespoke an almost total disregard for the relationship on his part.
- 86) Sometimes, Mrs B's emotions were expressed in deeply concerning ways. In the course of cross-examination, she was directed to messages in which she threatened to drown herself and K, and in which she threatened to withhold contact between K and Mr A. She denied having sent these at all. This was

another instance where she claimed that documents had been fabricated. I do not accept that. Mr A sought to portray this as coldly calculated manipulations. I do not accept that either. In my view, the obvious explanation for these things is the right one: she sent them in a state of heightened emotion and distress at his indifference. They were, of course, manipulative. They were, of course, unacceptable and profoundly troubling. The context in which all that arose, however, was one created by Mr A.

87) Pulling all these threads together, I am quite satisfied that Mr A had little or no commitment to his marriage from the outset. Mrs B believes that he married her to gain entry to, and immigration status in, this country. The evidence supports that view, and I find that it was the truth of the matter. Mrs B did love Mr A, and she was committed to the relationship. Her actions in response to his behaviours were driven by simple desperation in the face of a husband who showed little or no interest in her or in their relationship. Her behaviours were, at times, worrying and unacceptable, but that was the context in which they arose. Mr A was not controlling. Not only did his frequent and prolonged absences preclude that, but to be controlling would have shown a form of commitment and engagement to the relationship, albeit of an unpleasant and unacceptable kind, that was simply not there.

#### Sexually coercive behaviour

88) On Mrs B's account, there were two occasions when Mr A raped her. I emphasise that I am using the word "rape" as a descriptive label here because it is the word that Mrs B herself used. I am not importing concepts from the criminal law into my consideration of the factual matters. The two alleged incidents were:

- (i) In December 2020, Mr A raped her at knife point whilst they were at her parents' home. She was in the kitchen when he produced the knife. He forced her to go upstairs at knife point where he forcibly removed her clothes and then raped her. K was present at the time.
- (ii) On 26<sup>th</sup> January 2022, Mrs B went to Oldham to see Mr A. She arrived somewhere between 6.30 and 7 pm. She was unable to find him at his workplace. He was not there. She tried to contact him by phone. He was angry that she had gone there. She went to his sister's home. Her sister told her to go back to Walsall. She waited. Mr A finally arrived at about 10 pm. He was angry. She told him that she wanted a divorce. He told her to go home. She said that it was too late. He refused to let her stay at his sister's where he was staying, and so did his sister. He insisted that she book a hotel. He went to the hotel with her, and they checked in together at after 10.30 pm. Once there, he said, "Come on, let's play," which she understood to be a request for sex. She declined. He got undressed, and he forced her to undress. He then forcibly penetrated her and had sex. K was present throughout.

89) There is no medical evidence or other physical evidence to assist me in evaluating these claims. I would not expect there to be any. The allegation

was first raised a significant time after the alleged events. By the stage, it would not have been possible to carry out a medical examination to corroborate what was said, or to obtain physical evidence of any kind. In any event, even had the allegation been raised at the time, it is doubtful whether it would have been possible to establish the truth of the matter by way of gathering physical evidence. It was not in dispute that the parties had sex. The issue was whether sex was consensual, or whether it was coercive. That is not something that can be established by physical evidence. The absence of physical evidence of that kind is, in my view, a neutral factor which neither supports nor undermines Mrs B's account.

- 90) There was one evidential gap which I did find surprising. That was the absence of contemporaneous texts or WhatsApp messages in which Mrs B mentioned the alleged assaults either to Mr A or to her family and friends. I appreciate the difficulties for someone to share an experience of this kind because of the sense of shame and stigma that can go with it. Nonetheless, it is a normal human response to traumatic experiences to reach out to someone, even if only a very small select group or a single person. It would also be a normal response to recriminate with the person responsible, to express anger and hurt. The absence of any such message was a minor point, and in no way determinative, but it did form part of the evidential tapestry.
- 91) The matter was explored at length in cross-examination. Much of the questioning focused on inconsistencies in the factual narrative of what allegedly happened on each of the two occasions. It was clear that there were factual inconsistencies. In my view, that was not, of itself, sufficient to determine the allegations. The difficulty was that those inconsistencies could be explained by the allegations being untrue. Equally, however, they could be explained in terms of fragmented and confused recall of genuine, traumatic incidents.
- 92) In respect of the first alleged incident, the real inconsistency lay not in the narrative of what happened at the time. Rather, it is in the clear evidence of Mrs B showing love and commitment to Mr A after the alleged event. This was between one and two months before he went to Pakistan in February 2021. It is difficult to reconcile her account of being raped at knife point by him in December 2020 with her evident distress at being separated from him a few weeks later. There is also the matter of texts sent after this alleged incident in which she continued to express affection and physical desire. Nowhere is there evidence of the fear, anger or repulsion that it might reasonably be supposed someone who had been raped at knife point would feel.
- 93) I am conscious of the obstacles to leaving abusive relationships. There are financial, practical and emotional barriers to doing so. There is also fear for safety. Leaving an abusive relationship is often associated with an elevated risk of harm by way of reprisals from the abuser. I have carefully reminded myself of the matters discussed above in the section of this judgment addressing sexual abuse in general terms. I am mindful of the dangers of adopting a stereotypical view of how someone ought to respond. Even

allowing for all those matters, I have to say that this inconsistency does substantially undermine the account. There is an absence of emotional truth to this. There is also an absence of apparent fear for either herself or for her daughter in dealing with a man who she said had held her at knife point.

- 94) These features are more marked in relation to the second alleged incident. I do have to wonder firstly at the fact that Mrs B agreed to go to a hotel with Mr A at all in the context that arose here. Integral to her account is the fact that he was effectively living in Oldham at this point. He was living there, and he was working there. He had effectively abandoned her and K who remained in Walsall. She had gone down to Oldham essentially to confront him about his desertion, and to tell him that she wanted to get divorced. His response to her being there was one of anger. I can understand why she would have felt the need to stay overnight given the time, her tiredness, and the prospect of having to drive back to Walsall. It is not difficult to understand why she would have booked a hotel room for herself and K in these circumstances. It is difficult to understand, however, why, in such circumstances, she would have agreed to book into a hotel with Mr A that night.
- 95) It is an element of Mrs B's account that it was as a result of this assault that she became pregnant with M. She was adamant when asked about it that it must have been that night that M was conceived. This was because she had not had sex with Mr A at any other point around that period to have become pregnant. The problem with that was that, as Ms Ketley pointed out in her cross-examination, M was born at full term on 20<sup>th</sup> September 2022. Had he been conceived on 26<sup>th</sup> January, he would have been some weeks premature. This is not akin to the factual inconsistencies about the sequence of events that could be explained in terms of imperfect recall of a traumatic event. This is a fundamental point that goes to the core of the narrative.
- 96) Moreover, it was clear from the messages exchanged between the parties when Mrs B discovered herself to be pregnant with M that she treated the conception as a positive thing, that she was pleased to be pregnant, and that she was hoping for a boy. In other circumstances, her pleasure at being pregnant would have been a normal response. In these circumstances, however, it was not a normal response. There was a profound emotional disconnect between what she said had happened, and her response.
- 97) In my view, the reality of the situation was that sex was on both occasions consensual. Afterwards, as she came to appreciate that the whole relationship had been exploitative, a vehicle for Mr A to enter and remain in the United Kingdom, she may well have felt used and emotionally violated. That was, I consider, the context in which she came to view the sexual relationship as a whole as having been exploitative. That was, on the evidence before me, the basis on which she alleged that she had been raped.
- 98) Pulling all the threads together, and viewing it in the round, I reminded myself that the burden was on Mrs B to prove her allegations on the balance of probabilities, I find that she has not done so. I dismiss the allegation in its entirety.

### Physical violence

99) There are also allegations of physical violence. Specifically, in her first statement, it was said that:

- (i) When Mrs B was about three months pregnant with K, so in about April 2020, there was an incident when Mrs B took from Mr A one of his two mobile phones. She did so because she was suspicious about why he had two phones, and she feared that it was because he was cheating on her. There was a fight between them during which Mr A threw her onto the bed and straddled her body. He also punched her in the face with a closed fist, although this left no mark.
- (ii) There was an incident of violence on the night of 17<sup>th</sup> November 2022, the date on which the parties finally separated. The parties were living together in a rented house in Oldham at the time. Mrs B described her having gone there as being a last attempt to save the marriage. Mr A was filming himself, and he was saying that he needed help because Mrs B was hitting him. She spoke to her mother who advised her to leave because he was “plotting something”. She states that he deliberately opened a door so as to hit her in the back. He pushed her with one hand, and grabbed her left wrist by the other. He also grabbed K by the wrist, and he threatened to hit her. She went to the mosque to seek help and advice. The lady there advised her to return to the family home, and to seek help from the police. Shortly after she arrived back there, the police came having been called by Mr A. They arrested Mrs B for assaulting Mr A. He alleged that she had punched him in the face, causing his lip to bleed, and that she had also strangled him. After she gave her account, the police also arrested him.

100) There were four further allegations of physical violence in Mrs B’s second statement:

- (i) there was an incident in 2021 when Mr A burnt her left wrist with a lit cigarette;
- (ii) there was an incident in 2020 when Mr A threw hair straighteners at her, causing burning to her arm;
- (iii) there was a further incident in 2020 when he threw a hot water bottle at her with the lid loose as a result of which hot water splashed onto her arm, scalding her; and
- (iv) there was an incident on 25<sup>th</sup> September 2022 when Mr A pushed her, causing her to bang her right knee on the bed rail.

101) There are a number of difficulties with these allegations. In general terms, the reservations that I have expressed in respect of the allegation of sexual coercion apply equally to this. Again, they were allegations raised at a late stage, following the breakdown of the marriage, with no adequate explanation for why that was. Again, I have to question why Mrs B made no efforts to protect herself or her children, and why she engaged in the post-separation behaviour that she did such as moving down to Oldham in

September 2022, and returning to the home after the alleged violence in November 2022. Even allowing for the cultural context, this is difficult to understand in the context that arises here of allegedly extreme violence and rape. All of this substantially undermines the account she now gives.

- 102) The first incident is, taken at face value, one which reflects well on neither of the parties. On Mrs B's own account, she initiated the incident by snatching one of Mr A's mobile phones. Whatever the reason she felt she had for doing so, that was an aggressive and provocative act.
- 103) The reason given, that Mrs B feared Mr A had it because he was cheating on her is revealing. It demonstrates a toxic lack of trust at a very early stage in the relationship. This was not, putting it mildly, a couple who, early in their married life, had a positive relationship. I have already set out above the reasons why Mrs B may well have felt suspicious and insecure. I can readily understand why Mr A would have reacted angrily to his phone being snatched in this way. Some elements of the account seem improbable on the face of it. I struggle to understand how a punch to the face with a closed fist could have left no mark or bruising of any kind.
- 104) The evidence leads me to conclude that, putting this at its highest, there was an unpleasant scuffle between the parties. Mrs B started it by snatching the phone, but Mr A shared responsibility because he created the context in which she felt unloved, fearful and suspicious. There followed a scuffle in which both participated. It seems probable to me that Mrs B subsequently embellished her account to add in details to present the incident as one in which there was serious violence. The evidence does not support that. The behaviour of both parties was poor.
- 105) The account of the alleged incident on 17<sup>th</sup> November 2022 given by Mr A was that he was out that day, trying to resolve a problem with his car whilst Mrs B was trying to locate him. He described her as angry and persistent, and he asserted that, when he came home, she accused him of having an affair, and she said that she wanted a divorce. He said that she punched him, and she grabbed him by the throat. He denied having assaulted her. He said that he then called the police.
- 106) I struggle with Mrs B's account of this incident. The background lies in her decision to relocate to Oldham is problematic against the background of alleged abuse. I recognise her account is that she felt under pressure to try to salvage her marriage given the cultural pressures. Even allowing for that, it is a difficult decision to understand against the background of physical, sexual and emotional abuse that she gives. It is still more difficult to understand why, having left the property that evening following the alleged assault against her and K, she would have returned there. The explanation that she gave of what was said by the woman in the mosque makes little sense in the context that arises here. On her own account, she had other options such as returning to Walsall or going to a hotel for the night, either of which would have been more satisfactory.

- 107) I have no direct evidence for the events of the day beyond the parties' own. It seems to me that the most probable sequence of events was broadly as described by Mr A. He was out for the day. Mrs B felt angry and distressed by his absence. Although he chooses to present himself as being wholly innocent, it appears to have been another occasion when he absented himself, and he was unresponsive to Mrs B when she tried to contact him. That understandably led to her being angry and distressed. Against that backdrop, I consider it likely that matters unfolded much as he described in his statement.
- 108) In respect of the three alleged burning incidents, I do have to wonder why it was that Mrs B did not mention them at all until she filed her second statement. She said that she forgot to do so. That was wholly inadequate as an explanation for not mentioning three such serious assaults, particularly as it is her case that they caused her scarring to the arm such that, she told me in her evidence, she was upset to look at that arm because it was a physical reminder of the abuse she had experienced.
- 109) Mrs B showed me during the hearing the marks to her arm which she alleged were the result of the three burning incidents. There were visible patches of slightly discoloured skin. I had no medical evidence to assist me in interpreting the marks. At the risk of being obvious, I am not a medical expert, and I am wholly unqualified to comment on the cause or age of the marks that Mrs B showed me. At its highest, all I could say is that the marks might have been caused as she described.
- 110) The difficulty is that, on the evidence before me, there were two other incidents that could have left marks of this kind. The first was in 2019 when Mrs B sought medical treatment having accidentally scalded herself with water that leaked from a hot water bottle. That incident could not have been Mr A's fault because he was still in Pakistan at the time. The 2019 incident was markedly similar to the alleged 2020 incident when she claimed that Mr A had scalded her arm that way. It was the left forearm on both occasions. Mrs B initially denied the earlier incident in 2019 until taken to the relevant entry in her medical notes after which she accepted it. There was also a documented incident in 2020 when Mrs B sought treatment after chip fat splashed that same arm. Even if the discolouration she showed me was the legacy of burns, it does not follow that because Mr A assaulted her in the way she now alleges, and these other episodes would explain it.
- 111) I am also struck by the level of coincidence involved in one of Mr A's alleged assaults so closely replicating the accidental injury caused by the hot water bottle, even to the extent of the same injury site. It is possible, but it seems unlikely.
- 112) The incident with the hair straighteners has an element of improbability. As was pointed out on cross-examination, hair straighteners are designed to minimise the risk of accidental injury for very obvious reasons. They are enclosed in a plastic sheath for that reason. It seems unlikely that throwing

them would cause a burn as alleged. Freak accidents can happen, of course, but it seems unlikely.

113) There is no direct evidence so far as the alleged cigarette burn, and the bruising caused when Mrs B banged her right knee is concerned. In respect of those, I could only consider it through the prism of general credibility. In my view, whilst Mrs B was reliable in her account of Mr A as neglectful and exploitative, she was not so in her account of more active abuse on his part.

114) I have considered the photographs that were exhibited to her statement of purported injuries. The photographs are undated, and their provenance is unclear.

115) Again, I remind myself that the burden of proof lies on Mrs B. I find that it has not been discharged, and I dismiss the allegations.

#### Threatened removal from the jurisdiction

116) It is alleged that Mr A threatened to remove K to Pakistan. He denies that. I find that the allegation is not made out. I find that for the following reasons:

- (i) Again, this is a matter where I have no direct evidence, and so I am reliant on general credibility. In those terms, Mrs B generally was not a particularly reliable witness of fact.
- (ii) The threat to remove K to Pakistan is problematic in terms of Mr A's desire to remain in this country. As I have found, he exploited Mrs B for immigration advantage. Since she is no longer supporting his application for leave to remain, he can no longer seek status as the partner of a British national. To remain, he is reliant on the fact that he is the father of two British national children. The last thing he would be likely to want to do is remove them to Pakistan because that would undermine his own position.

#### **Further findings – immigration and Mr A's motivations**

117) I have considered whether there are further findings that I need to make above and beyond those identified already in this judgment. There is one additional finding that I make. That is that immigration status remains a live issue for Mr A. In the papers, there is an email from his immigration solicitors dated 1<sup>st</sup> July 2024. He made an application on 1<sup>st</sup> September 2022 before his initial leave to remain expired. That was as the partner of a British national. Since Mrs B withdrew her support, he was pursuing a claim under article 8 of the European Convention on Human Rights as a father.

118) During the course of proceedings, I have directed at each stage that Mr A provide evidence from the Home Office about his immigration claim. He has never done so. He has provided various excuses for that. He has denied that he has documents that would show his current status. I do not believe that. As

a former judge of the First-tier Tribunal (Immigration and Asylum Chamber), I am well aware that the Home Office would have issued him with status letters to confirm his status, together with a biometric residence card. I pointed that out during the fact-finding hearing, and directed him to produce them. He did not do so. His persistent non-compliance with my orders about this smacks of concealment.

119) In the course of investigating the circumstances to prepare the section 7 report that I am likely to direct, consideration will need to be given to Mr A's motivation for wanting to see the children. It is a matter of fact that, at this stage, he is unable to satisfy the immigration rules. His only basis for remaining in this country is outside the rules under article 8 of the European Convention on Human Rights on the basis that he is the father of two British national children.

120) Section 117B(6) of the Nationality Immigration and Asylum Act 2002 (as amended) provides that:

In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

- (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
- (b) it would not be reasonable to expect the child to leave the United Kingdom.

121) It is not capable of dispute, therefore, that being able to demonstrate a genuine and subsisting relationship with these children would confer immigration advantage on Mr A. It does not, of course follow that this is his sole reason for seeking to spend time with them. It may be that he is motivated primarily by love for them with any immigration advantage being merely a happy by-product. It would, however, be naïve to ignore the possibility that cynical self-gain is a significant factor here. The matter needs to be explored with care.

### **Summary of findings**

122) I have considered whether there are further findings that I need to make above and beyond those identified already in this judgment. I do not consider that there is. In summary, I find that:

- (i) the allegations of sexual misconduct were not made out;
- (ii) the allegations of physical abuse were not made out;
- (iii) the allegation of coercive control were not made out;
- (iv) the allegations of threats to remove the children were not made out;
- (v) Mr A did exploit Mrs B for immigration advantage; and
- (vi) Mr A was neglectful of Mrs B and, by extension the children, during the currency of the relationship, frequently absenting himself, sometimes for prolonged periods.

### **Reservation of the case to me**

- 123) Having heard the case at the fact-finding hearing, it is critical that there should be continuity and consistency for future hearings. For that reason, I am reserving all future hearings to me.

### **What happens next?**

- 124) Plainly, I have made significant findings in this judgment. The question is where we go from here. It is an established principle of case law that findings of this kind are not determinative of child arrangements, but the fact that they have been made is a significant issue to which careful regard must be had in deciding what the arrangements should be, and how they should be managed. I will invite submissions from the advocates at the next hearing as to how best matters should be moved forward, and as to what they propose for the interim period between now and any further hearings. Those submissions must be founded on the findings made.

### **Closing comments**

- 125) Before concluding, I should record my gratitude to a number of people. The first is the parties from whom I heard evidence. There is also Ms Ketley and Mr Spollon for their professional and constructive approach to the hearing, which helped make it less difficult for both parents than it might otherwise have been. I am also grateful for their comprehensive submissions.
- 126) I am also grateful to the parents themselves for their engagement in the hearing before me. I know that cannot have been easy for either of them. It is much appreciated.

DJ O'Hagan

28<sup>th</sup> February 2025