Neutral Citation Number: [2021] EWHC 1191 (Fam)

Case No: MA20P02495/MA20C00280

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Sitting Remotely

Date: 11/05/2021

Before:

THE HONOURABLE MR JUSTICE MACDONALD

- -

Between:

Manchester City Council	**Applicant**
- and -	
D	**First Respondent**
-and-	
T	**Second Respondent**
-and-	
H, E and M	**Third, Fourth and Fifth Respondents**

- -

Ms Louise Harvey (instructed by **Waddington & Son**) for the **Applicant**
Ms Hilary Lennox (instructed by **Abbey Solicitors**) for the **First Respondent**
Mr Damian Sanders (instructed by **Zacharia & Co Solicitors**) for the **Second Respondent**
Ms Nazmun Ismail (instructed by **Alfred Newton Solicitors**) for the **Third, Fourth and Fifth Respondents**

Hearing date: 21 April 2021

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic. Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be at 10.30am on 11 May 2021.

....

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

1. This case raises the question of how the court should treat an application by the local authority pursuant to FPR 2010 r.29.4 for permission to withdraw care proceedings under Part IV of the Children Act 1989 where the parents have abducted the children who are the subject of those proceedings from the jurisdiction of England and Wales and, following all reasonable efforts being made by the court, it proves impossible to secure the return of the children to this jurisdiction within a timescale commensurate with the care proceedings.

2. In this case the court is concerned with the welfare of H aged nine, E aged six, and M aged three. Those children are represented through their Children's Guardian, Ms Angela Rumble, by Ms Nazmun Ismail of counsel. The children are believed currently to be in Pakistan. The applications before the court with respect to the children comprise an application in wardship, an application for summary return orders under the inherent jurisdiction and an application for care orders under s.31 of the Children Act 1989. Those applications are brought by Manchester City Council, represented by Ms Louise Harvey of counsel. The mother of the children is D (hereafter 'the mother'), represented by Ms Hilary Lennox of counsel. The mother has declined to attend the hearing today. She is believed currently to be in Pakistan. The father of the children is T (hereafter 'the father'), represented by Mr Damian Sanders of counsel. The father has not attended this hearing and is believed currently to be in Italy. Both parents are Pakistani nationals. It is understood that both parents also hold Italian passports.

3. On 14 December 2020 I gave judgment on the application of the local authority for summary return orders under the inherent jurisdiction of the High Court. At the conclusion of that judgment I made an order requiring the mother to return each of the children to the jurisdiction of England and Wales from the jurisdiction of Pakistan within 14 days of the date of that order. In addition, I made a passport order with a view to securing the passports of the children when they re-entered the United Kingdom. Both the mother and the father attended that hearing, the mother by video link from Pakistan and the father by video link from Germany. Both parents were therefore on notice that the order had been made, both by hearing the order pronounced by the court and, in respect of the mother, by being sent subsequently a sealed copy of the order of the court. The parents have to date failed to comply with the order for summary return from Pakistan.

4. In circumstances where all subsequent efforts to secure the return of the children to this jurisdiction have failed, the local authority now applies for permission to withdraw the care proceedings in respect of the children pursuant to FPR 2010 r 29.4. The local authority however, submits that the children should remain wards of this court for the remainder of their minority in case it becomes possible later to secure their return to this jurisdiction. Whilst each parent has provided their respective counsel with limited instructions, it is clear that neither opposes the application of the local authority for permission to withdraw the care proceedings. On behalf of the mother, Ms Lennox further submits that it would be wrong in the circumstances of this case for the court to continue to ward the children and, in any event, wrong to ward them for the period contended for by the local authority. Albeit reluctantly, the Children's Guardian supports the local authority's application for permission to withdraw the care

proceedings and supports the local authority's submissions with respect to the continued wardship.

BACKGROUND

5. Care proceedings under Part IV of the Children Act 1989 were issued by the local authority on 20 March 2020 and the children were each made the subject of interim care orders in the care of their mother, with an exclusion requirement being put in place in respect of the father pursuant to s. 38A of the 1989 Act. The principal risk to the children which grounded the care proceedings was an alleged risk of harm arising out of domestic violence perpetrated by the father on the mother over a period of 11 years.

6. That alleged abuse is described in the local authority evidence as having included sexual abuse, financial abuse, physical abuse and emotional abuse by the father against the mother. The evidence filed in the care proceedings includes the following specific allegations:

   i) The father had been domestically abusive towards the mother throughout their marriage.

   ii) The allegations of domestic abuse made by the mother included that the father had regularly hit her in the face, had dragged her into the kitchen and held a knife to her throat in front of the children, had driven his car at high speed whilst with the mother and the children with the intention of scaring them and had controlled the family finances to the exclusion of the mother.

   iii) In November 2018 the mother had suffered a miscarriage and heavy bleeding after being pushed by the father, who thereafter refused to take her to hospital.

   iv) The father threw and broke objects in the family home in front of the children.

   v) The father threw a mobile phone at the mother's foot, injuring her and leaving a permanent scar.

   vi) The father made threats to kill the mother, including a threat to smash her head with a hammer, threats to kill the children and threats to kill himself.

   vii) In February 2020 the father held a portable radiator over the mother and threatened to burn her face with it.

   viii) The father sexually assaulted the mother and raped her vaginally, with incidents of rape being a regular occurrence.

7. Within the foregoing context, I note that the children were spoken to by Greater Manchester Police during the course of a criminal investigation into the father's conduct and stated that they had witnessed the father domestically abusing the mother in the family home. H and E stated that they were scared of their father and had asked him to stop. On a subsequent occasion, H described the father slapping the mother in the face and asserted that this happened often. Whilst the father was arrested in February 2020 the mother retracted her allegations and a prosecution was not pursued. However, during the course of the social work assessment in the care proceedings the

father conceded that some of the mother's allegations were true, although he asserted he could not remember which ones. During the course of the Initial Child Protection Conference held on 10 March 2020 the father is recorded as having admitted to raping the mother but asserted he thought this was permitted to do so because of his religious beliefs, believing he could have sex with the mother whenever he wished and even if she did not consent. The father made further concessions with regard to the allegations levelled at him by the mother in his statement filed within the care proceedings.

8. Subsequent to the issuing of care proceedings on 20 March 2020 the local authority undertook a comprehensive programme of assessment of the parents. The father was assessed to continue to pose a significant risk to the children in the circumstances I have outlined in the foregoing paragraphs. The assessment of the mother however, was positive. In the circumstances, the local authority's care plan approaching the conclusion of the care proceedings was for the three children to remain in their mother's care under a court order, the nature of which was to be determined at the final hearing, the local authority contending that the order should be a supervision order under s.31(1)(b) of the Children Act 1989. Whilst the Children's Guardian agreed that the children should remain in the care of the mother, she contended that this should be under the auspices of a final care order rather than a supervision order.

9. I pause to note that the practice of placing children at home under final care orders has recently been the subject of some scrutiny by the Public Law Working Group chaired by Keehan J. That scrutiny has had added significance with respect to cases decided on the Northern Circuit in circumstances where it is said that this Circuit has a higher than average number cases in which the placement of children at home under a care order is the final welfare outcome endorsed by the court. In this context, I note the following important passage from the best practice guidance contained at Appendix F of the final report of the Public Law Working Group published with the imprimatur of the President of the Family Division at the beginning of March 2021:

> "**Care order on a care plan of the child remaining at home**
>
> [33] There may be good reason at the inception of care proceedings for a child to remain in the care of her parents/carers/family members and subject to an ICO pending the completion of assessments.
>
> [34] The making of a care order on the basis of a plan for the child to remain in the care of her parents/carers is a different matter. There should be exceptional reasons for a court to make a care order on the basis of such a plan.
>
> [35] If the making of a care order is intended to be used a vehicle for the provision of support and services, that is wrong. A means/route should be devised to provide these necessary support and services without the need to make a care order. Consideration should be given to the making of a supervision order, which may be an appropriate order to support the reunification of the family.
>
> [36] The risks of significant harm to the child are either adjudged to be such that the child should be removed from the care of her parents/carers or some lesser legal order and regime is required. Any placement with parents under

> an interim or final order should be evidenced to comply with the statutory regulations for placement at home.
>
> [37] It should be considered to be rare in the extreme that the risks of significant harm to the child are judged to be sufficient to merit the making of a care order but, nevertheless, the risks can be managed with a care order being made in favour of the local authority with the child remaining in the care of the parents/carers. A care order represents a serious intervention by the state in the life of the child and in the lives of the parents in terms of their respective ECHR, article 8 rights. This can only be justified if it is necessary and proportionate to the risks of harm of the child."

10. Notwithstanding the proposed final care plans for the children to remain in the care of their mother, on 3 November 2020 the school which each of the children attended emailed the local authority to inform them that the children were not in school, the children last having been present on 22 October 2020 and the mother having telephoned the school on 23 October 2020 to assert that the children were too unwell to attend. It transpired subsequently that the parents had, in fact, removed the children from the jurisdiction in breach of the interim care orders in place and notwithstanding that the children continued to be the subject of proceedings. Whilst these actions were not strictly a breach of the exclusion order under section 38A of the Children Act 1989, they were certainly not in accordance with the spirit of that order, designed as it was to ensure that the children were not exposed to unsupervised contact with their father given the risk of significant he was assessed to pose during the course of the proceedings, a risk of significant harm the mother had claimed that she had accepted.

11. By application dated 13 November 2020 the Local Authority applied for permission to invoke the inherent jurisdiction of the court and for summary return orders with respect to each of the children. When the matter came before the court on 9 December 2020 the mother was directed to file a statement. The statement subsequently filed by the mother asserted that that the children were safe and well and she requested a further assessment of her and the children be undertaken in Pakistan. She confirmed that she had no intention of returning to the United Kingdom and that her settled intention was to remain in Pakistan with the children and her family but separate from the father. The application for return orders under the inherent jurisdiction came before the court for final hearing on 14 December 2020.

12. During the course of my *ex tempore* judgment at the conclusion of the hearing on 14 December 2020 I made the following findings regarding the abduction of the children from this jurisdiction having heard evidence via video link from both parents and having heard both parents being cross-examined:

> "[7] Whilst giving evidence before this court, both parents sought to deflect blame for the plan to leave England onto others in the community in Manchester, the mother going as far as seeking to suggest that she had had no contact with the father save through a third party or third parties before they met at Manchester airport at the point at which they left the jurisdiction. I do not accept that evidence.

[8] Both parents also sought to portray themselves as confused about the effect of a care order, that being the recommendation of the Children's Guardian as the appropriate way to finalise the proceedings, albeit again with the children remaining in the care of the mother.

[9] Both parents contend that they believed that the making of a care order would necessarily result in the removal of the children. In her statement the mother claims as follows:

> "However, I became very worried at the end of the case when the guardian said she wanted to ask the court for a care order. I was worried I was going to lose the children when the case went to court after half-term. I really genuinely thought that when the court makes a care order that the children are put in foster care and then adopted. I really did not know that the children could stay with me under a care order. It was such a frightening time for me, and I was really panicked."

[10] However, I reject the mother's assertion that she believed the children would be removed. She admitted during the course of cross-examination that prior to the removal of the children from the jurisdiction she was aware of the positive outcome of her assessment and of the care plan for the children to remain in her care, and had available to her the advice of her solicitor in the care proceedings.

[11] Within this context, whilst there is insufficient evidence to make a finding at this interim stage, the court was left with the distinct impression that the mother had been persuaded by the father - perhaps in concert with associates of his - that a care order would result in the removal of the children from her care and that she should flee the UK to Pakistan, rather than the mother herself being confused about the effect of the care order in circumstances where it was plain on the face of the papers that all those concerned with the children, and indeed all professionals involved in the proceedings, were of the clear view that her assessment was positive and that the children would be remaining in her care. The mother at the very least in any event proved herself willing to co-operate with the father in the abduction of the children and to allow him to be with the children whilst the family did so, notwithstanding his history of domestic abuse, the impact of that on the welfare of the children, and the existence of an exclusion order designed to protect the children and the mother, albeit again accepting that the removal of the children in the company of the father was not strictly a breach of the order itself.

[12] The mother's efforts in this regard extended, on her own admission during the course of evidence, to lying to the social worker and doing all that she could to disguise the whereabouts of the children and herself until such time as they reached Pakistan. The mother explained to me that she had adopted this course of action in order that the local authority were kept in the dark as to the whereabouts of the children in circumstances where the mother was clear that she knew the local authority would not agree to the removal of the children from this jurisdiction.

[13] Within that context, the mother and the father admit flying to Shannon Airport together before together flying on to Milan with the children after spending a number of days in Ireland. Whilst both parents sought to suggest that the father was not with the mother and the children during this period save when at these respective airports, I consider that to be unlikely.

[14] The mother is now in Pakistan with the children, it is said in the company of the maternal grandmother and the maternal uncle. The father contends that he remains in Germany, although there is no independent proof of that. He further contends that whilst there is nothing stopping him from entering Pakistan, he has no intention of doing so, and indeed has been threatened by the mother's family in this regard.

[15] Whilst the mother in her statement contends that she appreciates that the father is a risk, during her evidence before this court she contended that he did not present a risk during the course of the period he accompanied the mother and the children from Europe. Indeed, there was a stark disparity between what it is said the assessment of the local authority demonstrated in terms of the mother's insight into the risk that father presented and her evidence before this court.

[16] In the circumstances I have outlined, on the parents' own evidence the following conclusions can be drawn:

(a) the mother was aware that the care plan of the local authority was the rehabilitation of the children to her care and aware that notwithstanding the Guardian was recommending a care order, the Guardian too considered the children should remain in the care of the mother;

(b) following discussion with the father or liaison through a third party, the mother chose to or was persuaded by the father to remove the children from the jurisdiction;

(c) the mother and the father acted together to remove the children from the jurisdiction, notwithstanding the existence of care proceedings, an interim care order and an order pursuant to section 38(a) of the Children Act 1989;

(d) the mother travelled to Ireland and then to Italy with the father and the children, notwithstanding the risk he had been assessed to pose to the children, and that the mother had during the course of proceedings apparently indicated that she recognised that risk and would act accordingly; and

(e) the mother and the father sought to mislead professionals as to the whereabouts of the children until they were out of the jurisdiction and beyond the reach of the legal instruments that govern child abduction as between member states of the EU."

13. Within this context, and as I have noted, having undertaken the swift, realistic and unsentimental assessment of the best interests of each of the children as required by the

House of Lords in *Re J (A Child) (Child Returned Abroad: Convention Rights)* [2006] 1 AC 80, I was satisfied that it was in each of the children's best interests for an order to be made requiring the mother to return the children to the jurisdiction of their habitual residence, namely England and Wales. My reasons for making return orders were expressed as follows in my *ex tempore* judgment:

> "[21] First, at the time of their abduction, the children were the subject of ongoing care proceedings to determine their welfare. Those proceedings had been ongoing for some time and were nearing conclusion. Indeed, they had come at that point in time to the conclusion that the children should continue to reside with their mother. Both parents understandably rely on the fact that the recommendation in those proceedings was that the children should remain in the care of their mother. Thus, the argument goes, there is no difficulty in concluding at this point in time that the children should be allowed to remain in the care of their mother in Pakistan, notwithstanding that the mother's conduct in taking the children to that jurisdiction in breach of the court orders in place in respect of them was reprehensible.
>
> [22] The difficulty with that submission, of course, is that whilst the mother was assessed in the context of the proceedings to be able to recognise the risk presented by the father, to be able to maintain separation from the father in the children's best interests and accordingly to be able to act to prioritise the children's best interests ahead of her relationship with the father, those assessments fall to be revisited now in light of the mother's actions from 3 November 2020 onwards. On that date and in express contrast to the outcome of the local authority's assessments, I am satisfied mother failed to act in a manner commensurate with the assessed risk presented by the father, failed to demonstrate her ability to remain separated from him, and failed to act to prioritise the welfare of the children when she colluded with the father to abduct the children during the course of the proceedings from the jurisdiction.
>
> [23] Within that context, secondly, I am satisfied that the court must take account of the risk the father was assessed during the course of those proceedings to present. As I have summarised in the introduction to this judgment, the allegations concerned questions of serious domestic violence over an extended period of time extended to allegations of sexual abuse, physical abuse and financial control and coercion. The father to his credit, it is clear from those proceedings and indeed evidence today, showed some insight by way of limited admissions regarding his conduct and the effect of that conduct on the children.
>
> [24] However, it is further clear that the father has done no work at this point in time to deal with his issues of anger. I am further satisfied by virtue of her conduct on 3 November and thereafter that, notwithstanding the assessment of the mother, she demonstrated a marked lack of insight into the risks presented by the father in seeking his assistance and/or conspiring and colluding with him in the abduction of the children from the jurisdiction, and failed thereby to prioritise the best interests of the children in light of the assessed risk presented by the father.

[25] Whilst the mother asserts that the parents are now separated and cannot resume their relationship by virtue of Islamic law, I am satisfied that there is a very real possibility that the father may well return to Pakistan. If that were to occur, it is unclear to me that this court can rely on the assurances of the parents in relation to their relationship in light of their conduct over the past number of weeks. In particular, I have regard to the fact that the father is currently abroad, having left the UK with the mother and the children as a family. It is still not clear or confirmed whereabouts in the world the father is. I am satisfied that in light of the deception perpetrated by the parents on the local authority and indeed the court, there must be a real possibility that the father will also return to Pakistan where his family are located, albeit in a different part of that jurisdiction. As I have noted, the parents left the UK together, travelled together to Milan, and did so with the shared intention of frustrating the conclusion of the care proceedings in this country, which conclusion was that the mother should care for the children alone. There must in my judgment be a real possibility or risk that the family will be reconstituted in Pakistan with the resumption of risks that grounded the care proceedings in this country in the first place.

[26] Given the parents' deceptive conduct over the last month or so, this court is not able regretfully to be in a position where it can accept the assurances of either the mother or the father that this will not happen either by the father not returning to Pakistan or the mother seeking to exclude the father from her life if he does so. The reasons that I am unable to rely on those assurances will be obvious in light of the evidence given by the mother, in particular, regarding her deception of the social worker.

[27] I am further satisfied that the risks as assessed during the care proceedings stemming from the father are now heightened by what I am satisfied, for reasons I have already referred to, is a lack of insight demonstrated by the mother into the risks which ground these proceedings. Notwithstanding the history of this matter, she clearly failed to recognise she had put her children into a situation of heightened risk by colluding with the father and travelling with him and the children to Pakistan. Whilst the mother now undertakes to divorce the father in Pakistan, again the court can attach little weight to the assurances of the mother.

[28] In those circumstances, notwithstanding the positive assessment of the mother during the care proceedings and taking account of matters that have happened since 3rd November, the court is faced with a situation where the mother has abducted the children from the jurisdiction in which protective proceedings were taking place, and the court has no confidence that the father, in respect of whom the risk was grounded regarding those proceedings, will not return to Pakistan.

[29] I have, of course, borne carefully in mind in deciding whether that situation requires the return of the children to this jurisdiction in their best interests that the mother now contends that it would cause further disruption to the children should the court now order them to return to this jurisdiction in circumstances where they are settled, she would say, with her and her

family in Karachi. Having carefully considered that particular issue, however, I am not satisfied that this should prevent a return order being made. In particular, I bear in mind that the children have only been out of the jurisdiction in Pakistan for a little over one month, after living for the past four years at least in this jurisdiction, during which time I am satisfied, not least on the mother's own evidence, that the children were settled.

[30] It is the case that the mother does not have family in England, and she now seemingly advances a permanent placement with her for the children in Pakistan as the proper welfare outcome for the children this this case. In her statement she says as follows:

> "All my family is in Pakistan. As my separation from my husband is permanent, I do not have any ties in England. It is only natural that I should want to remain in Pakistan, where all my family is and where I will get support. I was born in Pakistan, and only went to live abroad due to my marriage. But as my marriage is over, I wish to bring up my children in Pakistan where I have all my families and ties."

[31] However, I am not able to accept on the evidence before the court that this position of the mother represents a considered conclusion based on her children's welfare, rather than an *ex post facto* justification for her abduction of the children during the course of the proceedings. Prior to that abduction on 3 November, the mother had sought settled status in the UK under the EU Settlement Scheme and was taking advantage of support from the local authority to apply for permanent leave to remain under the domestic abuse exception. Indeed, the court has now seen documents which grant the mother and the children free settled status in the UK under the EUSS. The children were settled in this jurisdiction at home and in school, and the mother had evinced no intention during the course of the care proceedings of a wish to return to Pakistan with the children as the proper assessed outcome of those proceedings.

[32] In those circumstances I am satisfied that the removal of the children to Pakistan was not because the mother sought in the long term to return to Pakistan permanently as the proper outcome of the children's long-term welfare. Whilst it is now convenient to the mother to represent this as the position that is most advantageous to the children, only some two months ago she was seeking a very different outcome in this jurisdiction for her children.

[33] Finally, I also bear in mind that the welfare outcome for the children remains to be determined. It may well be that the mother now seeks to argue that that welfare outcome should be the placement with her in Pakistan with her family. However, I am satisfied that whatever argument ultimately succeeds, the welfare arguments that fall to be determined are properly determined in this jurisdiction. First, the children are habitually resident here; second, this court therefore has jurisdiction in relation to matters of parental responsibility; and third, the court is already seized of proceedings in respect of the children. All the evidence concerning the children's welfare by which the court will assess that welfare exists in this jurisdiction. There

> is no evidence that the Pakistani authorities have been asked by the mother to take protective measures for the children with respect to the father. There is no evidence that proceedings have been commenced in Pakistan with respect to the children. In those circumstances all matters point to this being the most convenient forum in which the welfare of the children is to be determined.
>
> [34] Whilst it may be that the further assessments to be undertaken in these proceedings will now require the option of placement with the mother in Pakistan to be examined, again it is this jurisdiction that is best equipped to undertake those assessments in circumstances where all evidence to date of the difficulties that grounded the care proceedings exist in this jurisdiction."

14. As I have noted, the parents have serially failed to comply with the summary return order made by the court in respect of each of the children. When the matter came back before the court on 18 January 2021 the mother had had failed to return the children to this jurisdiction and had refused to provide her solicitor with the current address for her and the children. The mother reiterated her intention to remain in Pakistan. Both parents failed to attend a further hearing held on 1 March 2021. Ms Lennox informs the court today that her instructions remain that the mother has no intention of complying with the order of the court for the return of the children from Pakistan. There is likewise no indication that the father intends to seek or facilitate the return of the children to this jurisdiction.

15. Within this context, since the return orders were made the court has had sight of a letter purporting to be from a lawyer in Pakistan which states that the mother is with the children in the company of her mother and other members of her family. The children have also been seen with the mother in video calls made by the mother. At this hearing the court was again informed by Ms Lennox that the mother remains in Pakistan with the children who, the mother contends, are now enrolled in school and are happy and thriving. As I have noted, the father contends that he has returned to Italy. At this hearing the court was again informed by Mr Sanders that the father has not joined the children and the mother in Pakistan, has no intention of doing so and remains in Italy. Mr Sanders relies in this respect on phone records that show that when the father briefly dialled into the hearing on 1 March 2021 he did so from a number that displayed the country code for Italy. There is no evidence before the court to indicate that the father has entered or attempted to enter Pakistan.

16. Since this court made return orders under the inherent jurisdiction the local authority has continued to work closely with the Greater Manchester Police (hereafter 'GMP') to secure the return of the children to this jurisdiction. GMP are treating this case as one constituting a criminal offence of child abduction. The court has been informed that GMP are in turn working closely with the UK Border Agency, Interpol and the police in Pakistan in an attempt to recover the children to this jurisdiction. On 10 March 2021 a Strategy Meeting was convened between the local authority and GMP. At that Strategy Meeting GMP confirmed that it awaited updates from Interpol in Pakistan. GMP were unable to provide a timescale for the outcome of its efforts to secure the return of the children, dependent as it is on the actions of the Pakistani police and authorities. In GMP's assessment however, it is unlikely that the mother and the

children will return to the United Kingdom in a timely manner and certainly not within a timescale consistent with that applicable to care proceedings.

17. Within the foregoing context, whilst the children currently remain the subject of interim care orders pursuant to s.38 of the Children Act 1989 within ongoing care proceedings, the local authority is not at present able to discharge its statutory obligations towards the children. As I have noted, within this context, the local authority seeks permission to withdraw its care proceedings, with the children remaining wards of the court for the duration of their minority.

THE LAW

18. The law governing applications for permission to withdraw care proceedings is well settled and can be summarised as follows.

19. Pursuant to r. 29.4(2) of the FPR 2010, a local authority may only withdraw an application for a care order with the permission of the court. To date, two categories of cases have been identified. First, those cases in which a local authority is unable to satisfy the threshold criteria for making a care order or supervision order set out in s.31(2) of the Children Act 1989. Second, those cases in which it remains possible for the local authority to satisfy the threshold criteria for making a care order or supervision order.

20. Where an application for permission to withdraw is mounted in proceedings in which the local authority is unable to satisfy the threshold criteria pursuant to s 31(2) of the Children Act 1989 , then that application *must* succeed as the jurisdictional gateway to the making of a care or supervision order remains closed. In *J, A, M and X (Children)* [2014] EWHC 4648 (Fam) at [30], Cobb J considered that in order for a case to fall into the category of cases in which the local authority is unable to satisfy the threshold criteria, and hence into the category of cases in which the application for permission to withdraw must be granted, the inability on the part of the local authority to satisfy the threshold criteria should be "obvious".

21. However, where on the evidence before the court the local authority could satisfy the threshold criteria, then the court must consider whether withdrawal is consistent with the welfare of the child such that no order is required pursuant to s 1(5) of the Children Act 1989 notwithstanding that the jurisdictional gateway to making a care order or supervision order is open or could be opened (see *Redbridge LBC v B and C and A (Through His Children's Guardian)* [2011] 2 FLR 117). Within this context, it is important to note that an application made pursuant to FPR r 29.4 involves the court determining a question with respect to the upbringing of a child for the purposes of s 1(1) of the Children Act 1989 . In the circumstances, when considering an application for permission to withdraw an application for a care order, the child's welfare is the court's paramount concern (see *London Borough of Southwark v B* [1993] 2 FLR 559 at 572). However, an application for permission to withdraw proceedings falls outside the scope of s 1(4) of the Children Act 1989 and therefore there is no requirement to have regard to the welfare checklist in s 1(3) of the Children Act 1989, although s.1(3) may well provide a useful analytical framework when considering the merits of the application.

22. With respect to the second category of cases, in *J, A, M and X (Children)*, Cobb J considered the proper approach to an application for permission to withdraw care proceedings is first to determine whether or not the court should proceed with a fact-finding exercise by reference to the factors set out by McFarlane J (as he then was) in *A County Council v DP, RS, BS (By the Children's Guardian)* [2005] 2 FLR 1031. Those factors, which in their totality embody the concepts of both necessity and proportionality, are as follows:

    i) the interests of the child (relevant not paramount);

    ii) the time the investigation would take;

    iii) the likely cost to public funds;

    iv) the evidential result;

    v) the necessity of the investigation;

    vi) the relevance of the potential result to the future care plans for the child;

    vii) the impact of any fact-finding process upon the other parties;

    viii) the prospects of a fair trial on the issue;

    ix) the justice of the case.

23. Having determined whether to conduct a fact finding exercise by reference to the factors set out in *A County Council v DP, RS, BS (By the Children's Guardian)* the court should then should then cross-check the conclusion reached having regard to the best interests test under s 1(1) of the Children Act 1989 in reaching its decision on the application for permission to withdraw proceedings. As this court noted in *A Local Authority v X, Y and Z (Permission to Withdraw)* [2018] 2 FLR 1121, the courts power under FPR r 29.4 to grant a local authority permission to withdraw proceedings constitutes, to paraphrase Cobb J in *J, A, M and X (Children)*, an objective and dispassionate check on whether the local authority should be entitled to disengage from proceedings.

24. The approach set out above was endorsed by the Court of Appeal in *GC v A Local Authority (A Child) (Withdrawal of care proceedings)* [2020] 4 WLR 92, Baker LJ holding as follows regarding the approach taken to applications for permission to withdraw since the decision of the Court of Appeal in *London Borough of Southwark v B* [1993] 2 FLR 559:

> "[17] Since then, the provision has been considered by judges of the Family Division in a number of cases at first instance, in particular in *A County Council v DP and others* [2005] EWHC 1593 (Fam) (McFarlane J, as he then was), *Redbridge London Borough Council v B and C and A* [2011] EWHC 517 (Fam) (Hedley J), *Re J, A, M and X (Children)* [2014] EWHC 4648 (Fam) (Cobb J), and *A Local Authority v X, Y and Z (Permission to Withdraw)* [2017] EWHC 3741 (Fam) (MacDonald J). The latter three cases were decided following the implementation of the Family Procedure Rules 2010 which, unlike their predecessors, include the overriding objective in rule 1.1.

> [18] For my part, I would endorse the approach evolved in these first instance decisions, which can be summarised as follows.
>
> [19] As identified by Hedley J in the Redbridge case, applications to withdraw care proceedings will fall into two categories. In the first, the local authority will be unable to satisfy the threshold criteria for making a care or supervision order under s.31(2) of the Act. In such cases, the application must succeed. But for cases to fall into this first category, the inability to satisfy the criteria must, in the words of Cobb J in *Re J, A, M and X (Children)*, be "obvious".
>
> [20] In the second category, there will be cases where on the evidence it is possible for the local authority to satisfy the threshold criteria. In those circumstances, an application to withdraw the proceedings must be determined by considering (1) whether withdrawal of the care proceedings will promote or conflict with the welfare of the child concerned, and (2) the overriding objective under the Family Procedure Rules. The relevant factors will include those identified by McFarlane J in *A County Council v DP* which, having regard to the paramountcy of the child's welfare and the overriding objective in the FPR, can be restated in these terms:
>
> (a) the necessity of the investigation and the relevance of the potential result to the future care plans for the child;
>
> (b) the obligation to deal with cases justly;
>
> (c) whether the hearing would be proportionate to the nature, importance and complexity of the issues;
>
> (d) the prospects of a fair trial of the issues and the impact of any fact-finding process on other parties;
>
> (e) the time the investigation would take and the likely cost to public funds."

25. It is clear from the foregoing authorities that the factors relevant to deciding whether withdrawal of the care proceedings will promote or conflict with the welfare of the child concerned and the overriding objective under the Family Procedure Rules are *not* exhaustive. Accordingly, and subject to the best interests of the child remaining the court's paramount consideration, the court is not precluded from taking into account other factors relevant to the welfare of the child concerned and the overriding objective under the Family Procedure Rules.

26. Within this context, I note again the decision of the Court of Appeal in *London Borough of Southwark v B* (a decision under the previous rule, which was expressed in similar but not identical terms). In that case a local authority had obtained an interim care order in respect of a child who had been admitted to hospital with suspected non-accidental injuries. On the day the local authority issued proceedings in respect of the sibling of that child the sibling was removed from the jurisdiction of England and Wales to Algeria by her paternal grandparents. The sibling was also made the subject of an interim care order and the local authority was granted leave to proceed under s 100(3) of the Children Act 1989 and the High Court made an order in the inherent jurisdiction

requiring the sibling to be returned to the jurisdiction by her parents. The return order was endorsed with a penal notice. In the context of a failure to return the child the father was found guilty of contempt of court and given a six month suspended sentence of imprisonment. The father appealed to the Court of Appeal and by the time the matter came before that court the local authority was not opposing the appeal and seeking the withdrawal of the care proceedings, the Court of Appeal having directed a medical report on the sibling which confirmed she was in good health. The application for permission to withdraw the care proceeding was opposed by the Children's Guardian. Allowing the appeal and granting permission to withdraw the care proceedings, Lord Justice Ward observed at 573D that:

> "The paramount consideration for any court dealing with a r 4.5 application is accordingly the question whether the withdrawal of the care proceedings will promote or conflict with the welfare of the child concerned. It is not to be assumed, when determining that question, that every child who is made the subject of care proceedings derives an automatic advantage from having them continued. There is no advantage to any child in being maintained as the subject of proceedings that have become redundant in purpose or ineffective in result. It is a matter of looking at each case to see whether there is some solid advantage to the child to be derived from continuing the proceedings…I would therefore be in favour of granting the authority's application for leave to withdraw [the sibling's] care proceedings. If circumstances should radically alter – if there should be a change of heart by the paternal grandparents, for example, leading to a voluntary return of [the sibling] to this country – there are ample procedures available for a fresh invocation, if need be at short notice, of the child protection procedures under the Children Act. That would be a more satisfactory result in my view for everyone, including [the sibling], than keeping alive proceedings that have no current efficacy and have lost the momentum of any support from the authority which initiated them."

DISCUSSION

27. With reservations, and on a balance, I have decided to grant the application of the local authority for permission to withdraw the care proceedings with respect to each of the children. I have further decided however, that the children will remain wards of court and that the wardship proceedings will be listed for a further hearing in six months' time to consider whether those proceedings should continue or should also be brought to a conclusion, having regard to any further progress made by GMP in the criminal investigation in concert with Interpol and the authorities and the police in Pakistan. My reasons for so deciding are as follows.

Application for Permission to Withdraw

28. Having regard to the evidence before the court I am satisfied that this is plainly a case in which the local authority could meet the threshold criteria for making a care or supervision order under s.31 of the Children Act 1989. The allegations I have summarised above have been reduced to a threshold document that is unhelpfully, and indeed disturbingly, anodyne having regard to the gravity of the allegations made by the mother and the extent of the admissions made by the father during the course of his

assessment and in his statement in the care proceedings, which admissions include rape. Notwithstanding this, it is plain that the incidents of serial domestic violence, sexual assault and coercive behaviour alleged by the mother and admitted in part by the father would, if proved formally before this court, readily meet the threshold set by s.31(2)(a) of the Children Act 1989.

29. In the circumstances, and having regard to the authorities I have summarised above, in considering the application of the local authority for permission to withdraw the care proceedings I must consider whether that course of action will promote or conflict with the welfare of the children, their welfare being my paramount consideration, and the overriding objective under Part I of the Family Procedure Rules. In doing so, I have considered the necessity of the investigation of the facts and the relevance of the potential result to the future care plans for the children, the obligation to deal with this case justly, whether hearing the case would be proportionate to the nature, importance and complexity of the issues, the prospects of a fair trial of the issues, the impact of any fact-finding process on other parties, the time the investigation would take and the likely cost to public funds.

30. Within the foregoing context, the particular difficulty presented by this case is that, leaving aside for the moment the unlawful abduction of the children by the parents to the jurisdiction of Pakistan, the questions posed in the paragraph above yield the answer that it *is* in each of the children's best interests, and consistent with the overriding objective, for the care proceedings to continue to final hearing before the court. In such circumstances, the local authority's application for permission to withdraw the care proceedings would ordinarily fail.

31. With respect to the necessity of the investigation, it is now clear that the local authority assessment of the parents failed to provide an accurate picture of their parenting ability and, in particular, the mother's capacity to protect the children from the risk of significant harm the father was assessed to present. The father was assessed during the course of the care proceedings to present a risk of physical, sexual and emotional harm to the mother and the children. It was further clear that the father had done no work to deal with his issues of anger. Within this context, and as I noted in my judgment of 14 December 2020, whilst the mother was assessed in the context of the proceedings to be able to recognise the risk presented by the father, to be able to maintain separation from the father in the children's best interests and accordingly to be able to act to prioritise the children's best interests ahead of her relationship with the father, the evidence now before the court indicates that there is, in fact, a stark disparity between the conclusions drawn by that assessment and what has now been demonstrated in terms of the mother's insight into the risk that father presents and her capacity to protect the children from that risk. In the circumstances, within the context of the extant care proceedings, it is plainly necessary now to investigate further the mother's parenting capacity in light of her actions from 3 November 2020 onwards. Were the court to be satisfied by that the mother cannot in fact be relied on to protect the children from the risk presented by the father then, equally plainly, this will necessarily have an impact on the final care plans for each of the children.

32. In circumstances where the evidence gathering and case management stage of the hearing has been completed and the matter was ready for determination, it can also be cogently argued that hearing the case would be proportionate to the nature, importance

and complexity of the issues, particularly in circumstances where there is now strong evidence that the assessment of the mother by the local authority, and the final care plans advanced on the basis of that assessment, *may* not provide a proper basis for safeguarding and promoting the children's welfare in the context of the risk the father has been assessed to present. Further, the parents would receive a fair trial within the proceedings, having been included fully in the process of evaluation and assessment during the course of proceedings and being represented by experienced legal teams within those proceedings. Given the stage the proceedings have reached, it can likewise reasonably be said that the case is ready for hearing and that the likely cost to public funds of the hearing will be modest and plainly justified given the amount of work that has now been undertaken in preparation for determination of the proceedings. Within the foregoing context, it is also reasonable to contend that proceeding to a hearing would be neither unjust nor have an adverse impact on the parties.

33. In these circumstances, and again leaving aside at this point the abduction of the children from the jurisdiction, I would have no difficulty in this case in concluding that withdrawal of the care proceedings at this stage *would* conflict with the welfare of the children and the overriding objective under FPR 2010 r.1.1. Or, to articulate the conclusion in the terms adopted by Ward LJ in *London Borough of Southwark v B*, that there *is* some solid advantage in this case to the children to be derived from continuing the proceedings.

34. However, the situation now faced by this court is that there *has* been an unlawful abduction of the children by the parents to the jurisdiction of Pakistan prior to the conclusion of the proceedings under Part IV of the Children Act 1989. Further, the children and the parents have not returned to this jurisdiction and there is cogent evidence that that outcome is unlikely to be secured within a timescale commensurate with the current public law proceedings. These developments are now settled fact and cannot, in reality, be left out of the equation.

35. As I have noted above, the factors relevant to deciding whether withdrawal of the care proceedings will promote or conflict with the welfare of the child concerned and the overriding objective under the Family Procedure Rules are not exhaustive and, subject to the best interests of the child remaining the court's paramount consideration, the court is not precluded from taking into account other relevant factors. Further, the factors set out in *A County Council v DP and others*, and reiterated by the Court of Appeal in *GC v A Local Authority (A Child) (Withdrawal of care proceedings)* are not ranked and will vary in relative importance from case to case depending on the particular facts of the case, the factors constituting, ultimately, a framework within which to answer the fundamental question of whether withdrawal of the care proceedings will promote or conflict with the welfare of the child concerned and the overriding objective under FPR 2010 r 1.1.

36. Within this context, it seems to me that the question now for this court is whether the fact of the abduction of the subject children to Pakistan, and the well evidenced difficulty in securing their return to this jurisdiction notwithstanding the steps taken by the court and the by the police to date, acts to alter the outcome of the analysis set out above with respect to the factors relevant to determining the local authority's application for permission to withdraw the care proceedings.

37. Notwithstanding the court making orders under the inherent jurisdiction for the summary return to this jurisdiction, which orders have attached to them penal notices, the parents have failed to return the children to the jurisdiction of England and Wales and, moreover, have repeatedly stated their intention not to comply with any order of the court. Further, whilst the GMP are treating this matter as a criminal offence of child abduction and have worked extremely hard in co-operation with Interpol and the authorities and police in Pakistan to recover the children, the considered assessment of GMP is that the process of securing the return of the children through those channels is likely to be a very protracted one, if it is successful at all.

38. In the foregoing circumstances, I further note that whilst Pakistan has acceded to the 1980 Hague Convention on the Civil Aspects of International Child Abduction, this accession has not yet been accepted by the United Kingdom, such that the Convention does not yet apply and cannot be utilised in this case. Although the UK / Pakistan Protocol was agreed between judges in England and Wales and judges in Pakistan in January 2003, which Protocol may be of assistance when a child is wrongfully taken to or retained in Pakistan and the taking parent either does not voluntarily agree to the child's return or does not comply with an order to that effect made in favour of the left behind parent by a court in England and Wales, the Protocol has not been incorporated into Pakistan law and it does not require any particular step or steps to be taken in that jurisdiction. In the circumstances, it does not provide a *directly* effective means of seeking to recover a child from the jurisdiction of Pakistan. The ability of the Protocol, and international judicial liaison, to assist in facilitating the return of the children is further curtailed in this case by the fact that there are no ongoing proceedings in the jurisdiction of Pakistan, in circumstances where this is a public law case brought by an English local authority rather than a private law dispute between a taking parent in Pakistan and a left behind parent in England.

39. In the foregoing circumstances, in my judgment the chances of securing the return of the children to this jurisdiction in a timescale commensurate with the statutory timescale for proceedings of this nature as set out in s.32(1)(a)(ii) of the Children Act 1989 is low. Whilst the court is able to extend the statutory timescale for care proceedings where necessary to enable the court to resolve the proceedings justly pursuant s.32(5) of the Act, in deciding whether to do so the court is required pursuant to s.32(6) of the Act to take account of any the impact revision to the timetable both on the child and on the duration and conduct of the proceedings. In the current circumstances, any extension would be an extension of unknown duration, with little by way of reliable evidence before the court to suggest a realistic end date. Further, and within this context, whilst the children remain the subject of care proceedings, and the subject of interim care orders pursuant to s.38 of the Children Act 1989, the local authority has statutory duties with respect to them as looked after children pursuant to s.22(1) of the Children Act 1989 and the Care Planning, Placement and Review (England) Regulations 2010. Whilst the children remain outside the jurisdiction the local authority is precluded from discharging effectively those statutory obligations.

40. It of course remains possible, particularly in light of the developments in the use of remote hearings that have taken place in response to the global COVID-19 pandemic, to deal with the determination of these proceedings by way of remote hearing, at which hearing the parents could attend by video link from Pakistan and Italy respectively. However, whilst superficially attractive, in light of the position adopted by the parents

with respect to co-operation with these proceedings I consider it unlikely that the parents would engage with a final hearing. Further, and more fundamentally, in light of the position set out above regarding the current paucity of directly effective reciprocal legal instruments between this jurisdiction and Pakistan, the court must also look to the situation that would pertain at the *conclusion* of such a remote final hearing. If that hearing resulted, in light of the developments in this case since 3 November 2020 evidencing the mother's inability to safeguard the children from the risks the father has been assessed to present, in the court considering that the mother could not safely care for the children, the court would be left in the position of making orders that it could not readily enforce. Were the decision to be that the children should remain in the care of their mother, the court would not be able to rely on any plan for supporting the mother and addressing deficits in her capacity to protect the children being implemented. In addition, and importantly, continuing the care proceedings notwithstanding that the children are now in Pakistan, with the attendant focus on the return of the children to this jurisdiction, is likely in my judgment to leave children in state of considerable stress and uncertainty.

41. In the foregoing circumstances, and notwithstanding the answer that I am satisfied is returned by the applicable principles *absent* account being taken on the abduction of the children from this jurisdiction, the reality of the situation that now pertains in this case leads me back to the observation by Ward LJ in *London Borough of Southwark v B* that there is no advantage to any child in being maintained as the subject of proceedings that have become ineffective in result by keeping alive proceedings that have no current efficacy and have lost the momentum derived from the support of the local authority that initiated them. To refuse the application made by the local authority, and supported by the Children's Guardian, would be to retain public law proceedings before the court during which the local authority could not discharge its statutory duty to the children and following which the court could not enforce any order it considered should be made to safeguard and promote the children's best interests. Within this context, it is much more difficult to see the relevance of the potential result of continuing the proceedings to the future care plans for the children. Further, the court would be compelling the local authority to engage in proceedings that it no longer seeks to pursue. In these circumstances, it is also far less clear that the time the investigation would take and the likely cost to public funds could be justified.

42. Finally, as Ms Lennox has pressed repeatedly upon the court, whilst the parents have shown an arrogant disregard for the authority of this court and have repeatedly refused to obey the orders this court has made, there is *some* evidence that the children's current position in Pakistan is capable of meeting their respective needs. The concerns regarding the mother's care of the children during the course of the care proceedings centred not on her ability to provide good enough day to day care of the children but rather on her ability to acknowledge the risk of significant harm presented by the father and to protect them from that risk of significant harm. Within this context, whilst the children are in the sole care of their mother, the risk to them is likely to be reduced. In this context, and whilst the court remains sceptical of the father's assertion that he is unable to return to Pakistan, there is some evidence that he remains working in Europe and is therefore not at present in contact with the children.

43. Having regard to all of the matters set out above, and on balance, I am satisfied that the fact of the abduction of the subject children to Pakistan during the course of the care

proceedings, and the well evidenced difficulty in securing their return to this jurisdiction notwithstanding the steps taken by the court and the by the police to date, does act to alter the outcome of the analysis set out above with respect to the factors relevant to determining the local authority's application for permission to withdraw the care proceedings. Reluctantly, I am satisfied that the application of the local authority must succeed in circumstances where care proceedings with respect to the children have become ineffective and of no current efficacy in light of the inability of the court to secure the return of the children to this jurisdiction within a timescale commensurate with those proceedings. It cannot be said at this time that that there is some solid advantage in this case to the children to be derived from continuing the care proceedings.

Wardship

44. However, whilst I accept Ms Lennox's submission that it would be inappropriate to make an order warding each of the children until they reach their respective ages of majority, it is my intention that the children shall remain wards of this court for a further period. The evidence before the court is that the GMP continue to investigate this case as a criminal offence of child abduction and are still working with Interpol and the authorities in Pakistan in that regard. Whilst satisfied that the timescales of that investigation are, on the evidence before the court, out with those of the care proceedings, I am satisfied that whilst these criminal investigations continue it is in each of the children's best interests that they remain wards of this court, in order that the court can intervene quickly with respect to their welfare should the criminal investigation be brought to a successful conclusion. In light of the timescales contemplated by GMP I am satisfied that in the first instance the wardship proceedings should be listed for a further review in six months' time. At that point, further consideration can be given by the court to whether those proceedings should continue or should also be brought to a conclusion, having regard to any further progress made by GMP in the criminal investigation in concert with Interpol and the authorities and the police in Pakistan.

CONCLUSION

45. In conclusion, I grant the local authority permission to withdraw the care proceedings in respect of the children. The children will however, continue to be wards of this court. I will list the wardship proceedings for review in six months' time, at which review the court will give further consideration to the progress of the criminal investigation by GMP, in concert with Interpol, into the parents abduction of the children from this jurisdiction and determine whether it is appropriate for the children to remain wards of court at that juncture.

46. Finally, I wish to make *abundantly* clear that my decision in this case has been reached on its own very particular facts. My decision should in no way be taken to represent acquiescence by the court in the face of the actions taken by the parents in this case, as an acceptance of those actions or to suggests that parents involved in care proceedings can avoid those proceedings by removing their child from the jurisdiction of the court.

47. To the contrary, parents who abduct children as a means of avoiding local authority involvement with those children or during the course of subsequent care proceedings

can expect the court to bring to bear the *full* weight of the law in seeking the return of those children to this jurisdiction, and to continue in that effort until all legal avenues have been exhausted. A case in point is the decision of this court in *Re K (Wardship: Without Notice Return Order)* [2017] 2 FLR 901, in which this court ordered the return of the children to this jurisdiction some five years after they had been abducted by their mother as a means of avoiding local authority involvement with the children's welfare. The courts of this jurisdiction will pursue *all* reasonable measures to ensure that subject children abducted by their parents or relatives during the course of care proceedings are returned to this jurisdiction.

48. Within that context, I direct that a copy of this judgment be sent to the Greater Manchester Police and I give permission to the Greater Manchester Police to disclose the judgment to Interpol and to the authorities in Pakistan with whom the Greater Manchester Police are co-operating with respect to their ongoing criminal investigation into the abduction of the children.

49. That is my judgment.