

SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

[2021] SC GLA 37

B1715-19

JUDGMENT OF SHERIFF ANDREW M MACKIE

in the cause

C

Applicants

against

DT

First Respondent

and

GT

Second Respondent

and

HF

Third Respondent

In respect of

RT

Protected Person

**Act: Jackson**

**Alt: Guinnane, counsel for first respondent; Cooney for the protected person**

GLASGOW 5 February 2021

The Sheriff, having resumed consideration of the cause, finds the following facts admitted or proved:

(1) The protected person is 17 years of age. The protected person is ordinarily resident with her mother at an undisclosed address within the Sheriffdom of Glasgow and Strathkelvin. This court has jurisdiction. The first respondent is the father of the protected person. The first and second respondents are brothers.

(2) The protected person's parents entered into an arranged marriage in 2000 in Kyrgyzstan. They are first cousins. The first respondent is from Pakistan. The mother of the protected person grew up in that part of Russia which is now known as Kyrgyzstan (otherwise the Kyrgyz Republic). The families of both parents of the protected person are from a Pathan background. The parents of the protected person's mother told her that she should marry her cousin and, although she did not want to marry at the time, she felt she had to marry because that was what had been decided for her.

(3) When the protected person's parents were married, the protected person's mother was 17 or 18 years of age and the protected person's father was 34 years of age. At the time of the marriage of the parents of the protected person the protected person's father had two sons. The protected person's mother did not know whether the protected person's father had been married prior to 2000 and has never met anyone identified by the protected person's father as his wife.

(4) After their marriage the protected person's parents lived briefly in Kyrgyzstan and in Pakistan before moving to Glasgow in or around 2002 where they lived until 2010. The protected person was born in Glasgow and lived in Glasgow until she was 6 years of age. The protected person's parents also have a son who was born in Glasgow on 29 January 2005. The protected person lived in family with her brother from that date until October 2018.

(5) Prior to 2010 the protected person's mother told the first respondent that she was unhappy and that she wanted him to change. She gave him an ultimatum that, if he did not change, she would divorce him. The protected person's mother sought support and assistance from the first respondent which he did not provide when the couple were living in family with the protected person and her brother in Glasgow.

(6) During 2010 the second respondent travelled to Glasgow from his home in Peshawar, Pakistan. Peshawar is a region of Pakistan in which a number of people from a Pathan background reside. While present in Glasgow the second respondent persuaded the protected person's mother to travel to Peshawar with the first respondent, the protected person and the protected person's brother to attend a wedding. Upon the family's arrival in Pakistan it became clear that no such wedding was due to take place and that the first respondent had, in fact, decided that the family would henceforth live in Pakistan with the second respondent and other members of the first respondent's extended family in their home in Peshawar.

(7) Upon the family's arrival in Pakistan the first respondent removed the phone which had been in the possession of the protected person's mother. The protected person's parents argued and the protected person's mother was assaulted by the first respondent. The protected person's mother was forbidden by the first respondent from leaving Pakistan and from contacting her family in Kyrgyzstan. When the protected person's parents lived in Glasgow the protected person's mother had often spoke to her family in Kyrgyzstan by telephone.

(8) After their arrival in Pakistan the protected person's mother was forbidden by the first respondent from leaving the family home. Peshawar is an area where some women are not treated as the equals of men and where some people follow traditions such as women not leaving the family home without men and requiring a man's permission to leave home. The protected person's mother was expected to remain within the family home at all times and to cook and clean for the family, as were the other women in the household of the first and second respondents. The protected person's mother stopped eating and drinking for several weeks in protest at her treatment.

(9) After a period of around 2 months had elapsed since their arrival in Pakistan, the first respondent allowed the protected person's mother to contact her family in Kyrgyzstan by telephone. A family member told the protected person's mother that her mother had had a small stroke and had been in hospital. The protected person's mother became enraged and assaulted the first respondent.

(10) Ultimately the first respondent allowed the protected person's mother to travel from Pakistan to Kyrgyzstan to visit her mother but did not allow her to take the protected person or the protected person's brother to Kyrgyzstan with her. The protected person's mother remained in Kyrgyzstan for a number of months until her mother recovered. The first respondent then travelled to Kyrgyzstan to collect the protected person's mother and to take her back to Pakistan with him but she refused to return.

(11) The first respondent thereafter returned to Pakistan and the protected person's mother returned to Glasgow. The first respondent had surrendered the tenancy of the property in which the protected person's parents along with their two children had been living prior to the family travelling to Pakistan together in 2010. The protected person's mother complained to the landlord as the tenancy had been in her name. The protected person's mother subsequently secured the tenancy of another property in the same block where the family had resided prior to travelling to Pakistan in 2010.

(12) Following her return to Glasgow around December 2010 the protected person's mother took legal advice in respect of securing the return of the protected person and her brother to Scotland. The protected person's mother was advised that she would require to seek orders from the courts in Pakistan. The protected person's mother believed that the courts in Pakistan would decide that the protected person and her brother should remain with the first respondent and decided not to raise court proceedings in Pakistan.

(13) Between December 2010 and October 2018 the first respondent restricted contact between the protected person's mother and her two children. The protected person's mother was only able to speak to the protected person and to the protected person's brother on a couple of occasions. On one of the occasions when the protected person's mother was able to speak to the protected person, the protected person told her mother to travel to Pakistan. The protected person's mother believed that the first respondent was manipulating the protected person and that he was telling the protected person what to say. The first respondent subsequently changed his telephone number to prevent the protected person's mother being able to contact him or the two children.

(14) From December 2010 until October 2018 the protected person lived with the first respondent, her brother and stepmother as well as other, older children of the first respondent, including her half-brother Y, on the upper floor of the family home in Peshawar, Pakistan in which other relatives of the protected person also resided. On the lower floor of the house the protected person's paternal uncle, the second respondent, resided along with his five sons, together with the wives and children of two of his said sons. The first respondent is the head of his community of people from a Pathan background in Peshawar and is a respected member of his community.

(15) Between 2010 and 2017 or 2018 the protected person attended school where she performed well. The protected person stopped going to school in 2017 or 2018. At that time the first respondent offered her as a wife to one of the sons of the second respondent who lived on the lower floor of the family home. The first respondent told the protected person that he would "give" her to his brother's son, NT, because he wanted to keep her in his home. The protected person got on well with her said cousin but she did not want to marry

him. After the protected person stopped attending school she was not allowed to leave the family home.

(16) The protected person was unable to tell any member of her family in Pakistan that she did not want to marry her cousin. The protected person knew that if she told any member of her family that she did not want to marry her cousin she would not be allowed to leave. The protected person knew that she required to leave Pakistan if she were to avoid marrying her cousin. The protected person feared being forced to marry her cousin. The protected person decided that she would contact her mother to seek her assistance in leaving Pakistan.

(17) During a holiday to Afghanistan during 2018 the protected person visited a salon in the company of one of her stepsisters. When her stepsister visited the bathroom the protected person sought assistance from someone working in the salon to make contact on behalf of the protected person with the protected person's mother. The person who worked in the salon made contact with the protected person's mother. The protected person's mother sent money to the person who worked in the salon to enable her to purchase a mobile telephone for the protected person. This was done and the telephone was delivered to the protected person by the salon worker.

(18) The protected person kept the telephone hidden and used it to make contact with her mother. The first respondent did not know that the protected person had obtained a mobile telephone or that she had contacted her mother.

(19) When the protected person made contact with her mother by telephone, she told her mother that she did not want to marry her cousin and that her mother required to get her out of Pakistan before she had to marry him. The protected person's mother arranged for a

British passport to be obtained for the protected person. The protected person's mother also sought assistance from the British consulate in Islamabad.

(20) Arrangements were then made for the protected person's mother to travel to Pakistan to collect the protected person and to transport her to said British Consulate. The protected person's mother travelled to Peshawar in Pakistan where she met the protected person. The protected person's mother then travelled with the protected person to said British Consulate. The protected person's mother then travelled back to Glasgow leaving the protected person within the British consulate in Islamabad.

(21) The second respondent contacted the protected person's mother telling her that she required "to give (the protected person) back". The second respondent told the protected person's mother that she should be happy about the proposed marriage of the protected person because the bridegroom was NT, son of the second respondent. The protected person's mother told the second respondent that the protected person was in the United Kingdom. The protected person remained in the British consulate in Islamabad at that time. The first and second respondents travelled from Peshawar to Glasgow in an effort to collect the protected person and take her back to Peshawar. The protected person's mother travelled back to Pakistan while the first and second respondents were travelling to Glasgow.

(22) On the advice of the British consulate the protected person and her mother flew from Lahore in Pakistan to Edinburgh rather than from Islamabad, departing Lahore on 12 November 2018 and arriving in Edinburgh on 13 November 2018. The protected person's mother had alerted the Police Service of Scotland to her plans. Following their arrival in Scotland the protected person and her mother were told that the first and second respondents had arrived in Glasgow and were searching for the protected person. The

protected person and her mother were provided with temporary accommodation. They also stayed with a friend of the protected person's mother for a short period of time.

Subsequently the protected person and her mother returned to the home of the protected person's mother.

(23) On 15 November 2018 the protected person was interviewed with the benefit of an interpreter by Detective Constable M a serving officer with the Police Service of Scotland and by a social worker employed by the applicants (the joint investigative interview, hereafter "the JII"). During the JII the protected person told the interviewers that she had previously been attending school in Pakistan but that she had stopped attending; that she had been assaulted by the first respondent and by other family members when she lived in Pakistan; that she had become engaged to marry her cousin; that this had been the first respondent's decision and she had had no choice in the matter; that she was going to be forced to marry her cousin; and that she had been told by a family member that if she said "no" to her family she would be killed. During the JII the protected person said that she understood she was being interviewed because the first respondent wanted to take her back to Pakistan.

(24) During the period immediately after the protected person left the family home in Peshawar, the second respondent contacted the protected person's mother by telephone on dozens of occasions each day and also attended at her home in Glasgow. As a result of his conduct towards the protected person's mother, the Police Service of Scotland arrested the second respondent and charged him with breaching section 39(1) of the Criminal Justice and Licensing (Scotland) Act 2010. He was held in custody prior to his appearance in this court on 27 November 2018 when he pled guilty to having, on various occasions between 1 and 13 November 2018, both dates inclusive, at several locations, all Glasgow and elsewhere,

engaged in a course of conduct which caused the protected person's mother fear and alarm in that he did repeatedly telephone her and send her messages and voicemails and did attend at her home address.

(25) Following the second respondent's conviction for said offence, the court made a non-harassment order in favour of the protected person's mother and fined the second respondent the sum of £1,125. The second respondent thereafter returned to Pakistan.

(26) After the conviction of the second respondent, the first respondent remained in Glasgow. The protected person had her own telephone at that time. Between November 2018 and 14 December 2018 the protected person communicated with the first respondent via said telephone while he remained in Glasgow.

(27) Around mid-December 2018 the protected person ran away from school. The protected person said that she did not like it in Glasgow and that she wanted to return to Pakistan. The first respondent had assured the protected person that, if she returned to live in the family home in Peshawar, Pakistan, she would not be forced to marry anyone.

(28) On 9 January 2019 the applicants' social work department applied for and were granted a child protection order in respect of the protected person by this court. Said order prohibited the removal of the protected person from the care of her mother. The Children's Hearing subsequently made the protected person the subject of an interim compulsory supervision order with a condition of residence with her mother. Grounds of referral were prepared and at a Children's Hearing in respect of same on 29 January 2019 the first respondent did not accept the grounds. An application was thereafter made to this court for a determination under section 93 of the Children's Hearings (Scotland) Act 2011.

(29) In late January 2019 the protected person expressed a wish to have contact with her father. The said interim compulsory supervision order contained a condition of supervised

contact between the protected person and the first respondent should the protected person wish to have such contact. Some supervised contact took place in terms of said order in early February 2019.

(30) On 17 February 2019, when the protected person and the first respondent were in attendance at this court in connection with said proceedings, the protected person met the first respondent in a corridor. The first respondent told the protected person to leave her mother and to come back with him. The first respondent was very angry. The protected person was frightened by him and subsequently formed the view that she did not wish to have any further contact with him.

(31) On or around 25 March 2019 the protected person's mother received a telephone call from a friend. During said call the protected person's mother was told that the first respondent was in the home of the friend and had offered the friend £1,000 if she could arrange for the protected person's mother to speak to him. In addition, the protected person's mother was told by her friend that the first respondent would pay the protected person's mother the sum of £9,000 if she would allow the protected person to return to Pakistan with him. The protected person's mother was angered by these attempts at bribing herself and her friend.

(32) On 31 January 2019 SC was appointed safeguarder to the protected person in said proceedings. Between 31 January 2019 and 20 May 2019 SC made a number of enquiries and met with the protected person and her parents. SC provided a written report to the Children's Hearing dated 20 May 2019 (No 5/8 of process).

(33) In the course of her investigations SC was told by the protected person that, when the protected person was living in Pakistan, she was told what to do and was going to be forced to marry her cousin. The protected person also told SC that she did not want to

marry her cousin; that she did not want to return to Pakistan; and that she did not wish to have any contact with the first respondent.

(34) In the course of her investigations SC was told by the first respondent that the protected person had recently stopped going to school; that the family had decided the protected person was to marry her cousin; that there was an agreement the protected person should marry her cousin; and that he had not tried to force her so to do.

(35) On one occasion when SC attended at this court in connection with said proceedings she was told by the protected person that the first respondent had threatened her in some way and, as a consequence, the protected person was too scared to enter the court room and to sit beside the first respondent therein.

(36) On 8 May 2019, in said proceedings in this court the following ground was established, namely that, in terms of section 67(2)(b) of the Children's Hearings (Scotland) Act 2011, the protected person (i) has been, is being or is likely to be forced into a marriage (that expression being construed in accordance with section 1 of the Forced Marriage etc. (Protection and Jurisdiction (Scotland) Act 2011) or (ii) is, or is likely to become, a member of the same household as such a child.

(37) Following the said grounds of referral being established at this court on 8 May 2019, a children's hearing was convened on 29 May 2019 when a compulsory supervision order was made in respect of the protected person requiring that she reside with her mother and that her place of residence not be disclosed to the first respondent. In addition said compulsory supervision order directed that there should be no contact between the protected person and the first respondent.

(38) The first respondent had returned to his home in Pakistan during April 2019 prior to said proof which had been scheduled for 8 and 9 May 2019 in respect of the said grounds of

referral. He did not participate in said proof. The first respondent alleged that the protected person's younger brother was ill and that he required to return to Pakistan as a consequence. The protected person's younger brother was not ill at that time. The first respondent remained in Pakistan until early August 2019 when he returned to Glasgow. He has been resident in Glasgow since his return in August 2019.

(39) While the first respondent was at home in Pakistan the protected person's younger brother told the protected person that the first respondent had become ill because of the protected person and that he was in hospital. The protected person's younger brother attempted to make the protected person feel worried and guilty about the state of her father's health. The protected person's younger brother has remained at the family home in Pakistan and has not visited Glasgow since the protected person left Pakistan in November 2018.

(40) During the summer of 2019 the protected person's mother arranged a family holiday to Kyrgyzstan. The protected person accompanied her mother to Kyrgyzstan. During said holiday the protected person was in telephone contact with her older half-brother Y and with other members of her paternal family in Pakistan.

(41) On 29 July 2019, after the protected person had returned to Scotland from said holiday, the protected person's mother asked the protected person to look after her 5 year old half-brother within the family home in Glasgow while the protected person's mother went to a shopping centre. While the protected person's mother was away the protected person travelled to Glasgow Airport where she collected a ticket for a flight to Dubai where the protected person was due to meet her said half-brother, Y and from where she intended to travel on to Pakistan. The protected person was assisted and supported in navigating her way through Glasgow Airport by the third respondent.

(42) The protected person boarded the plane for said flight to Dubai. British Transport Police then attended and removed the protected person from said flight and returned her to the care of her mother. A marker on the protected person's passport caused her to be stopped by the police and removed from the flight prior to its departure.

(43) The protected person told police officers on 29 July 2019 that she wanted to return to the care of the first respondent and that she wanted to return to her family home in Pakistan. The protected person also told the police that everything that she had told them in the past about the risks from the first respondent and his family were lies.

(44) The protected person had not told her mother about her intention to travel to Dubai and then onwards to Pakistan. The protected person knew where her mother had put the protected person's passport after their return from holiday in Kyrgyzstan and so did not require to ask her mother for her passport. After being left in the house by her mother the protected person had collected her passport and travelled to Glasgow Airport. The protected person had been encouraged by members of her paternal family to return to Pakistan. Prior to making this attempt to return to Pakistan the protected person had sought assurances that the second respondent would confirm her safety.

(45) During subsequent interviews with the protected person, the protected person said that she had become engaged to her paternal cousin when she was 14 years old and that she had been happy about her engagement. The protected person said that she did not wish to marry straight away. The protected person said that her paternal cousin had been in contact with her, telling her that he loves and misses her. The protected person said that she felt the same way and wished to return to Pakistan to eventually marry him. The protected person said that the first respondent had told her she would be free to travel to the UK to see her mother and her family here once she is married. The protected person also said that she has

been told by one of her half-brothers in Pakistan that the first respondent has forgiven her and just wants her to return home. The protected person also said that she was not frightened of returning to Pakistan, denied that she was still at risk and denied that her paternal family were lying to her.

(46) Since 29 July 2019 the protected person has received advice and support from Hemat Gryffe Women's Aid, a registered charity based in Glasgow with particular experience of supporting BAME women facing domestic abuse and forced marriage.

(47) After the events of 29 July 2019 the applicants lodged an application with the court seeking a Forced Marriage Protection Order in relation to the protected person as well as an interim order. At a pre-service hearing on 2 August 2019 the court granted an interim Forced Marriage Protection Order. Said interim order remains in force. The protected person and the first respondent do not wish a final order to be granted and both consider that no order should be made by the court in these proceedings.

(48) On 2 August 2019 the protected person and her mother were advised of the granting of the interim Forced Marriage Protection Order. Over subsequent days the protected person became angry and abusive towards her mother. The protected person repeatedly left her mother's home without telling her mother where she was going and on one occasion, on 2 August 2019, was absent from her mother's home overnight without explanation. The protected person left her mother's home on 5 August 2019 without telling her mother where she was going and after packing a bag. The protected person's mother reported these events to the applicants' social work department and was advised to urgently contact the police to report the protected person as missing.

(49) On 5 August 2019 the protected person attended at a police station in Glasgow to report that she did not wish to be at home with her mother. JF and KS, social workers

employed by the applicants, met with the protected person and her mother on 5 August 2019. The protected person said that she no longer wished to live with her mother and was desperate to return home to Pakistan with the first respondent. The protected person asked if she could stay with a friend but as the person concerned was a friend of the paternal family her request was refused by the said social workers.

(50) On 6 August 2019 the protected person maintained that she had lied about there being a forced marriage. The protected person was very clear in her views that she wanted to return to Pakistan and wanted to be with her paternal family.

(51) The first respondent returned to Scotland on or around 7 August 2019. On 9 August 2019 service of these proceedings and of the interim Forced Marriage Protection Order was made upon the first respondent by sheriff officers at the home of the third respondent.

(52) On 16 August 2019 the protected person refused to go home with her mother when her mother collected the protected person from school. The protected person told her mother that she was going to see a friend. The applicants' social work department suspected the friend might have connections to the first respondent or other paternal family members. On 16 August 2019 the protected person's mother told KS, social worker, that she could no longer look after the protected person.

(53) On 16 August 2019 the applicants' social work department reported the protected person as missing to the Police Service of Scotland. The applicants' social work department suspected that the protected person might be in the household of an adult female with links to the local Pakistani community. On 18 August 2019 police officers located the protected person following a report from a member of the public who had witnessed the partner of the protected person's mother attempting to get the protected person into his car to take her home.

(54) The applicants' social work department thereafter identified a respite placement for the protected person with a foster carer with whom the protected person lived until early October 2019 when the protected person returned to live with her mother. During the period when the protected person was in the care of the foster carer it had been a condition of the compulsory supervision order that there be no contact between the protected person and the first respondent. Notwithstanding said condition the protected person was in contact with the first respondent during said period.

(55) Following the return of the protected person to the care of her mother the protected person settled well back into her mother's care and has remained in the care of her mother since early October 2019.

(56) Thereafter the Children's Hearing allowed supervised contact to take place between the protected person and the first respondent on the recommendation of the applicants' social work department in order that such contact could be monitored and assessed.

(57) Prior to the first such supervised contact visit taking place between the protected person and the first respondent on 23 January 2020, the first respondent advised the said KS, social worker, that the protected person can choose where she wants to live. He also made a comment that he would not be listening to the protected person and would be listening to elders in the community. The said KS advised the first respondent that the views of a child (as the protected person was when she first arrived in Scotland) are important. The first respondent appeared not to agree with KS in respect of that issue.

(58) During a meeting between the said KS, social worker, and the first respondent on 14 February 2020 the first respondent asked KS to return the protected person to him and said that the protected person was not happy in Glasgow and that she wanted to escape to return to Pakistan. The first respondent alleged in his discussions with KS that the protected

person's mother had told the protected person what to say when she first arrived in Scotland and had told her to lie about being forced to marry in Pakistan. The first respondent told KS that he does not want the protected person to marry despite KS telling the first respondent that the protected person had said that she does want to get married. During his discussions with KS the first respondent made a comment that it is not easy to kill someone in the UK and that you cannot even kill a bird. After their meeting KS noted that these were worrying statements made by the first respondent when under pressure. Throughout their meeting the first respondent was frustrated and stated that KS was not listening to the views of the protected person.

(59) KS supervised a contact visit between the protected person and the first respondent on 5 March 2020. During this contact visit KS noted that the first respondent brought the conversation with the protected person back round to the court process, the issue of forced marriage and "the lie" which the protected person said that she had told upon her arrival in Scotland. KS assessed that some of the statements made by the protected person appeared to be for KS's benefit. The first respondent told KS that he kept trying to change the subject and to direct the conversation away from these issues but that the protected person did not allow him to do so. KS noted no indication of that within this contact visit.

(60) The next scheduled contact visit between the protected person and the first respondent did not take place as the protected person was unwell. Subsequent contact visits could not take place and were suspended towards the end of March 2020 when the United Kingdom went into lockdown. KS tried to make arrangements for supervised contact between the protected person and the first respondent to take place by telephone or by video conference but neither the protected person nor her father were keen to have contact that way.

(61) Supervised contact between the protected person and the first respondent took place on one occasion by telephone conference call on 11 June 2020. An interpreter was also present. Although the conference call had been booked for one hour the protected person and her father said their goodbyes after around 20 minutes.

(62) Face to face contact between the protected person and the first respondent resumed around mid-July 2020. The initial contact took place outdoors. Thereafter contact has taken place within a supermarket café.

(63) Since her arrival in Glasgow in November 2018 the protected person has changed her mind about returning to Pakistan on several occasions. She has been subjected to pressure on this matter by the first respondent and by other members of her paternal family. The protected person has been repeatedly asked by the first respondent and by her younger brother to return to the family home in Peshawar. The protected person has been told that people in the community in Peshawar are saying that if she does not return there then she is not a respectful daughter. The protected person has caused embarrassment for the first respondent by her actions in fleeing her home in Pakistan. Since her departure the protected person has felt under pressure from the first respondent and other members of her paternal family, as well as from her community in Peshawar, to return there. The protected person is susceptible to the influence of the first respondent and other members of her extended paternal family and can be persuaded by them to act in a way which is not in her best interests.

(64) When the protected person has refused to return to Pakistan it has been because she believes that if she returns there with the first respondent she will be married to her said paternal cousin, NT, even if she refused her consent to the marriage. The protected person

believes she would have no choice in the matter and that the first respondent would make the decision for her.

(65) The protected person loves the first respondent but does not want to return to Pakistan with him as she believes that he wishes her to marry her said paternal cousin and wishes her to remain in the family home in Peshawar.

(66) If the protected person were to return to the family home in Peshawar she would be unable to leave of her own volition. Security guards are posted at the doors of the family home. The protected person anticipates that she would be an outcast if she were to return to Peshawar. The protected person does not believe that she would be accepted back into the community there. The protected person fears that if she were to return to Peshawar the paternal family might hold her there against her will and she might never be able to return to Scotland.

(67) The first respondent has assured the protected person that if she returns to Peshawar she will not be forced to marry anyone and he will give her whatever she wants. The protected person believes that the first respondent listens to her and that he knows she does not want to get married at present. Nonetheless the protected person reasonably and genuinely believes that if she returns to Peshawar she will be forced to marry her paternal cousin.

(68) The protected person is happy and settled in Scotland and wishes to reside with her mother in Scotland. The protected person is taking courses at a college in Glasgow. The protected person intends to complete her college courses and then work with her mother in her mother's business. The protected person has her own mobile phone and is able to access social media. The protected person's mother sometimes checks her said phone.

(69) The protected person misses her younger brother who continues to reside in the family home in Peshawar. He has told the protected person that he wants to come to Scotland. The protected person believes that someone is stopping her younger brother from coming to Scotland but she does not know who and she does not know why.

(70) The protected person would wish to return to visit Pakistan on holiday in the company of her mother if it were safe so to do. The protected person would like to visit cities which she considers are safe, such as Islamabad or Karachi.

(71) The protected person's mother has been told by a member of her family in Pakistan that the first respondent has made death threats about the protected person, alleging that he would take her back to Pakistan and kill her in front of the family. The protected person's mother is aware of other women in similar situations being killed after dishonouring their families.

(72) The first respondent's oldest son, namely AT, is married to the second respondent's daughter. They live together in the first respondent's home in Peshawar.

#### **FINDS IN FACT AND IN LAW:**

(1) The applicants are a relevant third party in terms of sections 3(1)(b) and 3(7)(a) of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011.

(2) The protected person is a person at risk from attempts to force her into a marriage on the part of the first and second respondents.

(3) The protected person requires the protection of a Forced Marriage Protection Order to protect her from being forced into a marriage by the first and second respondents.

(4) A Forced Marriage Protection Order is required to secure the health, safety and wellbeing of the protected person.

(5) The protected person has expressed a wish that the court not make a Forced Marriage Protection Order.

THEREFORE, Dismisses the application *quoad* the second respondent, the applicants having failed to effect service on the second respondent; Sustains the first plea-in-law for the applicants to the extent of making a Forced Marriage Protection Order in the following terms:

Makes a Forced Marriage Protection Order in terms of section 1 of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 for the period from this date until 8 April 2024 in respect of RT (the protected person) whereby:

- (i) Prohibits DT and HF from removing, seeking to remove or instructing or encouraging any other person to remove the protected person from Scotland;
- (ii) Prohibits the protected person from travelling to Pakistan;
- (iii) Prohibits DT from applying for a passport or other travel documents for the protected person;
- (iv) Ordains DT to refrain from coercing the protected person by physical, verbal or psychological means from entering into marriage or returning to Pakistan;
- (v) Ordains DT to refrain from forcing or attempting to force the protected person to enter into a marriage; and
- (vi) Ordains DT and HF to refrain from aiding, abetting, counselling, procuring, encouraging or assisting another person to force or attempt to force the protected person to enter into a marriage;

Repels the pleas-in-law for the first respondent and the plea-in-law for the protected person; Assigns a hearing on expenses on 10 March 2021 at 2.00pm and Directs that said hearing proceed by way of telephone conference.

**NOTE:**

[1] The applicants have been unable to serve the application and the interim order granted on 2 August 2019 on the second respondent. I have therefore dismissed the application *quoad* the second respondent.

[2] The applicants effected service of the application and said interim order on the third respondent. He was personally present at the hearing on 24 September 2019. He failed to attend at any subsequent hearings and failed to lodge answers to the application, despite the terms of the order of 24 September 2019 directing him to do so within 21 days of that date. He has taken no further part in these proceedings.

[3] I have considered the evidence led in respect of the actions of the third respondent in determining whether that evidence supports the granting of the order sought by the applicants and whether such an order is needed to protect the protected person from being forced into a marriage and whether such an order would secure her health, safety and wellbeing. My assessment of the evidence in so far as it relates to the third respondent is summarised below.

[4] The evidential hearing in these proceedings commenced on 19 October 2020. Evidence was led on 19, 20, 21 and 22 October 2020. Parties thereafter provided outline written submissions and I heard supplementary oral submissions on 23 October 2020. I have appended to this judgment parties' outline written submissions and a summary of their supplementary oral submissions. In most respects I preferred and accepted the

submissions made on behalf of the applicants and, to a lesser extent, those made for the protected person, all for the reasons set out below.

[5] In the course of the hearing, the applicants led evidence from seven witnesses, namely, the mother of the protected person, Sergeant M of the Police Service of Scotland, Detective Constable M of the Police Service of Scotland, KH, Social Worker and Team Leader in the Adult Learning Disability Team with Glasgow City Council, KS, Social Worker with Glasgow City Council, JF, Social Worker and Independent Reviewing Officer within Children's Services at Glasgow City Council and SC, Safeguarder in the Children's Hearing proceedings in respect of the protected person.

[6] The protected person gave evidence on her own behalf. The first respondent also gave evidence on his own behalf. Neither the protected person nor the first respondent led evidence from any other witnesses.

**Determination of preliminary issue in respect of the admissibility of the report commissioned by the applicants from Professor Aisha K Gill**

[7] In advance of the pre-proof hearing held on 24 September 2020 the first respondent intimated an objection to the evidence of Professor Gill. Brief outline submissions in respect of said objection were prepared by the first respondent and intimated to the other parties prior to the said pre-proof hearing. Lack of available court time meant that said objection could not be fully and properly canvassed before the court and consideration of the objection was continued until 19 October 2020, the first day of the evidential hearing.

[8] On 19 October 2020 counsel for the first respondent maintained her objection to the evidence of Professor Gill. Counsel expanded on the outline written submissions lodged on behalf of the first respondent on 15 September 2020. Outline written submissions in respect

of the issue of admissibility of said report had been lodged on behalf of the applicants shortly prior to the evidential hearing commencing and these comprise No.18 of process.

[9] In outlining the objection by the first respondent, counsel referred to the assertion by the applicants in paragraph 2 of their said outline written submissions that Professor Gill has expert knowledge of the issues considered in her report. The court had been furnished with no information in respect of the extent of Professor Gill's expert knowledge. Such reports are usually accompanied by the author's CV. None appeared to have been produced to the court on this occasion. It was acknowledged that, in paragraph 2 of Professor Gill's report, reference was made to other documents but no details were provided and there was nothing to assist the court in establishing Professor Gill's expertise in the field referred to in said report. Professor Gill's expertise could, of course, be explored during her evidence and counsel moved on to address the court on the issues which require to be considered by the court in terms of the relevant case law.

[10] Counsel referred to the four matters which fall to be addressed in the use of expert evidence in court proceedings as they are set out in paragraph 38 of the judgment of the Supreme Court in *Kennedy v Cordia (Services) LLP* [2016] UKSC 6. The first matter which falls to be addressed is the admissibility of such evidence and this is considered in paragraphs 39-56 of the Supreme Court decision in *Kennedy supra*. In particular, in paragraph 44 of said judgment, four considerations are identified which govern the admissibility of expert evidence. These are:

- (i) Whether the proposed skilled evidence will assist the court in its task;
- (ii) Whether the witness has the necessary knowledge and experience;
- (iii) Whether the witness is impartial in his or her presentation and assessment of the evidence; and

(iv) Whether there is a reliable body of knowledge or experience to underpin the expert's evidence.

[11] Counsel submitted that any expert report must be based on a factual matrix. The list of documents considered by Professor Gill is set out in paragraph 2 of page 1 of her report. As well as the summary application and inventory of productions, Professor Gill considered the answers for the protected person and those for the first respondent, together with the terms of the interim order granted on 2 August 2019. In addition, Professor Gill considered the witness statements of three of the applicants' witnesses, namely, the protected person's mother, Detective Constable M a serving officer with the Police Service of Scotland and SC, the safeguarder in the Children's Hearing proceedings. Professor Gill also considered the applicants' Care First records in respect of the protected person. Professor Gill also reported that she had had a lengthy telephone conversation with the protected person's mother, lasting approximately 1 hour and 45 minutes. Professor Gill had also spoken to KS, social worker, for around 30 minutes. The protected person's mother and KS were the only people to whom Professor Gill had spoken prior to preparing her report.

[12] Counsel did not know what had been said in the course of either of these telephone conversations and did not know what information had been provided to Professor Gill in the course of same. Furthermore, Professor Gill did not speak either to the protected person or to the first respondent. Such an approach clearly calls into question whether the witness has been impartial in her assessment of the evidence.

[13] In addition, counsel submitted that Professor Gill fails, in her report, to take into account the issues in the case as they are presently before the court. In particular, Professor Gill fails to take into account the protected person's position that she lied to the

authorities at the outset and that, at an earlier stage of the proceedings, she wished to return to Pakistan.

[14] Counsel submitted that an expert should not appear to be biased in the presentation of their opinion and that any such opinion should be based on facts. However, it is known that the protected person made certain allegations about her life in Pakistan during her initial contacts with the authorities and that she subsequently changed her position in respect of same. Professor Gill's report appears to ignore the protected person's changes in position. The factual matrix has not been established. We do not know if the Care First records viewed by Professor Gill are the same records as have been lodged by the applicants. What we do know is that the records are full of references to the protected person saying that she wants to go back to live in Pakistan. By way of example, there is an entry in the Care First records confirming that the protected person made her wishes known in this regard to KS, social worker, during a contact visit between the protected person and the first respondent while KS was supervising said visit.

[15] Even if the applicants could demonstrate that Professor Gill has the necessary knowledge and experience in respect of the issues covered in her report, the court could not be satisfied that Professor Gill had been impartial in her presentation and assessment of the evidence.

[16] In terms of whether such a report would assist the court in its task in this case, counsel submitted that Professor Gill's report was unnecessary. Counsel submitted that, on the basis of the proven facts, the court could form its own conclusions without the assistance of an expert and, accordingly, the opinion of an expert is unnecessary in these proceedings. Counsel referred, in particular, to paragraph 45 of said judgment in the case of *Kennedy supra*.

[17] Counsel went on to refer to paragraph 48 of said Supreme Court judgment before summarising her objection to the admissibility of the said report on the basis of the first three considerations set out in paragraph 44 of said Supreme Court judgment. Particular stress was laid on the third consideration, namely the issue of impartiality.

[18] The agent for the protected person made no submissions in respect of said objection.

[19] The applicants' agent submitted that Professor Gill has the necessary expertise and referred, in particular, to paragraph 3 on the first page of the said report in this regard. The applicants' agent submitted that Professor Gill was entitled to describe the sociocultural context of matters such as violence against women in Afghani/Pashtun/Pakistani communities and the importance of honour in those communities.

[20] In her report Professor Gill lists the documentation to which she has had access. Said documentation included the answers for the protected person and those for the first respondent which are fairly detailed. Said documentation also included the applicants' Care First records. Those records are the same as the records which have been lodged with the court. Said records contain details of the changing position of the protected person over the past 2 years. The applicants' agent accepted that the positions of the protected person and the first respondent, as recently disclosed in their respective affidavits, were different to the positions which had been outlined in their respective answers. However, the applicants' agent drew attention to the affidavit of the applicants' witness, JF (which affidavit was subsequently withdrawn and the affidavit, No.21 of process, substituted therefor) in which JF sets out the questions which the relevant social workers asked in respect of the varying positions advanced to them by the protected person and by the first respondent.

[21] The applicants' agent submitted that it was apparent from Professor Gill's report which facts she had relied upon in expressing her views. The applicants' agent submitted

that, if those facts were found by the court not to have been established, then the expert report would fall. The applicants' agent asserted that the said report was not biased. Professor Gill had been transparent in her views and what she had based those views on.

[22] The applicants' agent invited the court to consider the report as falling into two parts. Firstly, the report described the cultural context which the court ought to take into account. Secondly, Professor Gill expresses an opinion about the level of risk to the protected person in the particular circumstances of this case. The applicants' agent submitted that the report would assist the court in understanding the context of the evidence to be led by the applicants in this case and would assist the court in assessing the evidence to be led by the parties.

#### **Discussion and decision in respect of objection to the admissibility of expert evidence**

[23] I sustained the objection in this case and refused to admit Professor Gill's report as expert opinion evidence for a number of the reasons set out by counsel for the first respondent.

[24] In paragraph 44 of the judgment of the Supreme Court in *Kennedy supra* the Court said:

“There are in our view four considerations which govern the admissibility of skilled evidence:

- (i) Whether the proposed skilled evidence will assist the court in its task;
- (ii) Whether the witness has the necessary knowledge and experience;
- (iii) Whether the witness is impartial in his or her presentation and assessment of the evidence; and
- (iv) Whether there is a reliable body of knowledge or experience to underpin the expert's evidence.

All four considerations apply to opinion evidence, although, as we state below, when the first consideration is applied to opinion evidence the threshold is the

necessity of such evidence. The four considerations also apply to skilled evidence of fact, where the skilled witness draws on the knowledge and experience of others rather than or in addition to personal observation or its equivalent.”

[25] I gave careful consideration as to whether the opinion evidence of Professor Gill would assist the court in its task. I concluded that it would not. When the admissibility of expert evidence is challenged it is for the court to decide whether such evidence is needed. Paragraph 45 of the Supreme Court judgment in *Kennedy supra* refers. In said paragraph of said judgment the Supreme Court refers to the opinion of the High Court of Justiciary in *Wilson v Her Majesty's Advocate* 2009 JC 336 and, in particular, to paragraph 58 of the opinion delivered by Lord Wheatley where his Lordships states:

“[T]he subject-matter under discussion must be necessary for the proper resolution of the dispute, and be such that a judge or jury without instruction or advice in the particular area of knowledge or experience would be unable to reach a sound conclusion without the help of a witness who had such specialised knowledge or experience.”

[26] In said judgment in *Kennedy supra* the Supreme Court referred, with approval, to the exposition of the role of an expert witness as set out by Lord President Cooper in *Davie v Magistrates of Edinburgh* 1953 SC 34 and, in particular, to the passage which appears at page 40 where the Lord President states:

“Expert witnesses, however skilled or eminent, can give no more than evidence. They cannot usurp the functions of the jury or a judge sitting as a jury... Their duty is to furnish the judge or jury with the necessary scientific criteria for testing the accuracy of their own conclusions, so as to enable the judge or jury to form their own independent judgement by the application of these criteria to the facts proved in evidence... the decision is for the judge or jury”.

[27] In the particular circumstances of this case I do not consider that the opinion evidence of Professor Gill will assist the court. By the time of the final hearing on the objection I had had the benefit of considering the affidavits lodged by all parties. I considered that, in particular, the protected person, her mother and the first respondent all

had relevant experience of life in the area of Pakistan from which the protected person fled (with the assistance of her mother and the British Consulate in Islamabad) in November 2018. It was clear that the court would hear evidence from each of those persons about their first hand experiences of life in Peshawar and that each of them would be able to give evidence in respect of the relevant social and cultural issues which might be at play. In addition, it was clear from the affidavits of a number of the applicants' witnesses that the protected person and her mother (and to a lesser extent the first respondent) had provided accounts to social workers and other professionals of their experiences of the social and cultural customs and norms which might be at play in this case.

[28] In those circumstances I did not consider that a report from Professor Gill would be needed. I noted that Professor Gill had not had the opportunity of considering the affidavits lodged by each party. I mean no criticism of Professor Gill when I say this as her report was prepared several months before the affidavits were lodged. However, I do consider it unfortunate that, in preparing her report, Professor Gill decided not to speak to either the protected person or the first respondent. I appreciate copies of the answers lodged by the first respondent and by the protected person were made available to Professor Gill but she did not consider it appropriate to speak directly to the protected person or the first respondent. Professor Gill did speak to KS, social worker with the applicants and also spoke, at some length, to the protected person's mother. In these circumstances and where much of the evidence to be led before the court is disputed, I appreciate why counsel for the first respondent submitted that Professor Gill did not appear impartial in her presentation and assessment of the evidence.

[29] I concluded therefore that the report to which objection had been taken would not assist the court in its task; that the applicants had not demonstrated impartiality on the part

of the witness in her presentation and assessment of the available materials; and that the applicants had not demonstrated that the witness had the necessary knowledge and experience. In those circumstances I upheld the objection and refused to admit said report.

## ASSESSMENT OF WITNESSES

### *(i) Witnesses for the applicants*

#### **First witness – the protected person’s mother (PPM)**

[30] PPM adopted the terms of her affidavit dated 24 September 2020, No 12 of process and was asked a number of questions during examination in chief. Thereafter PPM was cross-examined on behalf of the first respondent and on behalf of the protected person before being briefly re-examined.

[31] For the most part, I found PPM to be a credible and reliable witness. PPM gave her evidence a calm, clear and straightforward manner. She appeared to be a witness doing her best to assist the court. She did not appear to be obviously dissembling at any stage.

[32] PPM confirmed that she and the first respondent are cousins. They were married in Kyrgyzstan in 2000. At that time the first respondent lived in Pakistan. The marriage was an arranged one. The first respondent is around 16 years older than PPM. PPM did not want to marry the first respondent. She wanted to study. However, her parents told her she should marry the first respondent and she complied with their wishes.

[33] After their marriage PPM and the first respondent lived in the Peshawar region of Pakistan, close to the border with Afghanistan. Their families are from a Pathan background. I accepted PPM’s evidence that, for Pathans, it is not unusual for cousins to marry one another. PPM explained that the protected person and NT are also cousins and that their proposed marriage would not be unusual in families from a Pathan background. I

also accepted PPM's evidence that both the protected person and the protected person's cousin, NT, had spoken to PPM about the plans for their marriage.

[34] I accepted PPM's evidence that both the first respondent and his brother, the second respondent, wanted the protected person to marry the said NT, son of the second respondent. I accepted PPM's evidence that the protected person had contacted her in 2018 to tell her that she was engaged to marry; that there were plans for a marriage after Eid in 2018; and that the protected person did not want to get married. I also accepted PPM's evidence that, after she made arrangements for the protected person to travel to Scotland in 2018 and went to great lengths to enable the protected person to travel here, the said NT contacted PPM and asked her to "let (the protected person) go" because he wanted to marry her. I also accepted PPM's evidence that she told him that she could not help him and that it was a matter for the protected person to decide for herself.

[35] PPM was open and straightforward in her evidence in respect of the protected person's attempt to leave Scotland in July 2019. PPM left the protected person at home looking after one of PPM's younger children (then aged 5) while PPM went to a shopping centre. PPM was horrified that the protected person had left the younger child alone in the family home while the protected person travelled to Glasgow Airport to board a flight to Dubai. PPM readily accepted that the protected person had intended to return to Pakistan and had wanted to go to see the first respondent.

[36] PPM showed insight into the motivation of the protected person in her attempt to return to Pakistan. She did not seek to downplay the difficulties which the protected person had experienced in re-adjusting to life in Scotland following her arrival here in November 2018. PPM said, candidly, that everything had been new for the protected person when she returned to Scotland in 2018; that she had started at a Scottish school where she

was meeting all new people; and that the protected person's fluency in English was less than than it is now. PPM accepted that the protected person had been missing people in Pakistan. PPM gave examples of things she understood to have been said to the protected person by members of the protected person's extended family in Pakistan by which they had persuaded her to attempt to travel back to Pakistan. PPM said that members of the protected person's extended family in Pakistan had "started playing with her (the protected person's) brain". They had told the protected person that something would happen to the first respondent because of the protected person and that the first respondent would become ill because of the protected person. They had also asked the protected person what kind of daughter she would be if she did not care about the first respondent, thereby trying to make her feel guilty.

[37] It was clear from PPM's evidence that she considered the influence of members of the protected person's extended family in Pakistan had been partly responsible for the protected person travelling to Glasgow Airport with the intention of flying back to Pakistan without telling PPM of her intentions. PPM described the protected person as "a soft hearted child" by which I understood her to mean that the protected person could be persuaded to act in a manner not in her own interests. PPM said, candidly, that she did not know if the first respondent had been in contact with the protected person prior to her attempt to return to Pakistan in July 2019.

[38] PPM readily accepted that the protected person wants to have a relationship with the first respondent but she qualified this by saying that the protected person "wants a relationship with her father in Glasgow, in Britain, not abroad". PPM readily accepted that this would be good for the protected person and said that the first respondent was "still" the protected person's parent. PPM said that she did not want the protected person "to feel

bad” about her parents. PPM was frank in stating that the protected person wishes to have contact with the first respondent on an unrestricted basis, whenever **she** wants and wishes such contact to take place outwith the presence of social workers.

[39] PPM did not accept the assurances given by the first respondent that the protected person would not be forced to marry anyone. PPM disagreed with the protected person’s assessment of her relationship with the first respondent in that PPM did not accept that the first respondent listens to the protected person and knows that she does not want to be married. PPM was firm in her view that, if the protected person returned to Pakistan to live with the first respondent, “she’ll be married”. I accepted this assessment as an accurate one, based, as it was, on PPM’s experience of living with the first respondent in the Pathan community in Peshawar.

[40] I accepted PPM’s evidence that the protected person is now happy and settled in Glasgow where she is currently attending college and that the protected person has made it clear that she wishes to remain in Glasgow with PPM. I also accepted PPM’s evidence that the protected person has formed a very close relationship with PPM since her return to Scotland in November 2018, notwithstanding the significant difficulties in the relationship between the protected person and PPM which manifested themselves in the protected person running away from PPM’s home on several occasions in 2019 and in the protected person living in foster care for a short period of time in 2019.

[41] PPM said that she trusted the protected person to make her own decisions about whether or not to return to Pakistan to live in the family home there. PPM said, however, that the protected person’s extended family should not try to persuade her to return. PPM went so far as to say that they should not “blackmail” the protected person by saying things like “Your dad is going to die here...he’s so old”. PPM believes that the first respondent’s

extended family in Pakistan will continue to try to persuade the protected person to return to Pakistan. PPM expressed the hope that the protected person would become stronger but was firmly of the view that the protected person should be left to decide for herself whether or not to return to Pakistan.

### **Second witness – Sergeant M of the Police Service of Scotland**

[42] Sergeant McDougall gave his evidence on 19 October 2020. He adopted the terms of his affidavit dated 23 September 2020, No 15 of process. Thereafter Sergeant M was cross-examined on behalf of the first respondent.

[43] Sergeant M gave his evidence in a calm, clear and straightforward manner. He appeared to be a witness doing his best to assist the court. He did not appear to be dissembling at any stage. I found Sergeant M to be a credible and reliable witness.

[44] I accepted Sergeant M's evidence about the reports which had been received from the Foreign and Commonwealth Office in respect of the concerns relative to the protected person being at risk of honour based abuse from the second respondent (with whom she lived in Pakistan) for bringing shame on the family. Sergeant M was told that the British High Commission in Pakistan had taken the protected person into protective custody as a result of the said risk, the protected person being a British national.

[45] In his affidavit Sergeant M recounts what he was told during the period of his involvement by a number of others including the protected person's mother, the protected person herself and the first and third respondents.

[46] Sergeant M confirmed that, in July 2019, he had instructed the removal of the protected person from a flight to Dubai and that he had collected the protected person from Glasgow Airport and had returned her to her mother's home in Glasgow. Sergeant M said

that when he had met the protected person at the airport she had told him that she did not want to stay in Glasgow anymore and that she wanted to go home to Pakistan; that she had been planning to meet her older half-brother Y in Dubai from where they would travel onward together to Pakistan; and that everything she had said before about the first and second respondents and everything she had said before about being ill-treated had been untrue. Sergeant M candidly accepted that, in her discussions with him in July 2019, the protected person had withdrawn the allegations which she had previously made during the JII.

[47] During cross-examination, when asked to reflect on the differing accounts given by the protected person, Sergeant M highlighted that the protected person had told him that she had been in touch with the first respondent's family in Pakistan before making plans to return there. In view of that Sergeant M said that the position of the Police Service of Scotland was that the protected person might have been coerced by the first respondent's family in Pakistan into changing her account of her life in Pakistan and into making an attempt to return to Pakistan. Sergeant M candidly accepted that the Police Service of Scotland had no way of knowing if the allegations which the protected person originally made were true or if the account given by the protected person was true when she withdrew the original allegations.

**Third witness – Detective Constable M (DC M), Police Service of Scotland**

[48] DC M gave her evidence on 20 October 2020. She adopted the terms of her affidavit dated 30 September 2020, No 13 of process. Thereafter, DC M was cross-examined on behalf of the first respondent and on behalf of the protected person before being briefly re-examined.

[49] DC M gave her evidence in a calm, clear and straightforward manner. She appeared to be a witness doing her best to assist the court. She did not appear to be dissembling at any stage. I found DC M to be a credible and reliable witness.

[50] DC M undertook the joint investigative interview of the protected person on 15 November 2018 in the presence of a social worker, as well as an interpreter. In the course of her affidavit DC M explained her approach to the JII and the purposes of certain questions. DC M confirmed that she had not asked the protected person leading questions and had been careful not to suggest the answers to any of the questions. DC M also explained in her affidavit that, towards the end of the JII, she had provided the protected person with some advice.

[51] DC M confirmed that, at the beginning of the interview, the protected person had been quite shy but that she had gained in confidence in the course of the interview. DC M also confirmed that she had been careful not to have the protected person identify any of the people who had helped the protected person leave her home in Pakistan in case there were any repercussions for those people as a result of having assisted the protected person. DC M confirmed that, during said interview, the protected person had volunteered that she had been told that, after she had left her home in Peshawar, the second respondent and his sons had visited the home of one of the protected person's friends and had been "quite abusive". The protected person told DC M that her friend had told her that the second respondent and his sons had been threatening and had accused her friend of having helped the protected person "escape from here".

[52] DC M was satisfied that, in the course of the JII, the protected person had described the first respondent as having attempted to force her into marriage with her cousin, NT, son of the second respondent.

[53] DC M was unaware that the protected person had subsequently retracted the allegations made in the course of the JII. DC M had not carried out any further joint investigative interview after the said retraction.

**Fourth witness – KH, Social Worker**

[54] KH gave her evidence on 20 October 2020. She adopted the terms of her affidavit dated 1 October 2020, No 11 of process. KH was then cross-examined on behalf of the first respondent and on behalf of the protected person.

[55] KH gave her evidence in a calm, clear and straightforward manner. She appeared to be a witness doing her best to assist the court. She did not appear to be dissembling at any stage. Throughout her evidence she appeared to be a truthful witness doing her best to fully and honestly answer all questions. I found KH to be a credible and reliable witness.

[56] KH first became involved with the protected person after being allocated to the case in February 2019. KH was involved for a relatively short period of time, namely 8 weeks. KH confirmed that she had not questioned whether or not this was a case about forced marriage.

[57] Upon being allocated the case KH familiarised herself with the Care First records. She confirmed that these disclosed that, on 9 November 2018, the applicants' Social Work Department ("the Department") had received an email message from a Specialist Case Worker with the Forced Marriage Unit of the Foreign and Commonwealth Office (FCO). In that email message the case worker had summarised the position as it was known to the FCO and had highlighted concerns about the area in which the protected person had been living which was described by said worker as "a highly conservative area of Pakistan" and as having "high levels of honour based violence". KH also confirmed that said worker had

alerted the Department to the state of knowledge of the first respondent at that time namely that the first respondent knew the protected person's mother had assisted the protected person to leave her home and he also knew where the protected person's mother lived. Accordingly, the first respondent would know where the protected person would be living in Glasgow.

[58] KH also confirmed that, in said email message from said case worker at the FCO, it had been disclosed that the first respondent had threatened (a) to come to the UK to take the protected person back to Pakistan and (b) to kill both the protected person and her mother. KH also confirmed that it had been disclosed in said email message that the second respondent had been harassing the protected person's mother by telephone and had been making similar threats. KH confirmed that the Department had been advised that the risk to the protected person was "high" and that the Department, together with the Police Service of Scotland, had been asked to commence safety planning for the protected person.

[59] KH confirmed that, within a few weeks of the joint investigative interview of the protected person having taken place, the protected person expressed a clear wish to be allowed to return to Pakistan. KH confirmed that the Care First records disclosed that the protected person had received assurances that, if she returned to Pakistan, she would not have to marry, she could continue with her studies and she would not be at risk. KH confirmed that said records also disclosed that the protected person had run away when her mother had collected her from school on or around 14 December 2018.

[60] KH confirmed that, by the time of her first meeting with the protected person in February 2019, the protected person did not wish to have contact with the first respondent. The protected person spoke to the panel at a Children's Hearing via conference call to confirm her view. KH confirmed that the first respondent would not accept the protected

person's position. The first respondent said that it was not the protected person on the conference call and that the views being expressed were not the views of the protected person. KH knew from the Care First records that the protected person had previously expressed the view that she did wish to have contact with the first respondent.

[61] KH confirmed that, when she met with the protected person on 19 February 2019, she was told by the protected person that the first respondent had approached her at court on the previous day and had told her to leave her mother and "come back with me". The protected person told KH that the first respondent was very angry and that she had been frightened by this. The protected person also confirmed that her parents had been arguing.

[62] KH confirmed that, over the succeeding weeks, the protected person remained frightened of the first respondent and described being slapped by him at the family home in Pakistan. The protected person told KH that, at a Children's Hearing on 4 March 2019, she had had the opportunity to speak to the panel members privately and had expressed the view that she did not wish to have any contact with the first respondent.

[63] KH recounted a number of examples of extended family members of the protected person seeking to persuade her to return to Pakistan and to persuade the protected person and her mother to come to an arrangement which did not involve the courts. In particular, KH recounted being told by the protected person's mother about a friend of the protected person's mother trying to persuade the protected person's mother to speak to the first respondent about a financial offer to secure the return of the protected person to Pakistan. KH described the protected person's mother as "furious" when recounting this attempt at "bribery". Based on the presentation of the protected person's mother and her fury, KH had believed what she was told by the protected person's mother. KH began to consider that the first respondent would go to great lengths to have the protected person return to Pakistan.

KH considered that the first respondent appeared able to manipulate other people. KH provided an appointment for the first respondent to meet with her but the first respondent did not attend a meeting with KH.

[64] KH considered that the risks to the protected person were significant and, in particular, that the risk of the protected person being killed if she returned to Pakistan was high. KH had done some reading on the internet about the area in Pakistan from which the protected person had travelled. This heightened her concerns. KH said that she had learned that the area in question has “very high statistics on the amount of women being harmed through honour based violence”.

#### **Fifth witness – KS, Social Worker**

[65] KS gave her evidence on 20 October 2020. She adopted the terms of her affidavit dated 30 September 2020, No 16 of process. KS was asked a number of questions about the events which had occurred after KS had signed her affidavit. Thereafter, KS was cross-examined on behalf of the first respondent and on behalf of the protected person before being briefly re-examined.

[66] KS gave her evidence in a calm, clear and straightforward manner. She appeared to be a witness doing her best to assist the court. She did not appear to be dissembling at any stage. Throughout her evidence she appeared to be a truthful witness doing her best to fully and honestly answer all questions posed. I found KS to be a credible and reliable witness.

[67] KS has been involved in the protected person’s case since 30 July 2019. KS visited the home of the protected person on that date which was the day after the protected person had travelled to Glasgow Airport and had boarded a flight bound for Dubai. During that visit KS learned that there had been more opportunities for the protected person to have

unlimited and unsupervised telephone contact with members of her paternal family while she was on holiday in Kyrgyzstan with her mother in June and early July 2019. The protected person's mother told KS that, during said holiday, the protected person had had access to a phone of her own and that the protected person would leave their holiday home every night at 10pm to speak to someone on said phone. The protected person's mother also told KS that the protected person had been speaking regularly on the phone to her older half-brother Y in Pakistan and that this was how the flight ticket to Dubai had been arranged. Having worked with the protected person for over a year, KS now considers that the protected person boarded the flight to Dubai after having been coerced to do so by members of her paternal family.

[68] I accepted KS's evidence that she had heard the protected person's mother stating that she has heard about threats that the protected person will be killed in front of her family should she return to Pakistan. I also accepted KS's evidence that the protected person's mother has told her that she is aware of other women in similar situations to the protected person having been stoned after dishonouring their family.

[69] KS candidly accepted that, after the protected person boarded the flight to Dubai, the protected person's mother made comments such as that she was "finished" and that the protected person "could go with her father". The protected person's mother had been very angry that the protected person had left her younger half-brother unattended in the family home on 29 July 2019 when she travelled to Glasgow Airport. KS accepted that the protected person repeatedly said, in the weeks after 29 July 2019, that she did not wish to stay with her mother and that she wished to return to Pakistan.

[70] KS also accepted that the protected person told her that she had lied during the JII and that she had been scared of not being allowed to stay with her mother. It was clear from

KS's evidence that she did not accept the protected person's statement that she had lied to the authorities when she travelled from Pakistan to Scotland in November 2018.

[71] KS accepted that, shortly after the events of 29 July 2019, the relationship between the protected person and her mother had broken down. Consequently, a respite placement with a foster carer had been identified for the protected person. Both the protected person and her mother had agreed, at that time, that this would be for the best.

[72] KS confirmed that, although it was a condition of the compulsory supervision order to which the protected person was subject at that time that she not have any contact with the first respondent, she believed that such contact was taking place. The basis for her belief was that, during a meeting with the protected person, the protected person referred to a forthcoming meeting between the first respondent and social workers. The protected person had not been told about that meeting by social workers leading KS to conclude that the first respondent and the protected person had been in contact with each other and that he had told her about the meeting.

[73] On 31 October 2019 KS had a discussion with the protected person during which the protected person told KS that, prior to boarding the flight to Dubai, her older half-brother Y had assured her that "no-one would touch her". When KS asked who would have told Y that she was worried about harm coming to her from the paternal family, the protected person told KS that she had said this to Y and that she was worried about the paternal family being angry.

[74] KS concluded from her discussions with the protected person and with the protected person's mother that the protected person would have genuine reason to be fearful of repercussions from members of the paternal family should she return to her home in Pakistan.

[75] KS confirmed that she had supervised the contact visits between the protected person and the first respondent on several occasions prior to the end of March 2020 when direct contact between the protected person and the first respondent was suspended due to the restrictions imposed by the government as a result of the global pandemic. I accepted KS's evidence that, prior to one of those contact visits commencing on 23 January 2020, the first respondent told KS that the protected person can choose where she wants to live but that he also told KS that he would not be listening to the protected person and would be listening to "elders in the community". I accepted KS's evidence that the first respondent told her that he would not be listening to a child, the protected person having been "just a child" when she came to Scotland.

[76] I also accepted KS's evidence that she had been told by the first respondent that in the past he had had 200/250 people under his command and that he had helped lots of people from Afghanistan with passports. KS formed the impression, from her discussions with the first respondent that his place in the community as a respected member thereof is important to him. KS said that she had also read another report by one of her colleagues in which it was noted that the first respondent had described himself as "a chief" in his community of about 250 families.

[77] I accepted KS's evidence that, during a supervised contact visit between the protected person and the first respondent on 6 February 2020, the protected person told KS that she had been influenced to leave Pakistan and come to the UK. KS noted that the protected person had never before stated that she had come to the UK because she was influenced by someone. KS considered that it was obvious from the conduct of the first respondent and of the protected person during said visit that the protected person had been prompted to make said statement by the first respondent.

[78] I accepted KS's evidence that the first respondent had made worrying statements to her during a meeting on 14 February 2020. During said meeting the first respondent said: "It is not easy to kill someone in the UK" and "you can't even kill a bird". KS believes the first respondent made these comments in response to the accusation that the first and second respondents came to the UK in 2018 to kill the protected person and/or her mother.

[79] I accepted KS's evidence that, during contact visits between the protected person and the first respondent, the first respondent would say that "someone" told the protected person to lie when she arrived in the UK. I accepted KS's evidence that she required to try to redirect the conversation during such visits as such statements appeared to be made for the benefit of KS and did not occur naturally in conversation. I accepted KS's assessment that, during such contact visits, the first respondent brought the conversation back to the court proceedings, the issue of forced marriage and the "lie" told by the protected person at the outset. I also accepted KS's evidence that the same pattern emerged when face to face contact between the protected person and the first respondent resumed at the end of July 2020 and her assessment that the first respondent was influencing the protected person in what she should say.

[80] KS confirmed that when she met with the protected person on 24 September 2020 the protected person was unsure about returning to Pakistan and told KS that she did not know if she wanted to return. The protected person subsequently told KS that she was going to tell the members of the children's panel that she wanted to stay with her mother in Glasgow rather than return to Pakistan to live with her father. During cross examination KS accepted that, prior to expressing this view, the protected person had been saying for over a year that she wished to return to Pakistan.

**Sixth witness - JF, Social Worker**

[81] JF gave her evidence on 20 and 21 October 2020. On 20 October 2020 she adopted the terms of her affidavit which she had sworn earlier that day but which was erroneously dated 2019, No 21 of process. JF was cross-examined on behalf of the first respondent and on behalf of the protected person before being re-examined.

[82] JF gave her evidence in a calm, clear and straightforward manner. She appeared to be a witness doing her best to assist the court. She did not appear to be dissembling at any stage. Throughout her evidence she appeared to be a truthful witness doing her best to fully and honestly answer all questions posed. I found JF to be a credible and reliable witness.

[83] JF accepted that the applicants had relied upon information provided by the Foreign and Commonwealth Office in respect of the protected person and that the FCO had identified one of the risk factors as the fact that the protected person had been living in Peshawar in Pakistan.

[84] I accepted JF's evidence that she had been at a child protection core group meeting on 5 June 2019 at which the protected person and her mother were also in attendance and that, during said meeting, the protected person's mother said that a member of her family in Pakistan (a child) had informed her that the first respondent had been making death threats about the protected person and alleging that "if he finds her he will bring her back to Pakistan and kill her in front of her family". I accepted JF's evidence that the protected person's mother had been asked to report this information to the police.

[85] I also accepted JF's evidence that the Department had been concerned about the proposal of the protected person's mother to take the protected person on holiday to Kyrgyzstan for a period of 6 weeks in June and July 2019 because (i) the protected person would be leaving a safe care plan in the United Kingdom; (ii) the Department would not

know exactly where the protected person would be staying in Kyrgyzstan; and (iii) there would be some disruption to the protected person's education. Notwithstanding these concerns the holiday proceeded and telephone checks on the protected person were made by the Department on a weekly basis during said holiday.

[86] I accepted JF's evidence in respect of her involvement with the protected person during the period immediately following the protected person's attempt to fly to Dubai. During meetings between JF and the protected person on 29 July 2019 and in the days and weeks which followed, the protected person told JF that she wanted to live with the first respondent as she did not like life in Scotland; that she had told lies to the police and social workers about everything in the past; that she was safe in Pakistan with the first respondent; and that she wished to return there. During said meetings the protected person had also told JF that she had become engaged to her cousin, one of the sons of the second respondent, when she was 14 years old and that she had been happy about the engagement, although she did not wish to marry straight away. I accepted JF's evidence that the protected person had told her that her fiancé had been in contact with her, telling her he loves and misses her. The protected person told JF that she feels the same and wishes to return to Pakistan to eventually marry him. The protected person told JF that she is not worried about marrying him and that the first respondent has told her she will be free to travel to the UK to see her mother and her maternal family here once she is married. I accepted JF's evidence that the protected person had also told her that she had been told by her older half-brother, Y, that the first respondent has "forgiven her" and just wants her home.

[87] I accepted JF was concerned that what the protected person had been told might not be true. JF was not convinced that the protected person would be safe if she were to return to Pakistan. JF was also concerned about such a sudden change in the protected person's

views and about the covert nature of such a change, namely the change having been effected without the protected person's mother or the Department knowing about it. I accepted that JF had been concerned that the protected person might have been coerced or manipulated into making the statements which she was then making.

[88] JF assessed that the protected person was withholding information in her discussions with JF in that the protected person was more guarded in her conversations about some issues, such as the views of her paternal family. JF was uncertain of the reason as to why the protected person would be withholding information.

[89] I accepted JF's evidence that she had been advised by the protected person's mother that she had listened to voice messages which the protected person had sent to her paternal family and in which the protected person had stated she was being mistreated by her mother. The protected person's mother also described the voice messages which she had listened to as "derogatory about her". I accepted JF's evidence that the protected person's mother had been very upset and animated when recounting this to JF.

[90] In light of the events of 29 July 2019 and the statements being made by the protected person, JF considered that a Forced Marriage Protection Order should be sought as she considered that the protected person's attempt to return to Pakistan had been facilitated by the protected person's paternal family. JF considers the protected person would be at risk if she visited Pakistan and it would be preferable if her extended paternal family could come to visit the protected person in Scotland. The application in these proceedings was presented to the court on 2 August 2019.

[91] In addition, JF referred the protected person and her mother to the Family Functional Therapy Team (a specialist social work team that works with families to help improve communications and relationships) after their relationship broke down in August 2019 and

the protected person was looked after for a period by a foster carer. KS confirmed that, after the involvement of said team, the protected person and her mother reconciled and the protected person decided to return to live with her mother.

[92] JF said that, in her view, the protected person should remain in the UK, unmarried, until “she’s fully an adult” which JF opined would be when the protected person reaches the age of 25. JF said that, from her experience of young people, a young person continued to grow and develop into their early twenties. In her assessment the protected person had experienced trauma in her life and remains vulnerable and could remain vulnerable into her early twenties. In expressing such a view JF did not rely on any medical evidence. She considered the order sought should be granted for a period of 7 years.

[93] During cross-examination on behalf of the first respondent, JF made it clear that the protected person had never withdrawn her assertion that, prior to her leaving Pakistan, it had been proposed that she would marry. JF said that, when the protected person had departed from her initial assertion that she would be forced into marriage in Pakistan, she had then indicated that there was to be an arranged marriage.

#### **Seventh witness – SC, Safeguarder**

[94] SC gave her evidence on 21 October 2020. She adopted the terms of her affidavit dated 17 September 2020, No 14 of process. SC was not cross-examined on behalf of the first respondent or on behalf of the protected person.

[95] On 31 January 2019 SC was appointed as safeguarder to the protected person in connection with the proceedings in this court following the application being made to the court by the Principal Reporter under section 93 of the Children’s Hearings (Scotland) Act 2011. Between 31 January 2019 and 20 May 2019 SC made a number of enquiries and

met with the protected person and her parents. SC provided a written report to the children's hearing dated 20 May 2019 (No 5/8 of process) to which SC refers in her said affidavit.

[96] I accepted the evidence of SC as credible and reliable, save in so far as at two places on the first page of her said report she erroneously refers to the first respondent by the name of the second respondent. Thereafter, and throughout her report, SC refers to the first respondent as the protected person's father. SC addresses this confusion in paragraph 7 of her said affidavit. I am satisfied that the two errors on the first page of said report are typographical and of no significance.

[97] I accepted the evidence of SC that, on one occasion prior to completion of her report on 20 May 2019, she had attended at this court and the protected person had told her she did not want to go into the courtroom because she was too scared to be beside the first respondent. SC remembers the protected person looking scared and telling her that the first respondent had been threatening her, although SC could not remember in what way.

[98] I accepted SC's evidence that she had been told by the protected person that she did not want to marry her cousin or return to Pakistan. In addition, I accepted SC's evidence that the description given to her by the protected person of what had occurred to her in Pakistan prior to November 2018 was a description of the protected person being told what to do and of being forced into marriage. I accepted SC's evidence that, at the time of preparing her said report in 2019, the protected person did not wish to have any contact with the first respondent and had expressed a clear view to that effect.

[99] I also accepted SC's evidence that, in the course of her enquiries, she met with the first respondent at this court during which meeting the first respondent told SC that the protected person had recently stopped attending school and that "the family had decided

(the protected person) was to marry her cousin". The first respondent told SC that he had not tried to force the protected person to marry but that there had been "an agreement" that the protected person would marry her cousin.

*(ii) Witness for the protected person*

**The protected person**

[100] The protected person gave evidence in person on 22 October 2020 with the benefit of a screen, this special measure having been authorized by the court following the granting of a vulnerable witness application on 21 October 2020.

[101] The protected person adopted the terms of her affidavit dated 15 October 2020, No 20 of process. She was then asked a series of questions during examination in chief to clarify her views before being cross-examined on behalf of the applicants and on behalf of the first respondent.

[102] The protected person gave her evidence in a calm, clear and straightforward manner. She did not appear to be obviously dissembling at any stage. I found the protected person to be a generally credible and reliable witness and, in large measure, I accepted her evidence.

[103] I accepted the protected person's evidence about her life prior to November 2018. The protected person was born in Glasgow where she lived until she was around 6 years old. Thereafter the protected person lived in Peshawar, Pakistan until November 2018 when she returned to Glasgow. I accepted the protected person's evidence about what she called her "engagement" and the plans which had been made by the first and second respondents for her to marry one of her paternal cousins. The protected person's evidence was that, when she turned 15 years old (in April 2018), she became engaged to her cousin, NT, one of

the sons of the second respondent. The engagement had come about by the protected person being told by the first respondent that he would “give her” to her said cousin as his wife. The protected person said that she did not want to marry her said cousin but did not speak out and say that she did not want to marry her said cousin. She said she had no say in the matter. At this point the protected person stopped attending school because she was not allowed to leave the family home. She was not allowed to go to the door or stand at the gate.

[104] I accepted the protected person’s evidence in respect of the sequence of events which led to her making contact with her mother to seek her assistance to leave the family home in Peshawar as well as her evidence in respect of the arrangements which were made for the protected person to leave the family home in Peshawar and to thereafter leave Pakistan. In the words of the protected person: “I knew I had to flee because I did not want to marry my cousin”. It is notable that, in her said affidavit, the protected person refers, more than once, to having “fled” the family home in Peshawar and not just to having left it.

[105] I accepted the protected person’s evidence that she is worried that if she were to return to Peshawar she would have to marry her said cousin. I accepted the protected person’s evidence of her experience of the roles played by parents in marriages in Peshawar. The protected person said that in Peshawar “it is always the parents’ choice” and that if you refuse to marry the person of your parents’ choice “then they will force you to. They can force it. They will shout and I wouldn’t be able to escape.” I accepted the protected person’s evidence that she is concerned that if she were to return to Peshawar in Pakistan she could be held there against her will and she might never return to Scotland. I accepted the protected person’s evidence that if she were to return to Peshawar there is a risk that she could be forced by the first respondent to marry her said paternal cousin. I also accepted the

protected person's evidence that she would face a lot of pressure from her community if she were to return to Pakistan. I accepted the protected person's evidence that she would not be accepted back into the community and would be an outcast.

[106] Notwithstanding her evidence in respect of the foregoing, the protected person was clear that she did not want the court to make a Forced Marriage Protection Order; that she did not wish to have any restrictions placed on her freedom of movement; and that she would like to have contact with the first respondent without the involvement of the applicants' social work department. After these proceedings are concluded the protected person hopes the first respondent will continue to live in Glasgow. She would like to see him in Glasgow and would like to live with him as well.

[107] I accepted the protected person's evidence that she is happy and settled in Scotland; that she has no intention of returning to Pakistan; and that she is really concerned about not having her own passport in her possession. Although the protected person recognises it is not a problem right now because of the pandemic, she wants to be able to go on holiday in the future. Although the protected person would like to have the freedom to go on holiday she would only wish to do so with her mother. She would not wish to visit Pakistan in the near future but she would like to visit Pakistan at some point.

[108] In her said affidavit the protected person said that she would only want to return to visit Pakistan on holiday "if it is safe". The protected person said that she would return with her mother accompanying her and would not travel near Peshawar where her paternal family members are located. The protected person would like to visit what she called "safe cities, such as Islamabad or Karachi".

[109] During cross-examination on behalf of the first respondent the protected person agreed that, at some point in the future, she might want to visit Pakistan but the protected person immediately said she did not want to visit Peshawar.

[110] At the end of her evidence, I asked the protected person to clarify her evidence and to explain why she did not want to visit Peshawar. In response to questions from the court, the protected person said that she did not want to visit Peshawar because it was not a safe place to go. When asked by the court to clarify what makes it unsafe, the protected person said that people had guns there and that it was not safe to go there. The protected person said that, when she lived in Peshawar, she had seen people with guns when she was going out with friends to a party or to a wedding.

[111] The protected person also confirmed that she would only wish to visit Pakistan in the company of her mother but understood her mother had no intention of returning to Pakistan. When asked by the court if she would travel to Pakistan with her father, the first respondent, the protected person said that she did not want "to go with him" and, when asked why, said "because it's not safe for me to go and I don't want to be there".

[112] Despite being the subject of a Compulsory Supervision Order at present which permits only supervised contact between the protected person and the first respondent, the protected person confirmed that she has access to social media and to a mobile phone. The protected person confirmed that her mother "sometimes" checks her phone but not always.

*(iii) Witness for the first respondent*

**The first respondent**

[113] The first respondent gave his evidence on 22 October 2020. He adopted the terms of his affidavit dated 5 October 2020, No 17 of process. The first respondent was asked a

number of questions during examination in chief before being cross-examined on behalf of the applicants.

[114] I found the first respondent to be an obstructive and evasive witness at times. His evidence was contradictory at times and I consider he was obviously dissembling at times. Generally, I did not accept the evidence of the first respondent as credible or reliable save where there was other credible and reliable evidence from other sources which I accepted. I rejected much of the evidence of the first respondent for the foregoing reasons.

[115] The first respondent's evidence in respect of the relationship between the protected person and her mother in the period prior to November 2018 is at odds with the evidence of the protected person and with that of her mother. According to the first respondent, when the protected person lived in Peshawar, the protected person had her own mobile phone and could text her mother whenever she wanted to. In addition, the first respondent's evidence was that the protected person's mother would call the protected person and her brother around once a month. The first respondent described his wife as having a close bond with their two children and the children as having a healthy relationship with their mother, despite not having seen her since around 2010. The first respondent said that he supported and encouraged the relationship between his children and their mother and that he had never controlled to whom the children had spoken on their own phones.

[116] The evidence of the protected person and that of her mother entirely contradicted the position of the first respondent. I accepted the evidence of the protected person and that of her mother that there had been little or no contact between the protected person and her mother from 2010 until November 2018. I also accepted the evidence of the protected person that she had not had a mobile phone provided by the first respondent through which she was able to keep in contact with her mother prior to November 2018. Even if I had found

that the first respondent had allowed the protected person to have her own mobile phone, I would have rejected, as incredible, the first respondent's evidence that he had never controlled to whom she had spoken. The protected person was only 7 years old when her mother left Pakistan and I consider it incredible that, if he had thereafter allowed the protected person to have a mobile phone, the first respondent would not have monitored or restricted its use, if only to ensure the safety of the protected person.

[117] The first respondent also said that, after she left in 2010, his wife had never visited the two children in Pakistan, Afghanistan or anywhere else. He said he was not sure why she had never visited or why she had never taken the children to Scotland. The first respondent maintained that he was not sure why this had not happened, despite his evidence that he had been having telephone conversations with his wife around twice a week after she travelled to Glasgow in 2010. I rejected this evidence as incredible. The first respondent sought to persuade the court that, despite being in frequent and regular contact with his wife, he did not know why she had never visited the children in Pakistan, Afghanistan or anywhere else and did not know why she had never taken them with her to visit Scotland.

[118] Furthermore, the evidence of the first respondent in respect of the relationship between the protected person and her mother, as set out in paragraph 2 of his said affidavit, appears to be at odds with answer 2 for the first respondent in his Answers, number 9 of process, and, in particular, with the terms of lines 11 to 14 of said answer. In said lines of said answer the first respondent avers that the protected person's mother "showed little or no interest in the children" and that she "would very rarely even call to speak to the children or enquire after their wellbeing or welfare". I consider the first respondent's evidence of regular telephone contact having taken place between the protected person and her mother

to be inconsistent with his said averments. During cross examination the first respondent was directed to the apparent inconsistency between his said answer and his evidence.

However, it was put to the first respondent that he had said in his said answer that the children were not in touch with their mother. That was incorrect and, quite justifiably, the first respondent denied that he had made such an averment.

[119] The first respondent confirmed that the protected person had left her home in Peshawar and had travelled to the British High Commission in Islamabad without telling the first respondent of her plans. The first respondent confirmed that only the protected person and her mother knew of these arrangements. The first respondent gave no explanation for the secretive manner in which these plans were made. The behaviour of the protected person and her mother in making these plans in secret implied that they believed the first respondent would have prevented the protected person from leaving had he known of her intentions.

[120] The first respondent denied that he would force the protected person into marriage. His position was that "other people" had told the protected person to say that she was being forced into marriage in Peshawar. The first respondent did not identify the person or persons he suspected of having told the protected person to make these allegations. It appears, however, from the evidence of SC that the first respondent believes the protected person's mother has misled the protected person in order to bring her to the UK.

[121] During cross-examination the first respondent denied that he and the second respondent had planned for the protected person to marry one of the sons of the second respondent, namely NT. When it was put to the first respondent that he had previously told SC, the safeguarder in the Children's Hearing proceedings, something different, the first respondent became somewhat obstructive. He was asked if he remembered SC who had

attended at court on the previous day. He did not answer the question but responded by saying that she was a social worker. When it was put to him that SC was a safeguarder appointed in the Children's Hearing proceedings he accepted that was the position. It was put to the first respondent that the safeguarder had told the court that she had spoken to him in 2019 to which the first respondent replied "I don't know". It was put to the first respondent that SC had spoken to him within this court building to which the first respondent replied "I don't remember". The first respondent had had no previous difficulties with his recollection of events, some far less recent than the proceedings which had occurred in 2019. The first respondent was then asked if his previous responses meant that he could not remember telling SC that there had been a marriage arranged for the protected person. Somewhat surprisingly, given that the first respondent had previously said that he did not know if SC had spoken to him in 2019 and that he did not remember SC speaking to him in the Sheriff Court building, the first respondent responded by saying "No...I didn't say that to her". It was then put to the first respondent that he had just told the court that he did not remember meeting SC to which he said "Even if I met her, I didn't say that to her".

[122] I consider the first respondent to have been dissembling during the foregoing chapter of his evidence, particularly when he addressed the protected person's evidence that she had been promised in marriage to her said cousin. I did not accept his evidence that he did not remember meeting SC nor did I accept his evidence that he did not tell her that a marriage had been arranged between the protected person and her said cousin. I consider the first respondent sought to persuade the court that no marriage had been arranged for the protected person. I rejected his evidence in that respect, preferring the evidence of the protected person which evidence had been consistent from November 2018 until

October 2020 that she had been engaged to marry her paternal cousin NT. I consider it is significant that the protected person maintained that such a marriage had been arranged even when she expressed the view that she wished to return to Peshawar and when she took steps so to do in July 2019.

[123] During cross examination it was put to the first respondent that, on an occasion during February 2019 when he was in attendance in the Sheriff Court building, he had been angry. The applicants had led evidence of such an occasion from the protected person's mother and from SC, safeguarder. Both had confirmed that the first respondent's anger had been directed towards the protected person and that she had been frightened. The first respondent flatly denied that he had been angry on any such occasion. Given the difficulties which he had experienced with his recollection of events as set out in paragraph 122 *supra* it was surprising that the first respondent had no difficulty in recalling his emotional state on a specific occasion more than 18 months before. I consider this undermined his credibility. I preferred the evidence of the protected person's mother and that of SC in respect of this incident.

[124] During his evidence the first respondent did not adequately explain why, if no marriage had been proposed between the protected person and the son of the second respondent, the second respondent had come to Glasgow with the first respondent in November 2018. The first respondent had lived in Glasgow before for a number of years and was familiar with the city. The first respondent confirmed that the second respondent was not familiar with the city. The first respondent denied that he and the second respondent had come to Glasgow to take the protected person back to Pakistan. I rejected his denial and the explanation that the first respondent set out in his evidence as improbable and incredible.

[125] According to the first respondent, the two men had travelled to Glasgow in November 2018 only to see the protected person and to find out if she wanted to go back to Pakistan or to stay with her mother in Glasgow. According to the first respondent, the protected person's mother had contacted the second respondent prior to the two men travelling to Glasgow and had told him that the protected person was in Glasgow; that the protected person wanted to stay in Scotland; and that the protected person's mother would bring her home to Pakistan after a few months. The first respondent said that he and the second respondent had then travelled to Glasgow, arriving on 11 November 2018; that they had attended the home of the protected person's mother; and that they had found no-one to be at home. I rejected this evidence in so far as it related to the motives of the first and second respondents for travelling to Glasgow.

[126] I consider it more likely than not that the first and second respondents had decided that the protected person would marry one of the sons of the second respondent, namely the said NT; that they had travelled to Glasgow to look for the protected person after she fled Peshawar; and their purpose in so doing had been either to force the protected person to return to Pakistan to ensure the marriage proceeded or to persuade her to return to Pakistan to ensure the marriage proceeded.

[127] In arriving at that conclusion I have taken into account that, in early November 2018, the second respondent engaged in a course of conduct which caused the protected person's mother fear and alarm in that he repeatedly telephoned her and sent her messages and voicemails and attended at her home address. His alarming conduct constituted a criminal offence and, on 27 November 2018, the second respondent pled guilty to a contravention of section 39(1) of the Criminal Justice and Licensing (Scotland) Act 2010. He was fined the sum of £1,125 and the court made a non-harassment order prohibiting the second

respondent from communicating further with the protected person's mother. The second respondent thereafter returned to Pakistan.

[128] I consider the intensity of the efforts of the second respondent to communicate with the protected person's mother about the protected person renders it more likely than not that the plans of the first and second respondents for a marriage between the protected person and her cousin had been frustrated and the second respondent was angry about the situation. The second respondent is, after all, the protected person's uncle and not her father. The intensity of his efforts to find the protected person strongly implies that he had a significant personal interest in finding her which went far beyond any avuncular wish to establish whether the protected person wished to stay in Glasgow rather than return to Pakistan.

[129] I also consider the presence of the first respondent in Glasgow for such a lengthy period, namely from November 2018 until October 2020 (save for a period between April and August 2019), renders it more likely than not that he has remained in Glasgow to try to secure an outcome which would enable the plans of the first and second respondents for a marriage between the protected person and her said cousin to be achieved. I consider this conclusion is supported by the fact that, throughout said period, the first respondent's younger son has remained in Pakistan and the first respondent has only been able to have direct contact with his younger son during the period between April and August 2019. The first respondent's younger son was 13 years of age when the first respondent travelled to Glasgow in November 2018 and by the time of the evidential hearing he was 15 years of age.

[130] Finally, during cross examination the first respondent confirmed that his oldest son, AT, a child of his first marriage, had married one of the second respondent's daughters. The

first respondent went on to say that this couple lived in his family home in Peshawar. That evidence directly contradicted the evidence in paragraph 11 of his said affidavit.

## **Discussion and Decision**

[131] It would be helpful to set out the relevant statutory provisions here. Section 1 of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (hereafter “the 2011 Act”) provides:

### **1 Forced marriage protection orders**

(1) The court may make an order for the purposes of protecting a person (a “protected person”)—

- (a) from being forced into a marriage or from any attempt to force the person into a marriage, or
- (b) who has been forced into a marriage.

(2) In deciding whether to make such an order and, if so, what order to make, the court must have regard to all the circumstances including the need to secure the health, safety and well-being of the protected person.

(3) In ascertaining the protected person’s well-being, the court must, in particular, have such regard to the person’s wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate on the basis of the person’s age and understanding.

(4) For the purposes of this Part, a person (“A”) is forced into a marriage if another person (“B”) forces A to enter into a marriage (whether with B or another person) without A’s free and full consent.

(5) For the purposes of subsection (4), it does not matter whether the conduct of B which forces A to enter into a marriage is directed against A, B or another person.

(6) In this Part—

“force” includes—

- (a) coerce by physical, verbal or psychological means, threatening conduct, harassment or other means,

- (b) knowingly take advantage of a person's incapacity to consent to marriage or to understand the nature of the marriage

and related expressions are to be read accordingly,

“forced marriage protection order” means an order under subsection (1).

[132] Section 2 of the 2011 Act provides:

## **2 Contents of orders**

(1) A forced marriage protection order may contain such —

- (a) prohibitions, restrictions or requirements, and
- (b) other terms,

as the court considers appropriate for the purposes of the order.

(2) The terms of such an order may, in particular, relate to —

- (a) conduct outwith (as well as, or instead of, conduct within) Scotland,
- (b) persons who force or attempt to force, or may force or attempt to force, a protected person to enter into a marriage,
- (c) persons who are, or may become, involved in other respects.

(3) A forced marriage protection order may, among other things, require a person —

- (a) to take the protected person to a place of safety designated in the order,
- (b) to bring the protected person to a court at such time and place as the court making the order may specify,
- (c) to refrain from violent, threatening or intimidating conduct (whether against the protected person or any other person),
- (d) who is a person such as is mentioned in subsection (2)(b) or (c), to appear in court,
- (e) to disclose, if known, the whereabouts of such a person,
- (f) to refrain from taking the protected person from, or to, such place as the court may specify,
- (g) to facilitate or otherwise enable the protected person or another person to return or go to such place (whether in Scotland or another part of the United Kingdom) as the court may specify within such period as may be so specified,
- (h) to submit to the court such documents (including passports, birth certificates or other documents identifying the person and travel documents) as the court may specify,

- (i) to provide the court with such other information as it may specify.
- (4) For the purposes of subsection (2)(c), examples of involvement in other respects are—
  - (a) aiding, abetting, counselling, procuring, encouraging or assisting another person to force, or to attempt to force, a person to enter into a marriage,
  - (b) conspiring to force, or to attempt to force, a person to enter into a marriage.

[133] Section 3 of the 2011 Act provides:

### **3 Applications for orders**

- (1) The court may make a forced marriage protection order on an application being made to it by —
  - (a) the protected person, or
  - (b) a relevant third party.
- (2) An application may be made by any other person only with the leave of the court.
- (3) In deciding whether to grant such leave, the court must have regard to all the circumstances including—
  - (a) the applicant’s connection with the protected person,
  - (b) the applicant’s knowledge of the circumstances of the protected person, and
  - (c) the wishes and feelings of the protected person so far as they are reasonably ascertainable.
- (4) But the court need only have regard to those wishes and feelings so far as it considers it appropriate, on the basis of the protected person’s age and understanding, to do so.
- (5) An application made to the sheriff under this section is to be made by summary application.
- (6) An application made to the sheriff under this section is to be made—
  - (a) to the sheriff in whose sheriffdom the protected person is ordinarily resident, or
  - (b) where the protected person is not ordinarily resident in Scotland, to the sheriff of the sheriffdom of Lothian and Borders at Edinburgh.
- (7) In this section, “a relevant third party” means —

- (a) a local authority,
- (b) the Lord Advocate,
- (c) a person specified, or falling within a description of persons specified, by order made by the Scottish Ministers.

[134] The applicants are a relevant third party in terms of sections 3(1)(b) and 3(7)(a) of the 2011 Act. The protected person is ordinarily resident with her mother at an undisclosed address within the sheriffdom of Glasgow and Strathkelvin. This court has jurisdiction in terms of section 3(6)(a) of the 2011 Act.

[135] On the basis of the findings in fact set out above I have found that (i) the protected person is a person at risk from attempts by the first and second respondents to force the protected person into a marriage, in terms of section 1(1)(a) of the 2011 Act; (ii) the order sought by the applicants is required to protect the protected person from being forced into a marriage; and (iii) the order sought by the applicants is required to secure the health, safety and wellbeing of the protected person, in terms of section 1(2) of the 2011 Act.

[136] I have also concluded that the protected person has genuine reasons to be fearful of harm befalling her at the hands of her paternal family should she return to Pakistan. I accepted as credible and reliable the evidence of the protected person's mother that (i) she has heard of threats that the protected person will be killed in front of her paternal family should she return to Pakistan and (ii) she is aware of other women in similar situations being killed after dishonouring their families.

[137] Having regard to the terms of section 1(3) of the 2011 Act, the protected person has repeatedly stated that she does not wish the order sought by the applicants to be granted. However, I am satisfied, having regard to the protected person's age and understanding, that it is more likely than not that the protected person is expressing such a wish because she knows it is the outcome sought by the first respondent. I am satisfied that it is more

likely than not that the protected person has been influenced by the first respondent in expressing a wish that the order sought by the applicants is not granted.

[138] Having regard to the definition of “force” in section 1(6) of the 2011 Act, I am satisfied that, by their conduct, the first and second respondents have sought to coerce the protected person to enter into a marriage and that they would continue in their attempts to force the protected person into marriage in the absence of the order sought by the applicants.

[139] I am also satisfied that, having regard to the terms of section 2(2)(c) of the 2011 Act, in consequence of his actions on 29 July 2019, the third respondent is a person who has become involved in the attempts by the first and second respondents to force the protected person into marriage. On the basis of the evidence which was led and which I accepted as credible and reliable, the involvement of the third respondent has been limited but significant. The third respondent is a friend of the first respondent. He was present at Glasgow Airport on 29 July 2019 and assisted the protected person to navigate the airport and to board the flight to Dubai where she had planned to meet her older half-brother Y who would accompany her on the next leg of her journey from Dubai to Pakistan. With the assistance of the third respondent the protected person managed to board the said flight. In that way, having regard to the terms of section 2(4)(a) of the 2011 Act, the third respondent assisted the first and second respondents in their attempts to secure the return of the protected person to Pakistan where they intended to force her to marry her said cousin.

[140] On the basis of the findings in fact set out above, I have found, on a balance of probabilities, that the evidence supports the granting of the order sought by the applicants *quoad* the first and third respondents. On the basis that the applicants have been unable to

serve the application on the second respondent, I have dismissed the application *quoad* the second respondent.

[141] The protected person is now an adult. She has the right to choose whether to marry at all and, if she chooses to marry, to whom she will be married and when. The first and second respondents do not have the right to determine these matters for the protected person.

[142] The first respondent denied that he had sought to force the protected person into marriage. He denied that there had been any plan for the protected person to marry her cousin, NT, one of the sons of the second respondent. He maintained these denials despite the evidence to the contrary. In assessing the credibility and reliability of his denial that there was any plan for the protected person to marry her said cousin I took into account the fact that one of the first respondent's older sons is already married to the second respondent's daughter and that there was, therefore, some precedent for marriages taking place between the children of the first and second respondents. The first respondent also denied having told SC, the safeguarder in the Children's Hearing proceedings, that a marriage had been arranged between the protected person and her said cousin. SC confirmed that the first respondent had not used the word "arranged" but he had made it clear that there was an agreement that the protected person would marry her said cousin. I rejected all of these denials as unreliable and, in several respects, incredible. I consider that these denials demonstrate the lengths to which the first respondent is prepared to go to prevent the granting of the order sought by the applicants and to secure the return of the protected person to Pakistan.

[143] Despite having an electronics business operating in Peshawar, Pakistan and in Kabul, Afghanistan, the first respondent has been resident in Glasgow since

November 2018 (save for a period of time between April and August 2019). The first respondent said, vaguely, during cross-examination that he was looking for a business in Glasgow. He also said that he could start a business again here. He gave no further details and I did not consider his evidence in this regard to be credible. He has homes and businesses in Peshawar and in Kabul. The rest of his family live in Peshawar including the protected person's younger brother. Apart from a period of 4 or 5 months during 2019 the first respondent has not seen his younger son, the protected person's brother, since November 2018. It appears that, for a considerable period of time, amounting to over 18 months, the first respondent has focused his energies in seeking to persuade the protected person to return with him to Peshawar. His determination strongly implies that the evidence about the risk of the protected person being forced into marriage is credible.

[144] I consider it was significant that, on 29 July 2019 when the protected person boarded said flight to Dubai with the intention of returning to Pakistan to live in the family home in Peshawar, the first respondent had already returned there. I rejected his denial of any knowledge of the protected person's travel arrangements. I consider the first respondent's evidence that those travel arrangements had been made by his older son Y and that the first respondent had no knowledge of same to be wholly lacking in credibility. I very much doubt that any arrangements would be made for the protected person to return to Pakistan without the knowledge of the first respondent, particularly in light of the first respondent's position as head of his community.

[145] During cross examination the first respondent maintained that he had had no knowledge of the said travel arrangements at the time and that he had had no involvement in planning the protected person's journey. When asked if his son Y had made the arrangements, the first respondent said: "That was between them" before going on to say

“He did not discuss that with me”. I rejected that evidence as incredible. I consider it more likely than not that the first respondent had returned to Pakistan and had coordinated the efforts to persuade the protected person to return there and had, at the very least, been consulted on the arrangements.

[146] It is all the more troubling that the protected person was persuaded to leave Glasgow and to travel back to her former home in Peshawar when the protected person was the subject of a compulsory supervision order with a condition of residence with her mother and a condition of no contact with the first respondent. The existence of the said order did not prevent the first respondent and other members of the paternal family of the protected person from persuading her to leave her mother’s home in Glasgow with the intention of travelling to her father’s home in Peshawar. I consider the order sought by the applicants in these proceedings to be required to prevent, at least, the first respondent from making any further attempts to have the protected person return to Pakistan and to force her to marry her said cousin.

[147] I also consider it was significant that the first respondent returned to Glasgow in early August 2019 very shortly after the plan for the protected person to return to Pakistan had failed. During cross examination, when it was put to the first respondent that he had returned to Glasgow only after the plan for the protected person to return to Pakistan had proven unsuccessful, he did not accept that characterization of his conduct. He said that he was “coming anyway” but did not say why. I consider it likely that the first respondent’s return to Glasgow was prompted by the removal of the protected person from the flight to Dubai on 29 July 2019.

[148] I was satisfied from the evidence led and which I accepted as credible and reliable that each of the three respondents has played a part in seeking to have the protected person

return to Pakistan. The role played by each of them is described above. In terms of the first respondent's role, I have found as a matter of fact that he has endeavoured to persuade the protected person to return to Pakistan over an extended period of time since November 2018 save for the period in 2019 during which the protected person did not wish to have any contact with the first respondent.

[149] I am satisfied that, by their conduct, the first and second respondents have sought to coerce the pursuer to enter into a marriage and that they would continue in their attempts to force the protected person into marriage in the event of her returning to Pakistan. In coming to this conclusion I have also taken into account the roles played by the first and second respondents in persuading the protected person's mother to travel to Pakistan in 2010 by pretending that the purpose of the trip was to attend a family wedding there when, in truth, the purpose was for the family to permanently relocate to Peshawar, Pakistan. I have also taken into account that the first respondent has previously assaulted the protected person's mother when seeking to enforce the customs and traditions of his community in Pakistan and that the protected person has been struck by the first respondent and by other members of her paternal family when living in Pakistan.

[150] I consider the protected person's evidence about only being willing to travel to "safe cities" in Pakistan in the company of her mother to have been highly significant. I have little doubt that the protected person would like to return to Pakistan in view of the very significant period during which she lived there. However, I consider it was highly significant that the protected person said she would not be willing to return to Pakistan in the company of the first respondent. The protected person said that it would not be safe for her so to do. It appeared clear that the protected person had, by October 2020, reached the view that, although she loves the first respondent, she does not trust him enough to travel

back to Pakistan in his company. I consider it is clear from the totality of the evidence of the protected person that she anticipates that if she were to travel to Pakistan with the first respondent she would be forced into a marriage which she does not want. I consider the protected person reasonably apprehends that she will be forced into marriage with her cousin NT, one of the sons of the second respondent, if she returns to Peshawar.

[151] Her mistrust of the first respondent notwithstanding, the protected person does not wish a Forced Marriage Protection Order to be granted. Her wishes and feelings in this respect have been consistent since the interim order was granted in 2019. The protected person is sufficiently mature and articulate to express her wishes and feelings in the matter. Nonetheless her wishes and feelings are not determinative of the outcome of the application. In terms of section 1(2) of the 2011 Act the court must have regard *inter alia* to the need to secure the well-being of the protected person. In terms of section 1(3) of the 2011 Act in ascertaining that well-being the court must, in particular, “have such regard to the person’s wishes and feelings ..... as the court considers appropriate on the basis of the person’s age and understanding.” I have given this matter careful consideration and have concluded that the order sought by the applicants is necessary to secure the health, safety and well-being of the protected person. I have concluded that the protected person’s wishes and feelings, although clearly and forcefully expressed, have been influenced by a number of factors and have been formed through an incomplete and unreliable understanding of the significant risks she continues to face if she were to return to Peshawar.

[152] I have concluded that the protected person’s wishes and feelings have been influenced by her desires to be considered a dutiful daughter and to please the first respondent. I have also concluded that the protected person’s wishes and feelings are likely to have been influenced by the emotional pressure previously brought to bear on her by

members of her paternal family, such as when she was told by her younger brother that her behaviour had made the first respondent unwell. The protected person was subjected to this pressure prior to her attempt to return to Pakistan in July 2019. Further, I consider the protected person's wishes and feelings to have been manipulated by the reassurances provided to her by members of her paternal family that she would have nothing to fear if she were to return to Peshawar, the second respondent having said that he would guarantee her safety. I consider the fact the protected person required to seek or be given such assurances demonstrates that she reasonably apprehends she may come to harm if she were to return to Peshawar in the absence of such assurances. I consider the protected person to have acted naively in having trusted said assurances prior to boarding the flight to Dubai in July 2019.

[153] It is clear from the evidence which I have accepted as credible and reliable that the first respondent intends to uphold the traditions of his community in Peshawar by having the protected person marry her said paternal cousin, whatever the protected person's wishes might be. I have concluded that this is particularly important to him given his high standing in the community and that he has gone to considerable lengths to achieve this outcome. Further, I consider that KS's evidence that the first respondent told her he would listen to elders in the community rather than to the protected person herself supports these conclusions. I have also concluded from the evidence of the protected person's mother that the first respondent will resort to violence and controlling behaviour to ensure the traditions of his community are adhered to by others in his family. I consider this places the protected person at risk of physical and emotional harm were she to return to Peshawar after all that has occurred.

[154] I have concluded, on a balance of probabilities and notwithstanding the protected person's own wishes and feelings in the matter, that the evidence supports the granting of a Forced Marriage Protection Order; that such an order is needed to protect the protected person from being forced into a marriage; and that such an order would secure the protected person's health, safety and well-being.

[155] In deciding to grant the order I have taken account of the rights of the protected person and of the first respondent in terms of Article 8 of the European Convention on Human Rights. I appreciate the order granted by the court will infringe upon the Article 8 rights of the protected person and of the first respondent but I have concluded that such interference is necessary to protect the right of the protected person to marry freely (or not to marry at all) and to protect the health of the protected person.

[156] In determining which provisions ought to be included in the order I have taken into account the protected person's wish to have the freedom to travel out of the UK should she so choose, although she would not wish to return to Peshawar in Pakistan. In view of the evidence led I have concluded that there does not require to be a provision in the order which requires a third party to hold the protected person's passport. However, having regard to the health, safety and well-being of the protected person, I have concluded that the order requires to contain a provision prohibiting the protected person from travelling to Pakistan. I have reached this conclusion on the basis of the protected person's attempt to travel there in July 2019 and on the basis of the evidence in the protected person's affidavit that she would like to visit certain "safe" cities in Pakistan (away from the Peshawar region) in the company of her mother. I am concerned that, as recently as October 2020, the protected person continued to contemplate travelling to Pakistan, notwithstanding the dangers this would pose.

[157] The first respondent says that he wishes the protected person to be free to make her own choices and decisions. He does not wish the order sought by the applicants to be granted. I have concluded from the findings in fact set out above that his motives for inviting the court to refuse the application are based on his desire that the protected person marry her said paternal cousin, in terms of the agreement made by the first and second respondents.

[158] Much has been made of the protected person's varying accounts of events prior to her leaving Pakistan in November 2018 and the changing views of the protected person in respect of whether or not she would wish to return to Pakistan. I consider these changes in the protected person's accounts of said events and in her views are likely to have come about as a result of the pressure and persuasion used by the first respondent and other members of the extended paternal family. In her discussions with her mother and with social workers the protected person has made statements to the effect that she has been forgiven by her paternal family. Such statements are indicative of communications having taken place directly with members of the paternal family (or via third parties) through which the paternal family have sought to persuade and pressurize the protected person to return to the family home in Peshawar, Pakistan. It is clear that the protected person has been susceptible to these attempts at persuasion and that she has provided a different account of her life in Pakistan prior to November 2018 and has expressed differing views about returning there as a result.

[159] Such statements are also indicative of there being a risk of harm to the protected person should she return to Pakistan. The protected person clearly believes that she has done something wrong for which she requires to be forgiven. The protected person has also made statements in which she says she has been assured that no harm will come to her at

the hand of the second respondent. I consider the very fact that such assurances required to be sought or offered strongly suggests that the protected person is at risk of harm should she return to the paternal family home in Peshawar. Absent the order sought being granted, I have concluded that the protected person would be in a vulnerable position and that her well-being would be adversely affected.

[160] I accepted the applicants' submission that there does not have to be an actual marriage planned at present to enable an order to be granted. Otherwise, the purpose of the legislation would be thwarted. As was observed by Sheriff Sheehan in the *City of Edinburgh Council v S* 2015 SLT (Sh Ct) 69, at paragraph 82 of her judgment, the long title of the 2011 Act refers to the purpose of the 2011 Act as being, *inter alia*, "to make provision for protecting persons from being forced into marriage without their free and full consent". A literal interpretation of section 1 of the 2011 Act, requiring evidence of an actual or current marriage proposal, would thwart the policy intention of the legislation.

[161] In this case the applicants have led credible and reliable evidence of a planned marriage between the protected person and her paternal cousin, NT, one of the sons of the second respondent. The first respondent denied a marriage of any kind had been planned. I rejected his denial. I am satisfied that such a marriage was planned and that the first and second respondents planned it. I have considered whether the marriage could be considered an arranged marriage. The first respondent gave no evidence that the marriage was an arranged one (maintaining his denial that any marriage had been planned). I am satisfied from the evidence which I have accepted as credible and reliable that the protected person did not want to marry her said cousin and that, were she to voice her opposition to same, she would be forced into marriage without her free and full consent. I have concluded that the marriage which the first and second respondents had planned could not

be described as an arranged marriage. Having regard to all the circumstances I have concluded that the requirements of section 1 of the 2011 Act have been satisfied and that the provisions which I have included in the order are necessary to protect the protected person from being forced into a marriage and to secure the protected person's health, safety and well-being.

[162] In terms of the duration of the order being granted by the court, I did not consider an order of seven years' duration would be proportionate and did not understand the applicants' final position to be that they would seek such a lengthy order. I gave careful consideration to the protected person's submission that the duration of any order granted should be limited to one year, particularly in light of the period during which she has been the subject of an interim order. However, I have determined that the appropriate and proportionate duration for the order is a period of just over three years and have made an order which is effective until the protected person's twenty first birthday.

[163] I have made an order for said duration in recognition that the protected person has previously been susceptible to the influence, persuasion and pressure exerted upon her by members of her paternal family and has acted on this contrary to her best interests. One example of such behaviour was her attempt to return to Pakistan in July 2019. I appreciate that was some time ago but I consider it is significant that the protected person has continued to make certain statements during supervised contact visits in 2020 which have been directed by the first respondent and which indicate that she remains susceptible to the first respondent's influence, persuasion and pressure.

[164] I consider an order with a duration of just over three years will give the protected person time and space to continue to mature, hopefully without continued pressure from her paternal family. I appreciate that some of the terms of her affidavit suggest the

protected person is maturing and is better able to express her own wishes and feelings but some of the terms of her said affidavit give cause for concern, such as when the protected person states that she would visit Pakistan and sets out the conditions for such a visit/visits. That evidence gives cause for concern that the protected person does not yet fully understand the risks which would be posed to her health and safety as a consequence of such a visit/visits. I have no doubt that her understanding of those risks is developing and evolving and an order of the said duration will allow that process to continue.

### **Expenses**

[165] I have assigned a hearing on expenses by way of telephone conference which hearing can be discharged in the event of parties reaching agreement on expenses.

## **SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW**

B1715-19

### **APPENDIX TO THE JUDGMENT OF SHERIFF ANDREW M MACKIE**

in the cause

C

Applicants

against

DT

First Respondent

and

GT

Second Respondent

and

HF

In respect of

Third Respondent

RT

Protected Person**PARTIES' SUBMISSIONS****(i) Applicants' oral submissions**

[1] The applicants' outline written submissions are attached hereto. In their supplementary oral submissions the applicants had no comment to make on the submissions for the protected person. In respect of those for the first respondent, the applicants' agent had noted the contents of the final paragraph on the second page and did not dispute that the word "arranged" did not appear in the entries in the Care First records made by JF, social worker, after her meeting with the protected person on 30 July 2019. However, the applicants' agent highlighted that, in said entries in said records, JF had stated that she was told by the protected person that she had become engaged to her paternal cousin when she was 14 years old and that a marriage had been planned. The applicants' agent also highlighted that the protected person told JF during said meeting that the first respondent had told the protected person that she would be free to travel to the UK and to see her mother and her family here once she is married.

[2] The applicants' agent referred to the cases cited by counsel in the outline written submissions for the first respondent, namely the *City of Edinburgh Council v S* 2015 SLT (Sh Ct) 69 and *Re K (Forced Marriage: Passport Order)* [2020] EWCA Civ 190. The applicants' agent submitted that the *City of Edinburgh Council* case turned very much on its own facts and could be distinguished from the present case. At paragraph 52 of the *City of Edinburgh Council* case the sheriff referred to the evidence in that case as being "so littered with

inconsistencies and contradictions that it is impossible to obtain a clear picture". The applicants' agent submitted that the evidence led on behalf of the applicants in this case had been consistent and that the scenario advanced by the applicants that the protected person was to be forced to marry in Pakistan is the only scenario which makes sense. The protected person's own position had been consistent over the 2 year period between November 2018 and October 2020, namely that when she lived in Pakistan it had been decided that she was to marry her paternal cousin, NT, one of the sons of the second respondent. The protected person had admitted in her answers, No 8 of process, that the first and second respondents had arranged for the protected person to be married to her said paternal cousin prior to the protected person leaving Pakistan in November 2018.

[3] The applicants' agent submitted that the applicants did not require to establish that a marriage had been planned for the protected person. The applicants' agent referred to section 1(2) of the 2011 Act as well as to the decision of the Court of Appeal in the *Re K* case in support of that submission. In any event, the applicant's agent submitted that, in the circumstances of the present case, the court could be satisfied that a marriage had been planned and that the protected person was to be forced into the marriage which had been planned. In support of this submission the applicants' agent referred, in particular, to paragraph 20 of the affidavit of the protected person, No 20 of process, in which the protected person sets out her concerns about being forced into a marriage with her said paternal cousin.

[4] The applicants' agent acknowledged that, since her arrival in Glasgow, the protected person had given differing accounts of her life in Pakistan prior to November 2018 and had given differing accounts as to whether the said proposed marriage had been arranged or was to be forced. The applicants' agent acknowledged that, during the evidence of JF, social

worker, JF had said that it was hard to tell where the truth lies. However, in her affidavit, No 21 of process, JF's evidence was that, having considered all of the information available to her in respect of the competing accounts provided by the protected person, JF had assessed that the protected person would be at risk of harm were she to return to Pakistan and would be at risk of being forced into a marriage with her said paternal cousin.

[5] JF's evidence was that, between November 2018 and July 2019, the protected person had provided a consistent account of the events which had occurred in Pakistan prior to November 2018. The protected person said that she had been beaten when she lived in Pakistan; that she had not been allowed to attend school latterly; that she had not been allowed to leave the family home latterly; and that she was going to be forced to marry her said paternal cousin which was something she did not want to do. JF had acknowledged that the sudden change in the protected person's account in July 2019 made it difficult for the applicants to ascertain the truth of the matter. JF confirmed that, on 30 July 2019, when the protected person told her that she wanted to go back to Pakistan and that she would be quite happy to marry her said paternal cousin at some time in the future, the protected person did appear to be genuine.

[6] The applicants' agent highlighted the terms of paragraphs 72 to 82 of JF's said affidavit in which JF sets out why she considers the protected person to still be at risk of being forced into a marriage with her said paternal cousin. The applicants' agent highlighted that the protected person had said as much herself in paragraph 20 of her said affidavit. JF had assessed that the change in the protected person's account in July 2019 had arisen because of things that were being said to her by the paternal family with whom she had been in contact by phone during the protected person's holiday with her mother in Kyrgyzstan in June and July 2019.

[7] The basis for JF's assessment was set out in said paragraphs of her said affidavit. In coming to that assessment JF placed weight on the previous consistency of the protected person's account; the previous reports of threats of serious harm to the protected person at the hands of the paternal family were she to return to Pakistan (as reported by the protected person and her mother); and the lengths to which the protected person and her mother had gone to enlist the assistance of the British Foreign and Commonwealth Office in facilitating the flight of the protected person from Pakistan to the United Kingdom.

[8] The applicants' agent submitted that JF considered it was a matter of concern that a member of the protected person's paternal family had been involved in the arrangements in July 2019 by which the protected person intended to return to Pakistan. The applicants considered this was demonstrative of there having been a line of communication between the protected person and her paternal family in Pakistan. The protected person's mother had subsequently told the applicants that, during the said holiday to Kyrgyzstan in June and July 2019, the protected person had been in frequent contact with her paternal family. The protected person also told JF that she had been in contact with members of her paternal family, including the first respondent. The protected person told JF that the first respondent had forgiven her; that she was not going to be required to marry her said cousin immediately; and that she would be free to travel to the UK to see her mother and her family here once she is married.

[9] In summary, the applicants had assessed that they could not rely on the account provided by the protected person to JF at their meeting on 30 July 2019 for a number of reasons, including the fact that said communications had taken place between the protected person and members of her paternal family, including the first respondent.

[10] The applicants' agent submitted that the court required to consider whether there is a real possibility that the protected person would be forced to marry were she to return to Pakistan. There does not require to be evidence that either the first or second respondent had sought to coerce the protected person to return to Pakistan. That is not what the statutory test requires. In terms of section 1(2) of the 2011 Act, the court must have regard to all the circumstances. The court had heard evidence that other individuals had been involved in seeking the return of the protected person to Pakistan. The evidence led points to the protected person's entire paternal family being involved in trying to persuade her to return to Pakistan. In her evidence, KS, social worker, told the court that the protected person had been blocking some of her paternal family members on her phone.

[11] The evidence of the first respondent that he was unaware of the travel arrangements which had been made for the protected person to return to Pakistan in July 2019 should be assessed by the court as not being credible. The first respondent had said that he had a close family with shared interests. It was not credible that he would not have known about the protected person's travel arrangements in July 2019. It was not credible that he could not have prevented the protected person from attempting to return to Pakistan in July 2019 if he had seen fit so to do.

[12] The applicants' agent submitted that the protected person was susceptible to persuasion by her extended paternal family. The protected person's mother said that the protected person had "a soft heart". During her own evidence the protected person said that, at one point, when the first respondent was in Pakistan between April and August 2019 and the protected person was told that he was unwell, the protected person thought that it was her fault that he was unwell.

[13] The protected person is 17 years of age. The court will have formed a view about how “streetwise” she seems. The protected person was described in some of the evidence as quite young for her age. When I asked if the reference to how “streetwise” the protected person seems was intended to be a reference to her maturity, the applicants’ agent said that the evidence which had been led suggested the protected person had had “a very closed life”. Her decision to flee Pakistan and the experience of making and acting upon a decision in respect of her own life had been something new to the protected person. The court should bear all of that in mind when having regard to all the circumstances of the case, including the need to secure the health, safety and wellbeing of the protected person in terms of said section 1(2) of the 2011 Act.

[14] The court should accept the evidence of the protected person’s mother that a third party had contacted her in March 2019 telling her that the first respondent was in the home of that third party and was offering a sum of money to the protected person’s mother if she would allow the protected person to return to Pakistan with the first respondent. In the answers for the protected person, No 8 of process, the protected person admits that the first respondent has attempted to bribe her mother in that way.

[15] The applicants’ agent invited the court to rely on the evidence of SC, the safeguarder appointed in connection with the Children’s Hearing proceedings in 2019. In particular, the court was invited to accept the evidence of SC that, prior to his return to Pakistan in April 2019, the first respondent had told her that a marriage had been arranged in Pakistan for the protected person.

[16] The applicants accepted that, when the protected person attempted to return to Pakistan in July 2019, she did not feel settled in Glasgow. That has since changed and the court should consider the protected person’s evidence that she is now settled here and

wishes to remain here. Notwithstanding the protected person's evidence that she is now settled in Glasgow, the applicants believe that members of the paternal family of the protected person continue to try to persuade her to return to Pakistan. In the evidence of KS, social worker, KS sets out her belief that the first respondent continues to try to influence the protected person during the supervised contact visits which take place between the protected person and the first respondent.

[17] In respect of the Forced Marriage Protection Order (hereafter "FMPO") sought by the applicants in respect of the protected person, the applicants' agent confirmed that the applicants could not establish that the application and interim order had been served on the second respondent. The applicants had received no report from the central authority in Pakistan in respect of service on the second respondent.

[18] In respect of crave 2(a) the applicants now seek a Forced Marriage Protection Order which contains a provision directing that the protected person's passport should be held by the applicants' social work department and would only be released to the protected person if she had a holiday arranged with her mother. This would be a proportionate way of providing her with the protection she requires against being forced or persuaded to leave the UK by any member of her paternal family.

[19] [1The applicants seek a Forced Marriage Protection Order with the provisions set out in craves 2(d) – 2(g) in respect of the first and third respondents. The applicants no longer seek that such an order contain the provisions set out in craves 2(b) and 2(c).

[20] The applicants' agent submitted that, given the protected person's evidence to the court, making a FMPO for a period of 7 or 8 years might not be proportionate. On the other hand, the protected person's change of heart is so recent and her account of feeling settled in Glasgow is so recent, any FMPO granted by the court would require to be for a period which

is long enough to allow her time to really settle in Glasgow and to see a future for herself here. This submission was made on behalf of the applicants after some discussions between the applicants' agent and KS, social worker.

[21] KS did not have a sense of why the protected person's view might have changed shortly before the evidential hearing took place. There was some suspicion that the protected person might be trying to please everyone, including those providing her with support and advice.

[22] The applicants' agent commended the "road map" set out by the Court of Appeal in the *Re K* case *supra* as to the route courts should follow when analysing and determining an application for a Forced Marriage Protection Order. Given the similarities between the terms of the Scottish and English legislation, the applicants' agent submitted that the "road map" set out in said case might be considered to be helpful for the Scottish courts.

**(ii) First respondent's oral submissions**

[23] Counsel for the first respondent submitted that the crucial question for the court to determine in light of the evidence which had been led was whether the marriage referred to by the protected person and others was an arranged marriage or a forced marriage. No order could be granted by the court unless the applicants had convinced the court that we are in the territory of forced marriage rather than arranged marriage. If the court accepted the evidence of SC that the first respondent had told her about an arranged marriage between the protected person and her paternal cousin, this would not assist the applicants.

[24] Counsel submitted that the evidence of JF, social worker, had come as some surprise as she had not used the words "arranged marriage" in the lengthy case notes which she had created after her meeting with the protected person on 30 July 2019.

[25] Further, during her evidence, JF had said, quite candidly, that she could not reconcile the version of events given to her by the protected person on 30 July 2019 with the earlier version of events given by the protected person. It did not appear that JF had tried to reconcile these versions. Counsel for the first respondent highlighted that, after 30 July 2019, JF took legal advice and spoke to the Police Service of Scotland. The concern at that time on the part of JF was not that the protected person had given different accounts, rather, JF's concern was in making sure that the protected person did not get access to her passport and did not get on another flight. The difficulty for the applicants is JF's inability or lack of action in attempting to discriminate between the two versions of events provided by the protected person. This brings the court back to considering whether we are in the territory of arranged or forced marriage.

[26] On 30 July 2019 the protected person told JF that she had been speaking to her half-brother Y in the period before she boarded the flight to Dubai on 29 July 2019. The protected person was quite clear that she was not having contact with either the first or second respondents at that time. The court should conclude that the point of contact in the paternal family in respect of the arrangements for the protected person to travel to Pakistan on 29 July 2019 had been Y.

[27] In so far as the court had heard evidence about the protected person having to block certain communications with friends or relatives in her wider family, such evidence was suggestive that the protected person is a young person who knows when she does not like what is being communicated to her and knows that she should cut it off. The protected person had given evidence about how savvy she is in respect of social media. She knows of the existence of social media sites and uses them. Rather than blocking people on social media being seen as a sign of danger or harm, the court should conclude that this is a sign of

a young person who knows how to do that if she does not like nasty words being used about her or her mother.

[28] Counsel for the first respondent invited the court to conclude that the change of position of the protected person as set out in her affidavit, where she says that she does not want to go back to Pakistan to live there, can be viewed as a protective factor for the protected person. The protected person's mother is another protective factor, although the protected person's mother said that she could not monitor the protected person's use of her mobile phone every hour of every day. Despite those limitations, the protected person's mother has let the protected person have her own mobile phone.

[29] The court should consider the time line in this case. The protected person had arrived in the UK in November 2018. The interim FMPO had not been granted until early August 2019. According to the evidence of JF, social worker, the application for an interim FMPO had resulted from the protected person's attempt to fly back to Pakistan via Dubai from Glasgow Airport. At that time the positions of the protected person's mother and that of the partner of the protected person's mother were that they could not stop the protected person if she chose to leave their home and run away.

[30] The picture of this family now is quite a different one to that described in 2019. The presentation of the protected person herself is now quite different. She is in attendance at college in Glasgow. She has now settled in the care of her mother. The obvious family tensions witnessed by social workers in August 2019 were followed by a brief period during which the protected person was in foster care. Such arrangements have never been required or considered since the end of September or early October 2019. Matters have moved on.

[31] The court should take into account that the protected person is resistant to any FMPO being made. The court should also take into account that, despite the desire of the

first respondent for the protected person to return to Pakistan, he accepts that she does not want to return there. There is no evidential basis for the mother of the protected person influencing her view. It is clear that the protected person wants to stay with her mother and also clear that she does not want to upset either of her parents. The protected person had given evidence without her mother being in court that she might like to live with the first respondent in Glasgow. The court should accept that the protected person has worked out what she wants to happen in the future. She does not want the applicants' social work department to remain involved in her life.

[32] Counsel for the first respondent made reference to the information provided by the protected person during the joint investigative interview in respect of the marriage. The protected person told DC M that she had first heard of marriage plans when one of her cousins told her that the protected person was going to be engaged. The impression given in the transcript of the joint investigative interview is that this had been a passing comment. The same cousin then told the protected person that if she said no, then "x, y or z might happen". DC M tried to get some detail about the marriage proposal. The impression formed from the transcript of the joint investigative interview is that not much detail was given by the protected person. In 2020 the scenario is quite a different one. The protected person is living with her mother and appears to be quite a forceful person.

[33] Although it is acknowledged that the second respondent pled guilty to the offence set out in the extract conviction, No 5/7 of process, the protected person's mother had not had any other pressure placed on her and had not been further harassed on the telephone or physically.

[34] There had been no real discussion within the applicants' social work department after the events of 29 July 2019 about the fact that the protected person's mother had failed

to monitor the protected person's use of her mobile phone during said holiday in Kyrgyzstan. Counsel for the first respondent submitted that, if the protected person's mother and her partner had been so concerned about the level of threat from the paternal family, they would not have gone on holiday to Kyrgyzstan in June and July 2019. Counsel for the first respondent submitted that the evidence did not add up. If, as the mother of the protected person had said, you want to protect your daughter because her extended paternal family can manipulate her, why would you let the protected person have unrestricted access to a phone for such a lengthy period during the 6 week holiday in Kyrgyzstan?

[35] Counsel submitted that JF's evidence had been that, after her attempt to travel to Pakistan on 29 July 2019, the protected person's position that if she had been frightened why would she have got on a plane was a genuine one. The protected person's complaint at that time was that no-one was listening to her. She had been saying that she was unhappy in Glasgow and that she wanted to go back to Pakistan and that was not being taken heed of.

[36] Counsel for the first respondent referred to the *City of Edinburgh Council* case and also to the analysis of that case by Sheriff Kearney in the Family Law Bulletin of 2015 (Fam. L.B. 2015, 135, 5 - 8).

[37] Counsel for the first respondent submitted that the facts of this case did not establish that this was a forced marriage case. It may, of course, be an arranged marriage case but there is a gap in the evidence that does not take the applicants into the territory of forced marriage.

[38] The protected person will be 18 years old in April 2021. Even if the court made a FMPO only for the period until the protected person reaches the age of 21, it would still be restrictive for a young person. If she went to university she might live on a university

campus and appear to be operating in society as an adult. However, her whole existence would be dictated by the existence of such an order.

[39] Making a FMPO for the period until the protected person is 25 years old would not, in any way, be justified. There had been no real analysis of the effect of such a lengthy order on the mental health of the protected person. The court had heard evidence from KS, social worker, that she had encouraged a referral to CAMHS (Child and Adolescent Mental Health Services) at an earlier stage in respect of the protected person in view of previous concerns about her mental health.

**(iii) Protected person's oral submissions**

[40] In respect of the duration of any FMPO made by the court, the attitude of the protected person would depend on what measures were included in such an order. From the point of view of the protected person if a FMPO were to be made prohibiting her from being forced into a marriage, the impact on the protected person would be negligible because she had no intention of so doing. If the protected person were to be prohibited from travelling to Pakistan for a period of time, she had indicated that she had no intention of so doing. The impact on the protected person of such a prohibition would therefore not be significant.

[41] What would impact on the protected person would be if a FMPO were to be made which included a measure in respect of her passport or a measure prohibiting the protected person from travelling elsewhere. The primary concern of the protected person would be that the court might impose restrictions on her relative to her passport and her right to travel to places other than Pakistan.

[42] The interim FMPO has now been in place for just over one year. This has allowed the protected person to become more settled and has led her to a position where she is now saying to the court that she wishes to stay in Glasgow and that she wishes to stay with her mother.

[43] It is understandable why the applicants are still seeking the FMPO craved given the incident in July 2019 when the protected person boarded a flight to Dubai. The circumstances of the protected person have changed significantly since then.

[44] If the court is persuaded that a FMPO is necessary, when considering the duration of such an order the court should take account of the impact on the protected person of the period during which the interim FMPO has been in place. If the court were to make a FMPO for a period of one year this would take the protected person to a date beyond which she would be the subject of compulsory measures of care.

[45] It is acknowledged that the protected person is very keen not to upset either of her parents and is also keen to keep social workers and support workers at Women's Aid happy. The protected person found it very difficult when she moved to the UK at the beginning but is now genuinely happy and settled here. The protected person has made it clear that she does not want to return to Peshawar and does not want to travel to Pakistan.

## **1. Applicants' written submissions**

### Legislative Basis

This is a Summary Application in terms of Section 3 of the Forced Marriage etc (Protection and Jurisdiction)(Scotland) Act 2011, in terms of which the court may make a forced marriage protection order on an application being made to it by "a relevant third party", the local authority being such a third party.

The 2011 Act is designed “to make provision for protecting persons from being forced into marriage without their free and full consent...”.

S1 specifies that:

- “(1) The court may make an order for the purposes of protecting a person (a “protected person”) - (a) from being forced in to a marriage or from any attempt to force the person into a marriage...
- (2) In deciding whether to make such an order and, if so, what order to make, the court must have regard to all the circumstances including the need to secure the health, safety and wellbeing of protected person.
- (3) In ascertaining the protected person’s well-being, the court must, in particular, have such regard to the person’s wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate on the basis of the person’s age and understanding;
- (4) ...a person (“A”) is forced into a marriage if another person (“B”) forces A to enter into a marriage...without A’s free and full consent...
- (6) “force includes coerce by physical, verbal or psychological means, threatening conduct, harassment, or other means...”

Section 2 describes the range of orders that might be contained within a forced marriage protection order:

- “(1) A forced marriage protection order may contain such (a) prohibitions, restrictions or requirements, and (b) other terms as the court considers appropriate for the purposes of the order.”

A recent Court of Appeal judgement – *Re K (Forced Marriage: Passport Order) [2020] EWCA Civ 190* – considered the English statutory provisions, which mirror those quoted above. In its judgement, the court of appeal identified “key principles” of the legislation, and set out a “route map” which it suggested could be followed when a court is considering making a FMPO in any particular case (para 45).

In Re K, the protected person was 35 years old. She suffered from no mental disorder or incapacity. She had been the subject of a FMPO since 2015 – at which time she had told police that her family were seeking to force her to marry against her will and that they had threatened to murder her if she refused to do so. By the time the original application went to proof – in January 2016 – K had withdrawn her allegations, and opposed the grant of an FMPO. K then sought discharge of the FMPO in early 2018 as she wished to travel to Pakistan for her mother’s funeral, and the order prevented her from doing so. That application was refused, and K appealed to the Court of Appeal.

In the course of analysing the statutory provisions, (in para 30) the court states “All of the parties are agreed that the legislation is cast in the widest and most flexible terms. [The legislation] simply gives the court jurisdiction to make an order for the purposes of protecting a person from being forced into a marriage, or from any attempt to do so, or protecting a person who has been forced in to a marriage. The court must “have regard to all the circumstances including the need to secure the health, safety and wellbeing of the person to be protected”.

Further, (para 32) – “In contrast to some other similar provisions, Parliament has neither imposed a threshold criteria nor a checklist of factors that the court is required to consider.

Further, in the context of the present case, it is of note that the person’s “wishes and feelings” are expressly positioned as part of “that person’s wellbeing” rather than as a specific factor in their own right”.

### Relevant Circumstances

The Pursuers have sought to establish in evidence facts relevant to the courts application of the terms of s1(2) of the 2011 Act. In my respectful submission, in applying s1(2), the circumstances to which the court should have regard include:

- RT's parents – her father, the first Defender and her mother – are Pathan – a people who fled Afghanistan to places including Pakistan, and who speak Pashtu. RT's home in Peshawar, Pakistan, is near the border with Afghanistan, and the community she lived in is one comprised mainly of Pathan people.
- PPM married the First Defender when she was 17 or 18 years old, and he was around 34 years old. They are cousins themselves, and PPM felt that she had no choice but to marry him, on her parents' say. At the time she would have preferred not to marry;
- At the time, DT already had a wife, 2 sons and 5 daughters – PPM is his second wife. His first wife resides in the family home in Peshawar with their 2 sons and 2 of their 5 daughters, as well as with PPM's son.
- In 2010, with the help of his brother – the 2<sup>nd</sup> Defender - the First Defender relocated the family from Glasgow to the home of his extended family in Peshawar. He did so without PPM's agreement.
- In line with traditions in the Pathan community, the family home was shared by the brothers and their children. The brothers have a close relationship, sharing both a household and business. The First Defender's older son is married to the Second Defender's daughter. Where one of their daughters marry, in accordance with traditions the daughter has moved out of the home with her husband, to reside

in their husband's extended household. Where a son married, his wife moved in to their home.

- In 2010, PPM found life in Pakistan very different to life in Glasgow. The women of the household could not leave the house without the permission of the men. Women were expected to obey the men of the house, and would be beaten otherwise. The women were treated as the property of the men of the house.

- After some months, in 2010 PPM managed, with difficulty, to return to Glasgow. She was unable to take the children with her. Despite her efforts, she was unable to secure the return of the children to her care: she did not know the address at which they were living, and she knew that in Pakistan, the law favours the child remaining with their father.

- PPM was unable to maintain regular contact with her children, as the First Defender would not facilitate that. RT wanted to have telephone contact with her mum, but was not allowed to own a phone.

- RT contacted her mother in secret, in October 2018. RT is unable to provide specific details around how that contact – or her flight from Peshawar - was effected due to the risk from RT's family which she believes will result to anyone who helped her.

- RT asked her mother to help her, and PPM went to great lengths to do so, setting aside the great risk that she perceived to her own person.

- PPM, the British Consulate, and Police Scotland were all involved in removing RT from her home in Pakistan without the knowledge or consent of her father in November 2018;

- RT had been told that she was to marry her cousin – NT – when she was 14 years old. NT is the son of GT, and lived in the same house as RT. RT wasn't asked about her own feelings about marriage to NT. Her flight from her home was prompted by her conviction that she would be forced to marry her cousin, when that is not what she wanted.

- RT loves her father, and believes that he wants what is best for her. She had never defied his wishes before. She hadn't seen, and had barely spoken to, her mother in 8 years. Nevertheless, she felt that her only option was to flee.

- RT had left home without her father's knowledge or permission. She was due to be married, and she left in secret.

- When RT and her mother arrived back in Scotland, both the First and Second Defenders were already in Glasgow searching for her. The second Defender was constantly phoning PPM, - there had been around 200 calls to her phone - and at one point made a veiled threat. The First and Second Defenders were arrested, and the second Defender was convicted of harassing PPM.

- RT had told her mother that she was to be made to marry NT, and that she did not want to. She told her that she hadn't been allowed to attend school, and that she was beaten in the home if she didn't do what she was told. She had a mark on her leg which she had sustained after being beaten with a pole by the First Defender's first wife.

- RT repeated those statements at various times to police and social workers. The court has seen and heard evidence of her JII interview on 15 November 2018. She went so far as to say she feared that she would be killed if she returned to

Pakistan as retribution for her actions in leaving. RT was, at first, afraid of what would happen to her if she returned to Pakistan.

- PPM, too, heard that DT had been so angry with RT that he had threatened to kill her.

- However, over the weeks after her arrival in Glasgow, RT was in telephone contact with her father and his family. They gave her assurances that she would be safe if she came home, and this was because she didn't leave because of a boy, but only out of a wish to see her mum. In around December 2018, RT said that she would like to see her father.

- Since then, the First Defender, his brother GT; RT's older half-brother, Y; her brother; and her cousin NT have all been involved in attempting to persuade her to return home. In December 2018 RT retracted her allegations and said that she wanted to return to Pakistan.

- However, in February 2019 when she was at court, RT felt that her father was, in fact, angry with her. When RT realised that, she again confirmed that her original statements were true. She told everyone that she didn't want to see her father.

- In March 2019, the First Defender contacted PPM and offered her £1,000 to speak to RT, and £9,000 if she would allow RT to return to Pakistan with him.

Although this is denied by the First Defender, both PPM and RT have confirmed that this offer took place.

- The First Defender left Glasgow for Pakistan in around April 2019.

- Between February and June 2019, RT maintained that she did not wish to see her father, and that her statements about forced marriage; about her being unable to attend school, or unable to leave the house unaccompanied, had been true. She

confirmed that she believed that by her actions she had dishonoured her family, and as a result was at risk of harm. Once again she confirmed that she had been beaten throughout her childhood. RT repeated these statements to a number of people, including the safeguarder SC, and the social worker KH.

- The first Defender did not meet with KH prior to grounds being established. Only the safeguarder could provide evidence of his position in respect of marriage at this time. Her (unchallenged) recollection is that the First Defender said to her that a marriage had been arranged, but would not be forced. Since his return to Glasgow in August 2019, he has maintained that there were no marriage plans.

- Ground of referral were established in May 2019, in the First Defender's absence. The ground was that RT was likely to be forced in to a marriage, and in support of that ground included statements of fact including that her father and uncle were using coercion in the form of verbal or psychological means and threatening conduct.

- In June 2019 RT went on holiday with her mother to her mother's extended family home in Kyrgyzstan. RT had been in frequent contact with her father's family during the holiday. Her half-brother Y arranged for her to travel secretly to Pakistan, and arranged for the third Defender to transport her to the airport. Tickets to fly out from Glasgow were waiting for her. She left her 5 year old brother alone in the house, which was an act which was out of character. She was prevented from leaving Glasgow due to the "marker" on her passport.

- After returning home, RT told social workers, and her mother, that she had lied about being forced to marry her cousin. She said that the marriage was arranged for her by her father and uncle, but that she was happy to go along with it, there was

no force. This was, consistently, her position, as seen in the evidence and also the Record – Answer 5 for the protected person. This remained her stated position until September 2020.

- Very soon after RT's return to her mother from the airport, the First Defender also returned to Glasgow, and has remained here since.

- During her holiday in Kyrgyzstan, RT was having unrestricted contact with her father's family, who persuaded to retract her allegations and to return to Pakistan.

- Since this time, RT has been in continual contact with her father and his family. They continue to try to persuade her to return to Pakistan. The First Defender is observed to direct RT in what to say to her social worker at contacts. RT has been assured that she will not be harmed if she returns.

- The first Defender has stayed in Glasgow since August 2019, despite having a business in Afghanistan, and a life as an important member of the Pathan community in Peshawar. His youngest child is still in the family home in Pakistan – he has not seen him for over a year. Returning RT to Peshawar is of overwhelming importance to the first Defender and his family, despite the fact that she is 17 years old and is safe with her mother, and despite the first Defender's assertion that RT is free to make up her own mind about what she wants to do.

RT is 17, but has led a sheltered, life – isolated, even. She loves her mum and her dad – she doesn't want to hurt anyone. She is easily coerced – exercising any choice or agency in her future is not something that she has been raised to believe is a possibility for her. She has, so

far, not always been able to hold on to the idea that making her own choices about her life is something that she is entitled to do.

Although RT has lived in Glasgow for almost 2 years, she hasn't had much opportunity to build new friendships outside her family, and to gain a sense of how her life might look if she stays here. Her positive experiences at college are very new.

In addition, RT wants to believe that her father, and her uncle, would not hurt her. She knows that she's brought shame upon her family, but when she's told that she's "forgiven", she tends to believe it, because that's very much what she wants to believe.

However, RT said that she has only recently received messages from her wider family which cause her to doubt that she can reintegrate in her community – they say that she left home for a boyfriend, which is considered nasty gossip, and could lead her to being ostracised.

The First Defender has told RT that she'll be able to keep in touch with her mum if she goes back. Again, it's only very recently that she has begun to believe that this may not be true.

RT has only in the last few weeks reiterated that if she goes to Pakistan, she will indeed be forced to marry her cousin NT. Her father only found out that she was now saying this in the course of these proceedings. It remains to be seen how her father, and his family, will react to her statements, but the history of the case suggests that this will not be accepted by her father and his family.

The facts presented on behalf of the Pursuer must be considered in the context of the cultural backdrop described by PPM and RT. RT grew up in the KPK province of Pakistan, near the border of Afghanistan. She lived in material comfort, but her community is close knit, and is strongly patriarchal. The wishes of individuals – especially those of female children – in the family are not important: the Defenders are the heads of their family, they are “in charge”. The area has security guards paid by the second Defender to watch the house. The second Defender was kidnapped and held hostage in 2008. There is not a reliable, independent police force who will step in to prevent violence to women in a household.

RT did not attend school beyond the age of 14; she was beaten as a matter of routine. When RT wanted to leave, she was either beaten when she asked to see her mum, or was so sure that she would be prevented that she did not feel that she could ask. She was promised to her cousin in marriage.

The first Defender is the only party to have led substantive evidence in opposition to the application. In my submission his evidence cannot be relied upon. He contradicts himself, other witnesses, and wider circumstances.

He himself has put forward 2 contradictory statements about whether RT was able to contact her mother between 2010 and 2018.

He said in his affidavit that his son AT had left the family home, but admitted in his oral evidence that he still lived there with his wife and family.

He has given contradictory statements about whether or not a marriage was arranged.

His claim to have known nothing about his son arranging flights for RT in July 2019, when he was in the same house, is not credible.

Likewise, he claims not to discuss this matter with his brother despite their close relationship – his brother who was convicted of harassing PPM when RT first came to the UK, and whose son is named as the person to whom RT is to be forced to marry.

In general, the evidence put forward in response is not credible. His evidence does not explain why his daughter would run away in secret if she wasn't afraid that she was going to be forced – against her will – to marry her cousin. It is clear that she would only defy her father and his family if she felt herself to be in danger. It has taken a great deal for RT to express a view which doesn't conform to her father's wishes.

Further, it doesn't explain why PPM would turn to the police for help if it was alright for RT to leave Pakistan; nor does it explain why the Defenders have made such concerted efforts to return her.

His version of events does not explain the lengths he and his brother went to to track PPM down, and the fact that parents from the local primary school were concerned enough to take down the licence plate and report them to the police.

Nor is there any alternative explanation for why RT has made her statements in relation to forced marriage. She's a British citizen – there's no issue with her being allowed to remain here – no reason has been put forward for her "lying".

The First Defender has stayed in Glasgow for over a year. He has arranged permanent accommodation. He has no friends here; his son has remained in Pakistan; his business and community interests are in Peshawar and Afghanistan. Only RT is here. Prior to 2018, he spent periods of time in Kabul – frequently enough to justify renting a flat. He left RT's care to the women.

The account contained in the evidence for the Pursuer is coherent and consistent: the circumstances demonstrate a real risk that RT was being forced to marry, and that she will be forced to marry if she returns to Pakistan.

The court must consider, then, the conclusions which lead from that: the real possibility that if she goes back to Pakistan, RT will be forced to marry, and will be punished emotionally and physically for her actions.

#### RT's views

RT opposes any order. The Act says that "in ascertaining wellbeing, the court must have such regard to the person's wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate on the basis of the person's age and understanding"

Re K – paragraph 32: “Further, in the context of the present case, it is of note that the person’s “wishes and feelings” are expressly positioned as part of “that person’s wellbeing” rather than as a specific factor in their own right. Further, with regard to “wishes and feelings”, the court is given a wide discretion to have regard to that factor “as the court considers appropriate in light of the person’s age and understanding”.

Re K – 35 – “It is, therefore, clear that the court has jurisdiction to make a FMPO to protect an adult who does not lack mental capacity and no submissions were made to the contrary before this court. Further, the express positioning...of “wishes and feelings” as an aspect of “wellbeing” indicates that the wishes and feelings of an adult with full capacity who is the subject of an FMPO application fall to be taken in to account, but are not in any manner an automatic trump card or determining factor.”, going on in 36 to add “In some cases, the state’s duty to protect an individual will override the individual’s stated wishes and feelings. In lay terms, the court, therefore, has jurisdiction, in a particular case, to protect a person from themselves.”

If, as in Re K, the evidence establishes a reasonable possibility that conduct sufficient to breach Article 3 of the human rights convention may occur, then “the court must at least do what is necessary to protect any potential victim from such a risk” (para 37).

In my submission, for the reasons set out above, RT’s assertions that she can make her own decisions, and stick to them, are not reliable. She is still very young, and relatively naïve. She has only recently felt settled and happy in Glasgow. We haven’t seen her father’s family’s reaction to her change of view. The evidence suggests that her decision will not be

accepted by them. RT's history suggests that it may not take much to coerce her in to a change of heart.

### What is necessary?

If RT returns to Pakistan, she is likely to be married to her cousin against her will. She can be deprived of any means to contact her mother, or anyone else who might interfere in her family's plans. She can be deprived of her liberty. She may be punished in some way for her actions in running away 2 years ago. At the very least she is likely to be treated as an outcast in the community. The case of Re K articulated in stark terms the extent of the potentially lifelong abuse which can follow forced marriage, setting out in paragraphs 24 and 25 the reasons that "it must be accepted that a forced marriage is likely to include behaviour sufficient to breach ECHR Article 3 which provides that 'no-one shall be subjected to torture or inhuman or degrading treatment or punishment'".

In the circumstances outlined above, I argue that it is necessary to prevent RT from returning to Pakistan. Further, it is submitted that there should be a restriction on RT travelling outside the UK unless accompanied by her mother, given the possibility that RT could fly from Glasgow to another country, and from there to Pakistan.

RT has recently re-evaluated the risks to her. It may be that since last summer she has found some confidence and maturity, and is indeed able to feel able to make and stand by her own choices. However, standing the very recent change in her view, I submit that it is necessary to place some restrictions upon RT's access to a passport. I suggest that the social work department should hold her passport, so that any planned holidays abroad can happen,

while at the same time offering a degree of protection to RT should she continue to be subject to coercion to change her position again.

This, I suggest, balances the degree of risk to RT; her right to make her own choices; the availability, of the protective factor of her mother, and her mother's ability to protect; and the nature and extent of the interference with RT's family life. Further, there is no less intrusive measure which can achieve the protection required in this matter.

In terms of the craves as originally framed (as shown in the existing Record), I submit that craves a, b and c are not necessary. I ask that craves d, e, f and g remain in so far as they relate to the First and Third Defenders.

In terms of the length of any order: the court will have its own view, having heard the evidence. JF explained that, generally, people don't reach what we think of as adult maturity until around the age of 25. The court may consider it appropriate to review matters before RT reaches that age.

Lastly, if orders are made, the court will note at the last page of KS's affidavit the error in spelling "RT", and her change of address.

## **2. First respondent's written submissions**

-i- to refuse the Forced Marriage Protection orders sought against the First Defender as being unnecessary and not proportionate in the circumstances, there being insufficient evidence to support the grant of orders 1 and 2b, c, d, e, f and g;

- ii to repel the pleas in law for the Applicant;
- iii to sustain the 5<sup>th</sup> plea in law for the First Defender, and
- iv to dismiss the application.

The Applicant brings this application and seeks final orders under the Forced Marriage etc. Protection & Jurisdiction (Scotland) Act 2011. These orders are resisted by the father of the Protected Person.

I do not intend to rehearse the evidence we have heard this week. I will refer to the one Scottish case decided in 2015 as well as the legislative framework as it applies to Scotland. The English authorities may also assist the Court and will be included too.

The Protected Person is RT who does not wish the orders sought to be granted. RT has stated in evidence (as distinct from her written answers) that she was engaged to her cousin. That there was to be “an arranged marriage; by agreement; with no force”. This was to happen in the future. She was happy about this. Her evidence was that in Pakistan her father has always been good to her and she loved him. He “listens to her” and she knows that “he wants the best for” her and to provide for” her like any other father.

RT clearly loves her father and her mother. She wishes to continue living in Glasgow with her mother, but she hopes in the future to live with her father in Glasgow too. She has been clear that she does not wish the orders sought to be granted. Her position has changed with the lodging of her affidavit. She no longer wishes to return to Pakistan. Her life is settled in Glasgow. She has college which she has just started. She has friends and is happy. She is

looking forward to taking driving lessons. She may wish to go to Pakistan in the future with her mother for a holiday. Whether a likely event in the future or not, this is her stated position in evidence. This change in position in her affidavit is, in itself, a sign of her maturity and her own attempt to reconcile her earlier feelings of not belonging in Glasgow. She missed her father and extended family in the past. She does not feel that the Peshawar region is a safe place to go. She was clear that that was the reason for not wishing to go there. She has insight into what is in her best interests. Throughout her evidence she was clear that she does not want (or need) further involvement or extended involvement in her life from social work beyond the age of 18 years. If the orders are granted, then that is what will happen.

The First Defender does not wish his daughter to be so restricted by the orders sought. He wishes her to be free to make her own decisions; her own choices and not to be restricted by the orders sought by the applicant. He does not wish the orders sought to be granted. I submit that the Court should accept this evidence as credible and reliable; his views genuinely held by him. He has stayed in Glasgow during the pandemic despite the earlier proof being discharged. He has attended contact with his daughter and clearly is on good terms with her. The Court should accept that he is committed to maintaining his relationship with her. He has accepted her change of position. His daughter is not frightened of him. She does not live in fear of him. They both want a relationship free of interference by social work.

JF confirmed in her evidence that when she met her on 30 July 2019, RT told her that she had lied about being harmed in Pakistan as she wished to see her mother desperately. She stated

to JF that she had lied that she had been threatened or was being forced into marrying her cousin. She told this witness that there was to be an “arranged” marriage. There is no evidence as to when she thought this was to take place except in the future. The word “arranged” does not appear anywhere in the lengthy entries made by this witness in the Care First Records on page 41 of 68 of the production 4 for the Applicant. JF did not make any enquiries into the veracity of RT’s change of position. She did nothing except proceed to take advice on lodging an application for interim orders under the Forced Marriage etc. Protection & Jurisdiction (Scotland) Act 2011.

It is to be remembered that when these interim orders were sought the Protected Person was already subject to compulsory measures of care and protection under the Compulsory Supervision Order. It is unclear why that was not enough interference in her life. Her removal from the flight to Dubai, in my submission, was not a proper basis on which to move from CSO to FMPO. It was an unnecessary interference in her life. I say this in a situation where her passport had been recovered. JF told us in evidence that she offered to hold the passport for RT’s mother PPM rather than her try to keep it at home. This offer was refused.

In the circumstances, it is submitted for the First Defender that the Applicant has failed to demonstrate that the Protected Person is at risk of significant harm such that her health, safety and well-being require protection and need to be secured under the orders sought.

I propose to consider the applicable law and the cases which I have been able to find in relation to such orders.

The Applicable Law:

This is an application under the [Forced Marriage etc. \(Protection and Jurisdiction\) \(Scotland\)](#)

[Act 2011](#) (hereinafter “the 2011 Act”). The 2011 Act came into force on 28 November 2011.

The relevant provisions are as follows:

“1. – (1) The court may make an order for the purposes of protecting a person (a ‘protected person’) – (a) from being forced into a marriage or from any attempt to force the person into a marriage, or (b) who has been forced into a marriage.

“(2) In deciding whether to make such an order and, if so, what order to make, the court must have regard to all the circumstances including the need to secure the health, safety and well-being of the protected person.

“(3) In ascertaining the protected person’s well-being, the court must, in particular, have such regard to the person’s wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate on the basis of the person’s age and understanding.

“(4) For the purposes of this Part, a person (‘A’) is forced into a marriage if another person (‘B’) forces A to enter into a marriage (whether with B or another person) without A’s free and full consent.

“(5) For the purposes of subsection (4), it does not matter whether the conduct of B which forces A to enter into a marriage is directed against A, B or another person.

“(6) In this Part –

“‘force’ includes – (a) coerce by physical, verbal or psychological means, threatening conduct, harassment or other means ...

“2. – (1) A forced marriage protection order may contain such – (a) prohibitions, restrictions or requirements, and (b) other terms, as the court considers appropriate for the purposes of the order.

“(2) The terms of such an order may, in particular, relate to – (a) conduct outwith (as well as, or instead of, conduct within) Scotland, (b) persons who force or attempt to force, or may force or attempt to force, a protected person to enter into a marriage, (c) persons who are, or may become, involved in other respects.

“(3) A forced marriage protection order may, among other things, require a

person — (a) to take the protected person to a place of safety designated in the order, (b) to bring the protected person to a court at such time and place as the court making the order may specify, (c) to refrain from violent, threatening or intimidating conduct (whether against the protected person or any other person), (d) who is a person such as is mentioned in subsection (2)(b) or (c), to appear in court, (e) to disclose, if known, the whereabouts of such a person, (f) to refrain from taking the protected person from, or to, such place as the court may specify, (g) to facilitate or otherwise enable the protected person or another person to return or go to such place (whether in Scotland or another part of the United Kingdom) as the court may specify within such period as may be so specified, (h) to submit to the court such documents (including passports, birth certificates or other documents identifying the person and travel documents) as the court may specify, (i) to provide the court with such other information as it may specify.

“3. — (1) The court may make a forced marriage protection order on an application being made to it by — (a) the protected person, or (b) a relevant third party. ...

“5. — (1) The court may, in a case where it considers that it is equitable to do so, make a forced marriage protection order in the absence of a person who is, or would be, a party to proceedings for the order (and may do so whether or not the person has been given such notice of the application for the order as would otherwise be required by rules of court).

“(2) An order made by virtue of subsection (1) is an ‘interim forced marriage protection order’....

“6. A forced marriage protection order has effect — (a) where the order specifies a period for which it is to have effect, until the expiry of that period (unless the order is recalled under section 7 or extended under section 8), (b) where no such period is specified, until the order is recalled under section 7.

“7. — (1) The court may vary or recall a forced marriage protection order on an application by — (a) any person who was or, in the case of an order made by virtue of section 4(1) or 5(1), would have been a party to the proceedings for the order, (b) the protected person (if not such a person), (c) any other person affected by the order ...

“8. — (1) This section applies where a forced marriage protection order specifies a period for which it is to have effect.

“(2) Before the expiry of the period, a person mentioned in subsection (3) may apply to the court for an extension of the order.

“(3) The persons are — (a) any person who was or, in the case of an order made by virtue of section 4(1) or 5(1), would have been a party to the proceedings for the order, (b) the protected person (if not such a person), (c) any other person affected

by the order, or (d) with the leave of the court only, any person not falling within paragraphs (a) to (c). ...

“9. — (1) Any person who, knowingly and without reasonable excuse, breaches a forced marriage protection order commits an offence.

“(2) A constable may arrest without warrant any person the constable reasonably believes is committing or has committed an offence under subsection (1).

“(3) Subsection (2) is without prejudice to any power of arrest conferred by law apart from that subsection.

“(4) A person guilty of an offence under subsection (1) is liable — (a) on summary conviction, to imprisonment for a period not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both, (b) on conviction on indictment, to imprisonment for a period not exceeding 2 years, to a fine, or to both. ...

“13. — ... (3) In [section 67\(2\)](#) [of the [Children’s Hearings \(Scotland\) Act 2011](#) ] (meaning of ‘section 67 ground’) —

“... insert —

“(q) the child — (i) has been, is being or is likely to be forced into a marriage (that expression being construed in accordance with [section 1 of the Forced Marriage etc. \(Protection and Jurisdiction\) \(Scotland\) Act 2011](#) (asp 15)) or, (ii) is, or is likely to become, a member of the same household as such a child.’.”

#### Anti-social Behaviour, Crime and Policing Act 2014

“122. — (1) A person commits an offence under the law of Scotland if he or she — (a) uses violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage, and (b) believes, or ought reasonably to believe, that the conduct may cause the other person to enter into the marriage without free and full consent. ...

“(9) A person guilty of an offence under this section is liable — (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or both; (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine or both.”

Until the decision by Sheriff Sheehan in the *Edinburgh City Council-v-S 2015 SLT*

(Sh.Crt.) 69, there had been no issued decisions in Scotland regarding the application or

interpretation of the 2011 Act. The policy memorandum relating to the 2011 Act which she refers to in that decision (it having been lodged in that process) “identifies the objective of the legislation as being to ensure that people who are eligible to marry or enter a civil partnership have the right to do so freely and without coercion and to protect citizens from pressure, harassment or threats aimed at forcing them into a marriage or civil partnership to which they have not consented or to which they are not capable of consenting. The statutory guidance issued by the Scottish Government (also lodged in that process) emphasises that forced marriage protection orders are designed to protect adults and children at risk of being forced into marriage. The legislation introduces a protective remedy akin to interdict.” Third parties, in this instance C, are given a statutory right to seek protective remedies on behalf of an individual (the “protected person”).

[Section 1\(2\)](#) of the 2011 Act is very widely drawn and simply provides that “the court must have regard to all the circumstances including the need to secure the health, safety and well-being of the protected person”. There is nothing in the Act which requires the court to apply any criteria beyond the matters identified in the section.

[Section 5](#) of the 2011 Act, which deals with interim orders, provides that when deciding whether to make an interim order “the court must have regard to all the circumstances including any risk of significant harm to the protected person”. This provision is not repeated in [s.1](#) which deals with the granting of final orders.

The court requires to consider whether the order sought is proportionate with regard to the [ECHR](#) in respect of the rights of the protected person and the First Defender and in

particular, to consider the impact of the order sought on the Article 8 rights of the First Defender and the Protected Person. It must also be borne in mind that criminal penalties arise in the event of a breach of any order granted.

In *Edinburgh City Council-v-S* 2015 SLT (Sh.Crt) 69, Sheriff Sheehan refused to grant the orders sought. The local authority applied under [s.1 of the Forced Marriage etc. \(Protection and Jurisdiction\) \(Scotland\) Act 2011](#) for a forced marriage protection order in relation to a 15 year old girl which would ordain her parents to refrain from conduct with a view to forcing her to enter into a marriage. Further orders were also sought which would prevent the parents from taking the child outwith the United Kingdom, to submit her passport to the court, and to allow social workers access to her to monitor her wellbeing, all until her 21<sup>st</sup> birthday. The applicant averred that the relevant risk could be inferred from evidence of the respondents' behaviour in relation to the child's siblings, and materially, their marriages. The child opposed the granting of the order sought. The Court:

Held, (1) that the granting of the orders sought would significantly infringe upon the Article 8 rights of both the child and the respondents but where such interference was necessary to protect the child's right to marry freely, it was warranted in terms of art.8(2) (para.78); (2) that there were criminal penalties applicable in [s.122 of the Antisocial Behaviour Crime and Policing Act 2014](#) in the absence of any order granted under [s.1](#) of the 2011 Act (para.80); (3) that a literal interpretation of [s.1](#) of the 2011 Act would require the court to establish the existence of an **actual marriage planned for the protected person in order to conclude that the order should be granted** and there was no such evidence in the present case where no marriage had been planned, nor had a putative spouse been identified (para.82); (4) that all that was required in terms of [s.1\(2\)](#) of the 2011 Act was for

the court to find that, on the balance of probabilities, the evidence supported the granting of orders which were needed to protect the child from being forced into a marriage, and that the orders would secure her health, safety and wellbeing (para.83); (5) that while the definition of force was widely drawn in s.1(6) of the 2011 Act, there had to be evidence to support an apprehension of force or coercion, and there was a need to avoid blurring the lines between forced and arranged marriages (para.84); (6) that the court had to give appropriate weight to the wishes and feelings of the protected person when deciding whether an order should be granted; the child was sufficiently mature and articulate to clearly express her wishes and feelings but the court had to take into account that those might have been stated against a background of incomplete understanding of risks (para.87); (7) that there was no evidence to support the contention that any attempt was made to force any of the child's siblings into marriage (paras 26-30, 32-46, 51-57 and 88-90); and application *dismissed*.

Despite the reference to the need to avoid "blurring the lines between forced and arranged marriages", it should be remembered that the 2011 Act does not prohibit "arranged" marriages. The test outlined in the above decision is whether or not a child was being forced into a marriage; a marriage which had been planned. The highlighted section above assists here because even if the Court accepts the position of the Protected Person in her affidavit, there is no evidence that an actual marriage had been planned. There is no evidence about timescales apart from the brief mention of Eid by DC M arising from the Joint investigative Interview (JII). When drafting these submissions, it is unclear if the Applicant will be relying on the contents of the JII or not.

Given the changing position of RT namely that it was an “arranged” marriage that had been planned but not one in which she was forced; she has been clear that her desire to leave Pakistan related to her wanting to see her mum. In my submission, there is insufficient evidence of a marriage having been planned which would bring this case within the terms of the 2011 Act. In the Joint Investigative interview, RT indicates that there was no imam present when she says she became engaged. There is very little detail surrounding this event. There is mention of a cousin telling her she is going to get engaged and reference to some flowers.

I submit that the contents of the JII cannot be relied upon given the subsequent evidence by RT. To rely on any of it would require a cherry-picking exercise where RT’s position is that she lied. That is what she tells JF. Even if she maintains that there was an engagement, the Court must have concerns as to how reliable this evidence is. She asked JF to come and support her and tell her mum as she knew her mother would be angry with her for lying.

In considering all of the evidence given by RT, the court will have to reconcile whether what she said on 30 July 2019 to JF and to Sergeant M on 29 July 2019 can be relied upon or not. Whilst at the same time, the court has heard evidence from the First defender that he would not force his daughter to marry. His position is that there is no marriage planned.

On one view, the evidence heard this week points away from coercion. Despite what was said to the police and social worker on 15 November 2018 during the Joint Investigative interview, I do not understand that RT is maintaining that she received death threats from her father. I do not understand that this is going to be maintained by the Applicant.

Given the tenor of the cross-examination, it would appear that the case for the Applicant will be that the orders should be granted because of coercion by the uncle of the protected person, designed in the process as the second Defender. The extract conviction in respect of DT's brother does not involve him. The fact that GT pled guilty will not be a sufficient basis to grant the orders sought. RT was clear that she had not been pressured by her uncle or "the Boss of the Household" as described by Ms. Jackson.

Internet searches by members of the Applicant's social work department of in relation to how dangerous the Peshawar region is and the spectre of "honour based violence" may be of interest but it will not assist the Court in relation to this protected person and the issue of force or coercion. The details of the Google searches undertaken were not lodged. This may be within judicial knowledge. What is also of significance when the Court hears evidence of people with guns when parties or weddings are attended is that this area and its proximity to the Afghani border was affected by people fleeing the Afghani wars. However, at the moment, RT lives in Scotland and not in Peshawar. She is protected. She is clear that she wishes to stay in Scotland although she thinks her father still wants her to go "home" to Pakistan. Her father has accepted this.

The case which remains for the Applicant, in my submission, is whether the actions of GT harassing PPM and the nasty text messages sent to RT will get this case over the finishing line. They will not.

Although there are more cases decided in English jurisdiction under similar legislation, they do provide assistance to the way in which these cases are considered.

For the application to be granted, the onus is on the pursuer to establish that the orders sought are necessary and require to be for the protection of the protected person, the child! The burden of proof lies upon the applicant. The standard of proof is the balance of probabilities.

Any orders sought require to be proportionate.

Difficulty is that the orders require proof of force or threat of force or coercion. In my submission, the attempts by the applicant in the cross examination of the protected person and the first defender in relation to the "boss of the household, the second defender and his actions do not assist the case against the first defender. RT was clear that when she decided to get on the flight to Dubai she had not been in touch with her uncle. She did not give evidence that she was being pressurised by her uncle. Any evidence she gave, in my submission, will not assist the Court in granting an order against her father or her uncle.

In considering the evidence of RT and the changing position of this Protected Person, there are difficulties for the Court. Which version of the child's is to be preferred? How is the court to select or choose which version to prefer? Perhaps Ms Jackson will be able to iron out these difficulties. I am not hopeful. RT maintained that she had lied about abuse in Pakistan but maintains that she was to be engaged to be married. She was not asked about being told this was going to happen by a cousin. Her explanation during the interview

relies upon the allegations of violence and threats. What she says now is that there was an arrangement which she was happy with but at the same time she missed her mum.

However, RT's change of position and desire to stay in Scotland are in themselves protective factors.

RT's desire for no order requires to be added into the mix as the legislation requires.

Why was the interim order sought? Her access to her passport allowed her to board the flight and attempt to leave. She does not have access to the passport. She states she wishes to stay in Glasgow, Scotland with her mother. Is this to be relied upon? It would seem so.

In my submission, her attempt at flying off to Dubai prompted the Applicant to seek interim orders when there was no need for such orders. Her mother had her passport and her phone. As I say, she was already subject to the compulsory care measures.

For the order to be granted, the pursuer must prove that there was use of force or coercion where a marriage had been "planned". They will need to explain that the evidence in relation to that is reliable and credible; that it reaches the standard required on the balance of probabilities that force was used. Was she the recipient of death threats or not? Was she coerced physically/emotionally/psychologically? Now seems unlikely if her evidence is to be believed.

In my submission, there are gaps in the evidence presented. We still do not know how RT managed to get out of her family home and actually meet her mum. Her father was in

Kabul at the time. He was told to attend at the High Commission with her passport which he did despite not seeing her. He co-operated in this. Perhaps if he had seen her and PPM he would have been content to leave her to go to Glasgow. He did not. He left Pakistan and journeyed to Glasgow with his brother. This has been presented as a sinister action.

However any father of a 15 year old (whether from Peshawar or Paisley) would want to know their child was all right in a situation where her mother had left her for nearly 8 years and, irrespective of the reasons, had not been back to see her. He was not in Scotland when the grounds of referral were established as he returned to Pakistan as his son was ill. The grounds were established but we now know that RT has stated she is not afraid of her father. Perhaps the fact of these grounds having been established in May of 2019, was part of the reason why the applicant's social work department did not act on the information given to them by RT on 30 July 2019. JF's evidence was that she could not verify this change in position. What is clear is she did not try!

Applicable English case law:

Part 4A of the Family Law Act 1996 ("the Act") – introduced in 2007 – creates forced marriage protection orders (FMPOs). The provisions are similar to those in Scotland.

Earlier this year, guidance was given by the President of the Family Division in the recent decision of the Court of Appeal in *Re K (Forced Marriage: Passport Order)* [2020] EWCA Civ 190 and touches briefly upon considerations of transparency and open justice in cases of forced marriage in the English Family Court.

In that jurisdiction:

A “forced marriage” is a marriage in which one or both spouses do not consent to the marriage and are forced into it. This is different to an arranged marriage, in which the decision as to whether or not to marry is made by both spouses. Force may include physical, psychological, financial, sexual or emotional pressure or coercion.

Forced marriage is considered within the UK to be a serious form of domestic abuse and a violation of the victim’s human rights. It is not only a question of safeguarding children; the criminal and family courts will intervene to protect both adult and child victims.

Perpetrators of forced marriage will often consider that their actions are justified by their perceived need to uphold their religious or cultural traditions or their so-called family “honour”.

In *Re K, McFarlane P* said at para.24:

“The abusive nature of a forced marriage does not begin and end on the day of the marriage ceremony. Rather, the marriage forms the start of a potentially unending period in the victim’s life where much of her daily experience will occur without their consent and against their will or will otherwise be abusive. In particular, the consummation of the marriage, rather than being the positive experience, will be, by definition, a rape. Life for an unwilling participant in a forced marriage is likely to be characterised by serial rape, deprivation of liberty and physical abuse experienced over an extended period. It may also lead to forced pregnancy and childbearing. The fate of some victims of forced marriage is even worse and may include murder, other “honour” crime or suicide.”

In *Re K McFarlane P* quoted Family Court statistics for 2018. In that year, 322 applications for forced marriage protection orders were made and 324 orders were granted. 72% of the persons protected were aged 17 years and under, perhaps reflecting that many of the cases are likely to arise as a result of local authority applications to protect vulnerable children.

In the case of Re K in 2015, the victim “K”, who was then 29 or 30 years old, contacted her local police on two occasions, telling them that her family were trying to force her to get married against her will and that they had threatened to murder her if she did not do it. The police already had similar information from concerned neighbours, so applied for an FMPO. This was granted at a without notice hearing in June 2015.

Various members of K’s family were made respondents to the application. They denied the allegations against them and disputed that an order should be made. By the time the case came to a contested final hearing in January 2016, K had withdrawn her allegations and she also said that she wanted the FMPO to be discharged.

HHJ Tucker found that K had been told she would marry the brother of a woman whom her eldest brother wished to marry. This man would only agree to that union if he were allowed to marry K, although this was against K’s wishes. The Judge found that K’s family members had threatened to burn her alive or to cut her up with a machete if she refused.

HHJ Tucker decided that the FMPO should remain in force. She also made an order that K’s passport and other travel documentation should be held by the West Midlands Police “until further order”. She made an order forbidding the respondents from applying for any new passport for K.

Immediately after the 2016 hearing, K fled her family home, alleging that her eldest brother had seriously assaulted her. She was removed to a refuge and subsequently rehoused by the local authority, living separately from her family ever since.

In December 2017, K's mother passed away. The funeral took place in Pakistan. K applied on an urgent basis to discharge the FMPO and, in particular, the passport order. An urgent hearing was not possible (meaning K missed the funeral) but the proceedings came to a further final hearing in July 2018, with the admission of fresh expert evidence. Following that hearing, HHJ Tucker decided to keep the FMPO in force, but adjourned the final determination for a period of four months in the hope that K would seek professional advice and assistance to be able to better protect herself from any risks that may arise if she were to travel abroad.

At the adjourned final hearing in December 2018, K confirmed that she had not sought and did not intend to engage with any such professional support. The Judge therefore refused the application to vary or discharge the FMPO, which remained in force. She found that K would not be able to maintain control of her own passport if it were in her possession and that, if her family were to get hold of it, they may force her to travel to Pakistan to marry without her consent. HHJ Tucker found that there was a "real risk of honour-based violence" towards K.

K appealed the decision which was eventually heard at the Court of Appeal in November 2019.

There were three issues of general importance identified in the appeal:

1. Whether the court had jurisdiction, and if so should that jurisdiction be exercised, where the individual said to be requiring protection is an adult who does not lack the mental capacity to make any relevant decision, and who opposes the FMPO;
2. Whether the Family Court has jurisdiction, as part of an FMPO, to require the protected person's passport to be removed and retained by the authorities and, if so, whether that jurisdiction extends to making an open-ended or indefinite "Passport Order";
3. What approach should a court take when determining issues such as this where there is apparent conflict between, on the one hand, a person's right to be protected by the State from inhuman or degrading treatment or punishment sufficient to engage Article 3 of the European Convention on Human Rights ("ECHR") and, on the other hand, that person's autonomy and right to respect for private and family life, including the right to travel, under Article 8.

As a result of the matters of general importance raised, in addition to the West Midlands Police – who were respondents to the appeal – the Secretary of State for Justice and the Southall Black Sisters (a not-for-profit organisation which aims to highlight and challenge all forms of gender-related violence against women and to empower victims) were each granted permission to intervene. They made written and oral representations to the appeal hearing.

In the Appeal Court, Sir Andrew McFarlane, President of the Family Division, delivered the lead judgment. He recognised that there was a large measure of agreement between all

parties as to the nature and extent of the legislation regarding FMPOs, which was described as being “cast in the widest and most flexible terms”.

Parliament has not defined the “person” who may require protection by any reference to their gender, age or mental capacity. Therefore, an FMPO can be made by either the High Court or the Family Court to protect anybody who requires it.

The court has the power to make an FMPO which may contain prohibitions, restrictions or requirements and “such other terms” as the court considers appropriate for the purpose of the order. It is therefore clear that the Judge has a wide power to either prevent persons from taking any action, or to compel them to take any action, as may be needed to ensure compliance with the order.

The court must “have regard to all the circumstances, including the need to secure the health, safety and wellbeing of the person to be protected”. As part of considering the person’s wellbeing, the court must also “have regard to the person’s wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate in the light of the person’s age and understanding”. The person’s wishes are not given more importance than any other factor. [One assumes that the Applicant in the present proceedings will rely on this to have the Court put RT’s wishes to one side.]

The answers to the first parts of questions 1 and 2 were therefore “yes”. Yes, the court has the jurisdiction to make an order in respect of an adult who has capacity to make decisions and who opposes the FMPO (McFarlane P described this as protecting a person from

themselves). Yes, the court has the jurisdiction to require a person's passport to be removed and retained by the authorities. The issue was therefore to what extent and how should those powers be exercised. **[In the present case, there is unverifiable evidence from JF that the age of 25 is a reasonable age limit to impose on any order granted.]**

Much of the argument at the appeal centred on how the legislation should be applied when considering the competing human rights which come into play. Some rights set out in the ECHR are considered to be absolute – so the state must uphold them all the time – and some are considered to be qualified, which means that the state may interfere in those rights where it is proportionate and necessary to do so. How are these rights to be balanced?

The Secretary of State highlighted specific aspects of the rights in play as follows:

- 1) Preventing a breach of the right to marry under ECHR, Article 12 (see R (Quila) v Secretary of State for the Home Department [2011] 3 WLR 836);
- 2) Discharging the UK's positive obligation under ECHR Article 8 with regard to the right to respect for private life and the protection of the moral and physical integrity of individuals by enhancing or liberating the autonomy of a vulnerable adult;
- 3) Discharging the UK's positive obligations under ECHR, Article 3 [prohibition on torture, inhuman or degrading treatment or punishment] in cases where forced marriage may give rise to a real risk of behaviour sufficient to engage Article 3. In cases in which the Article 3 threshold has been crossed, the UK has an obligation to take reasonable steps to prevent a real risk of inhuman or degrading treatment at the

hands of non-State actors, which includes treatment which may be imposed outside the jurisdiction;

- 4) Discharging the UK's positive obligation under ECHR Article 5 with respect to deprivation of liberty;
- 5) In particularly serious cases, discharging the UK's positive obligations under ECHR Article 2 [right to life].

The Southall Black Sisters made the following important submission:

“Cases of forced marriage do not just involve private individuals, but they involve the State undertaking an active and positive role in the protecting of an individual from themselves and, normally their community. ...When considering what protection should be put in place for a victim in what is near-universally by definition a family setting, the Family Court has to undertake a sensitive and careful balancing exercise. The issue in such cases is not whether there should be State intervention, **but rather what that intervention should be, taking into account human rights considerations (in particular Article 3) and the victim's standpoint and views.** Where the court's obligation to protect a victim does not conform – as in the instant case – with the victim's expressed wishes – **the court must be particularly careful** as to how it evaluates the evidence and reaches a conclusion as to what, if any, protective orders should be put in place. ...Ultimately though, **the court's primary focus is likely to be to prevent a victim being left unprotected and exposed to the risk of further harm, and a breach of their Article 3 rights.**”

In many cases, the person who requires protection will also want to benefit from that protection. Therefore, the order is not likely to interfere with their other rights to a significant degree. However, even in cases where that person says they do not want the order to be made or to have restrictions placed upon them, sometimes the court will need to intervene to protect them **[which is the position of the applicant in this case.]** McFarlane P recognised that **“In some cases, the State's duty to protect an individual will override that individual's stated wishes and feelings.”**

The important test identified by McFarlane P was set out at paragraph 37 of the judgment:

“It therefore follows that, in cases where there is potential conflict between Article 3 and Article 8 rights, the court must strive for an outcome which takes account of and achieves a reasonable accommodation between the competing rights. In this context, I have deliberately chosen the word “accommodation” to reflect the court’s approach. The required judicial analysis is not a true ‘balancing’ exercise in consequence of the imperative duty that arises from the absolute nature of Article 3 rights. Where the evidence establishes a reasonable possibility that conduct sufficient to breach Article 3 may occur, the court must at least do what is necessary to protect any potential victim from such a risk. The need to do so cannot be reduced below that necessary minimum even where the factors relating to the qualified rights protected by Article 8 are particularly weighty. Hence the need to find a word other than ‘balance’ to describe this process of analysis.”

Additionally, in cases where the forced marriage has not yet taken place, McFarlane P pointed out that the court is not dealing with a harm that is certain to take place, but instead a risk that it may do in the future. Therefore, there must also be an assessment of proportionality as to what is required to protect the person from that risk. In order to carry out this assessment, McFarlane P commended the approach taken by Moylan LJ in *Re X (A Child: FGMPO) (Rev 2)* [2018] EWCA Civ 1825, which is a case relating to the making of a Female Genital Mutilation Prevention Order.

McFarlane P went on to give guidance to be applied in every FMPO case, which he helpfully described as a “Routemap to Judgment” at paragraphs 45-55. There are four stages, summarised as follows:

#### 1. Find the Facts

Applying the civil standard of proof (the balance of probabilities) the court must establish the facts of the case. The burden of proof is on the applicant who says that an FMPO should be made. There does not need to be a full fact-finding exercise (or trial) at the first hearing, when an FMPO can be made on a without notice or an urgent basis if needed to protect a

person. However, if the order is contested or there is an application to discharge or vary it, there should be a fact-finding evaluation.

2. Determine whether a person has been forced into a marriage or whether there is a need to protect a person from being forced into a marriage. **[In our case, I submit the question is to be answered in the negative]**

3. Is there a real and immediate risk of the person suffering inhuman or degrading treatment sufficient to cross the ECHR Article 3 threshold? **[In our case the answer is again, no]**

The court must assess the risks and the protective factors relating to the situation of the person said to be vulnerable to forced marriage. **A balance sheet of the positives and negatives** of the circumstances within the particular family as they relate to the potential of a forced marriage may assist.

4. Achieve an accommodation between protecting the person from harm (Article 3) and respecting their autonomy and right to a private and family life (Article 8).

The court must establish the minimum necessary measures to meet the extent of the Article 3 risk identified. This should be a “bespoke order which pitches the intrusion on private and family life at a point which is necessary in order to meet the duty under Article 3, but no more”. The court must bear in mind that family circumstances may change and that it would only be in the most clear and serious cases that an open-ended order will be made; otherwise, the order should be time-limited or there should be a mechanism for review. **[In my submission, there is no basis for an order of 7+ years duration to be granted.]**

It is important to note that the Court of Appeal did not criticise HHJ Tucker’s approach and, in fact, praised many aspects of the way in which she dealt with this difficult case, including

her decision to adjourn the case to enable the victim to undergo some self-protective counselling. It was suggested that this could be considered in all cases of this nature. Nevertheless, the appeal was allowed to the extent that the Court of Appeal agreed that the passport order ought not to be open-ended. The matter was listed for further review in 2022.

In my submission, the court should adopt the approach of the English Court of Appeal. A list of positives and negatives would require the conflicting evidence of RT to be considered carefully in the context of whether or not there is a need for the orders sought.

The actions taken and the influence upon RT by her mother, PPM, must also be considered.

Her mother is convinced that she will be badly treated as she was badly treated in Pakistan.

Her mother is fearful for her daughter and relies on her own experience to explain this.

When asked by his Lordship, RT seemed to suggest that Peshawar was not a safe place as the reason why she didn't want to go there. She seemed reluctant to say any more than that.

As stated earlier, she no longer wants to live in Pakistan and that is a protective factor to be considered by the Court. Her mother is committed to her having a life here as indeed would appear to be the position accepted by her father.

The First Defender sees no need for the orders to be granted. He could just have not entered appearance in these proceedings and taken no part in the proof. Whoever, he chose to support his daughter. He continues to support her irrespective of her change of position.

The orders sought should be refused. RT will continue to be subject to compulsory measures of care by virtue of the existing CSO. Her mother would control her passport thereafter until she turns 18. The Applicant could have sought these orders when the child returned from Pakistan but chose not to do so. The delay has not been explained. I venture to suggest that it was not deemed necessary in 2018 or in 2019 until she was removed from the flight to Dubai. When the application was lodged, the only new piece of information was that she had boarded that flight; found her passport which presumably she had when she travelled to Russia and had been in contact with family in Pakistan using WhatsApp. She is still in contact with people in Pakistan; she has a passport to which she has no access and for that reason travel would be difficult. She does not want on-going social work interference in her life. There has been no evidence as to the effect upon RT if the order was granted for a duration of 7 years. In my submissions, that is a reason not to grant it.

### **3. Protected person's written submissions**

The court has heard evidence on behalf of the Local Authority, primarily from police officers and social workers. The factual position is largely not in dispute. There is no dispute in relation to the incidents involving the Protected Person leaving Pakistan and the incident in July 2019 involving the Protected Person boarding a plane bound for Dubai. It is also not in dispute that the Protected Person has said on a previous occasion that everything that she reported to the police and social work relating to risks from her father and her father's family were untrue. It is also obvious that the Protected Person's views about where she would like to live have fluctuated. The position of the Protected Person has, however, always been that she does not wish for a Forced Marriage Protection Order to be granted.

The Forced Marriage Etc (Protection and Jurisdiction) (Scotland) Act 2011 (the “**Legislation**”) deliberately allows a wide level of discretion to the decision maker in relation to the terms of the order. The Legislation is short and relatively succinct. The court must have regard to all the circumstances including the need to secure the health, safety and wellbeing of the Protected Person. Importantly, from the point of view of the Protected Person, the court must have such regard to the person’s wishes and feelings as the court considers appropriate on the basis of that person’s age and understanding.

RT is now 17 years of age. She has given evidence by way of both Affidavit and orally in court. In my submission she gave her evidence in a clear and forthright manner.

Her Affidavit does not seek to sugar-coat the reality of her life in Pakistan. She has made it clear that when she first moved to Scotland, she was unhappy. She has given her reasons for this. RT has given evidence of the work she has undertaken with Hemat Gryffe Women’s Aid and we have heard from a number of social workers in relation to this. She has been assisted in understanding the wider cultural issues at play. More importantly, RT has given evidence that she is now comfortable and settled in Glasgow. She has given evidence that she does not wish for an order to be made. She has given evidence that she would not return to Pakistan unless she was with her mother. RT understands that her mother does not wish to return to Pakistan. RT was very clear that she would not travel to Pakistan with her father. In my submission therefore, an order is not necessary to protect her from being forced into a marriage or from any attempt to force her into a marriage.

RT has given evidence that she does not like having to deal with social work. She would prefer to be able to get on with her life. She has left Pakistan in order to have more freedom.

It would be unfortunate if, as a result of this action, an order was put in place which would have the result of curtailing her freedom in this country.

It may be that the court considers there was some merit in granting an interim order originally, but that the granting of an order is no longer necessary. It would appear that the time RT has spent in Scotland has allowed her to mature, to grow older and to understand the differences between the cultures. She has expressed a view that she would like to be able to travel and to go on holiday. It would be unfortunate if her rights in relation to this were to be curtailed.

If the court ultimately decides that an order is necessary, I would like to address the court in relation to the powers sought. Firstly, I would respectfully request that the length of any order be kept as short as possible. Parliament, in passing the Legislation, has made no mention of an upper age limit for the expiry of an order. This was, in my submission, an attempt to allow the court as much discretion as possible. It is, however, also implied that an order should not be made for longer than is necessary. It is apparent, in my submission, that the Protected Person has matured significantly over the period she has spent in Scotland. In relation to the requested powers, I would respectfully ask the court not to make any orders in relation to the Protected Person's passport. In relation to the craves, I would submit that it is not necessary for either Crave b or Crave c to be included in any order. The evidence of the social work department was that they would have no difficulty with the Protected Person travelling to another part of the United Kingdom and indeed would have no difficulty with the Protected Person travelling with her mother on holiday in Europe. Given the position expressed by JF that she would have no issue with the Protected Person travelling with her mother to Paris or Milan, for example, it would seem unnecessary and

disproportionate to include the orders requested at Crave d and Crave e. This would have a disproportionate impact on the Protected Person and is in my submission unnecessary. If the court is persuaded that an order is necessary, an order could be made prohibiting travel to the country of Pakistan only.