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Case No: ZC15C00492

Neutral Citation Number: [2015] EWHC 3751 (Fam)

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 18/12/2015

**Before:**

**THE HONOURABLE MR JUSTICE MACDONALD**

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**Between:**

**London Borough of Camden**

**Applicant**

**- and -**

**RZ**

**First**  
**Respondent**

**- and -**

**HZ**

**Second**  
**Respondent**

**- and -**

**DZ and SZ**

**(by their Children's Guardian Cynthia Tobierre)**

**Third and**  
**Fourth**  
**Respondent**

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**Ms Mai-Ling Savage** (instructed by **Legal Services**) appeared on behalf of the **Applicant**  
**Dr Rob George** (instructed by **Dawson Cornwell**) appeared on behalf of the **First Respondent**  
**Ms Kristina Hopper** (instructed by **Williams & Co**) appeared on behalf of the **Second Respondent**  
**Ms Barbara Hopkins** (Solicitor, **Hopkin, Murray, Berskine**) appeared on behalf of the **Third and Fourth Respondents**  
**Ms Carter-Manning** (instructed by the Attorney General) appeared as Special Advocate for the Second Respondent at the commencement of the hearing and was thereafter released

Hearing dates: 9 and 10 December 2015

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**Judgment**

Mr Justice MacDonald:

## Introduction

- 1 In this matter I am concerned with DZ, aged 10; and SZ, aged 6. The mother of those children is RZ and the father is HZ. The family is of Afghan heritage. Both children reside currently in foster care, having been taken into police protection on 12<sup>th</sup> August 2015 following the service of a forced marriage protection order on the father. Interim care orders were made in respect of both children in favour of the London Borough of Camden on 14 August 2015.
- 2 This matter now comes before me for the first contested hearing of the application for interim care orders in respect of the children. That application is supported by the mother of the children and the Children’s Guardian. The application is opposed by the father of the children, who seeks the immediate return of the children to his care.
- 3 The mother is currently in Afghanistan. The precise circumstances by which the mother came to be in Afghanistan are in issue and I shall deal with this in more detail later. In the circumstances, whilst I have heard oral evidence from the former and current allocated social workers and from the father, I have not heard evidence from the mother, although she has filed a statement and has been represented at this hearing by Dr George. Whilst the mother has been in Afghanistan she has given birth to a third child of the family called FZ who is now aged one year and three months old. FZ is not a subject of these proceedings but is a ward of court.
- 4 All Dr George is able to say on behalf of the mother as to when she will be able to return to the United Kingdom is that “it is hoped” that it “will be in the near future”. Dr George accepts on behalf of the mother that there is at present no timetable for her return.
- 5 The forced marriage protection order was made against the mother and the father. That order remains in force and neither the mother nor the father seeks to have it discharged. The terms of that order prohibit the mother and the father from:
  - (a) Causing, permitting, aiding or abetting DZ to undergo marriage, whether within or outside the jurisdiction;
  - (b) Forcing DZ to undergo marriage, whether within or outside the jurisdiction;
  - (c) Using or threatening violence or otherwise harassing, pestering DZ in anyway directly or indirectly;
  - (d) Applying for any passport of any nationality (including an adult passport on which the child is entered) for DZ;
  - (e) Removing or attempting to remove DZ or SZ from England or Wales until further order.

The mother and the father are also required by the forced marriage protection order to hand to the Police immediately all travel documents in the name of DZ and SZ. Leave was given to the local authority to disclose the force marriage protection order to the Foreign and Commonwealth Office Forced Marriage Unit and the United Kingdom Passport Office. The court further requested that the United Kingdom

Passport Office not issue any passport (whether substantive or emergency) or other travel document to the parents or to DZ and SZ.

- 6 It will be noted that there has been a significant delay of some 16 weeks in this matter coming on for a contested hearing in respect of the application for interim care orders. That delay has been caused by the need to resolve a difficult issue of disclosure. The reasons that this issue arose, and the manner which it was dealt with are set out in the *ex tempore* judgment that I gave on 12 November 2015. Save for information concerning the precise current whereabouts of the mother in Afghanistan and information concerning the identity of those who are assisting her in that jurisdiction, it has been possible at this hearing to proceed on the basis of full disclosure of information to the father. The court is grateful to Ms Carter-Manning for the assistance she has provided as Special Advocate for the father during the case management stage of these proceedings and at the outset of this hearing.

## **Background and Evidence**

### *Historic Involvement of the Local Authority*

- 7 The family have been known to Camden Family Services since August 2011. On 23 August 2011 the local authority received a referral from the Police that the mother was the victim of domestic abuse perpetrated by the father and a paternal aunt, QZ and had been locked in a room and prevented from leaving the family home.
- 8 The Police report states that when the Police visited the home both parents denied any violence. Following receipt of the referral in relation to that incident, social services undertook an unannounced home visit on 24 August 2011 and the mother was said to have been seen to have visible bruising on her arms and alleged that the father had punched her and that he had been violent towards her since her arrival in the United Kingdom in 2008. These latter allegations were not and have not been further particularised. The mother also alleged that the paternal aunt had hit her and DZ. Both the father and the aunt denied those allegations. The Police appear to have taken no further action. The mother makes no allegations of domestic violence against the father in her statement to this court dated 23 September 2015 but has so alleged to those assisting her in Afghanistan.
- 9 Following these allegations, the mother and the children were placed in a women's refuge on 25 August 2011 before returning home on 31 August 2015, it being said that the mother had minimised the concerns regarding domestic abuse during a Section 47 investigation and had changed her story regarding the origin of her injuries. During this period DZ alleged that the father had hit her brother SZ using his hand. The children were made the subject of child in need plans.
- 10 In June 2012 the family went to Afghanistan due to a family bereavement. In August 2012 the father returned, but the mother did not and the children remained with the mother in Afghanistan. The father contends that the mother was refusing to return to the United Kingdom. There is no evidence before the court to confirm or refute this contention.
- 11 In November 2012 SZ returned to the United Kingdom having been collected by his father. The father informed Social Services that the mother and DZ had remained in Afghanistan. In March 2013 the local authority closed the case as it appeared that DZ and her mother had not returned and there was no indication that they would return. SZ remained in the care of his father at this time and there appear to have been no

concerns regarding the father's care justifying the case remaining open to the local authority. At some point in 2013 or early 2014 the mother and DZ returned to this jurisdiction.

- 12 On 10 April 2014 Camden received a further referral from a paternal cousin, HZ, who stated that she had visited the family home on the morning of 10<sup>th</sup> April and was informed by the father that the mother had travelled to Afghanistan earlier that day. HZ advised the local authority that DZ had told her that the mother was crying that morning (it would appear to be accepted by all parties that the mother had received news prior to her departure that her sister had been involved a serious accident in Afghanistan) and said that DZ was scared that her father was going to hit her (DZ). HZ also said that the father had threatened to murder her (HZ) and warned her to stay away from the family. There is no statement from HZ before the court and it would not appear that the local authority has sought to obtain one. In the circumstances, what HZ may or may not have said about these matters is only before the court in the form of, at best, second hand hearsay.
- 13 An initial assessment was completed by the local authority in June 2014. The father informed the local authority that the mother had travelled to Afghanistan when she was 8 months pregnant as her sister had been critically injured in a car accident. The children were seen by social workers and no concerns were raised. The case was again closed due the absence of any identified concerns with respect to the children.

#### *The Allegation of Forced Marriage*

- 14 On 7 August of this year an allegation was made to the local authority that the father was planning to take DZ, then aged nine, to Afghanistan in two weeks' time with the plan that she would marry her adult cousin, aged eighteen. The source of that allegation was the mother.
- 15 With respect to the allegation of forced marriage, those allegations are set out (a) in two referral letters sent by those assisting the mother in Afghanistan, which letters formed the basis of the original referral to the local authority, (b) the minutes of a professionals meeting from 11 August 2015, which detail a telephone conversation between the mother and a number of professionals following receipt of the aforementioned referral, and (c) the mother's statement in these proceedings dated 23 September 2015.
- 16 In her statement prepared for this court, the mother states that she travelled to Afghanistan on 8 April 2014. The father told Dr Parsons, the expert psychologist instructed to assess him, and this court that this was against his advice by reason of the advanced state of her pregnancy. Following giving birth to FZ the mother alleges in her statement that she posted her travel documents back to the father in order that he could apply for travel documents for FZ in England. She alleges that she has been "stranded" in Afghanistan ever since, implying that the father has failed to return her travel documents to her. The mother told those assisting her in Afghanistan that following her forwarding her documents to the father he subsequently told her that the "UK government do not want her and the child".
- 17 In her statement the mother relates that the father telephoned her in July 2015 and told her that he would be travelling to Afghanistan with DZ and SZ. He further told her that he had arranged a marriage between DZ and his nephew, the nephew being the son of his older brother, BZ, and eighteen years old. It is said by the mother that this is an arrangement that has been in place since DZ was born.

- 18 As I have already noted, it has not been possible for the mother to attend the hearing for the purposes of cross examination. In the circumstances, the father has not had the opportunity challenge the account of the mother, which lack of opportunity I have borne closely in mind when evaluating the mother's evidence. Within this context, it is important to note that the mother's accounts are not without their inconsistencies.
- 19 With regard to her travel documents, in a letter provided by those assisting the mother in Afghanistan dated 12 August 2015 the mother is recorded as having told that organisation (it would appear on 25 June 2015) that the family went to Afghanistan on holiday in 2014 whilst the mother was pregnant, that she gave birth to S and that the father, DZ and SZ then returned to the United Kingdom leaving her behind, the father taking her identification and travel documents. This version of events is recorded in the Police investigation log on 10 August 2015. During the professionals meeting on 11 August 2015 the mother stated that the father "took her passport" and describes the father as "taking the documents with him". In a document provided by those assisting the mother in Afghanistan dated 18 September 2015 the mother is recorded as having told them that she travelled to see her sister in 2014 and that the father asked her to send her documents to him in London. She repeats this version in her statement dated 23 September 2015. In her statement the mother asserts that she has applied for her Afghani passport, which will be ready in another 13 days. The mother now, nearly 3 months later, maintains she cannot return to the United Kingdom.
- 20 With respect to the allegation of forced marriage the mother says in her statement that the father telephoned her in July 2015 and stated he was planning to take DZ to Afghanistan to marry her cousin in two to three weeks. When speaking to professionals during the telephone meeting held with the mother on 11 August 2015 the mother stated that the father had telephoned on 5 August 2015.
- 21 Inconsistencies are also apparent in relation to the mother's allegation that the father intended to have SZ adopted in Afghanistan. No mention of this allegation by the mother was recorded by those assisting her in Afghanistan. The mother did not mention of her own volition the allegation in respect of SZ to professionals on 11 August 2015, it emerging only after professionals asked the mother whether "SZ had been promised to anyone". As at the date of her statement on 23 September 2015 the allegation in respect of SZ had again disappeared. These inconsistencies do not appear to have unduly troubled the local authority.
- 22 It is also important to note that care is required when considering the local authority's own evidence regarding the precise terms of the mother's allegation of forced marriage. For example, when describing the mother's allegation the previously allocated social worker, Ms Nevin says in her statement that "It is believed that an amount of 10,000 USA dollars had been agreed for this marriage". However, it is clear from the minutes of the professionals meeting of 11 August 2015 that the mother said nothing of the sort. What the mother is actually recorded as saying, in response to a question put to her, is that it would be the case that money is exchanged in respect of a marriage, that she was not sure of the amount and but the "normal" rate is \$10,000. Indeed, the mother appears to have made no mention of a dowry in her communications with those assisting her in Afghanistan. She likewise makes no mention of it in her statement. As I have recounted, in her meeting with professionals on 11 August 2015 she spoke only of the concept of a dowry in general terms in response to a question asked by professionals.

- 23 Thus, a general description of the principle of, and the going rate for a dowry, given by the mother in response to a question put by professionals and mentioned nowhere in the evidence of her prior communications with professionals in Afghanistan or in her sworn statement has become, in the hands of Ms Nevin, a settled agreement by the father to pay a dowry of \$10,000 in respect of DZ.
- 24 A strategy meeting was held with the police and other agencies on 11 August 2015. The meeting concluded that DZ was the subject of a forced marriage. The police Child Abuse Investigation Unit and the Foreign and Commonwealth Office Forced Marriage Unit were made aware of the local authority's application for a forced marriage protection order. It is of note that at this time the local authority did not seek the removal of the children from the care of their father and considered that a forced marriage protection order was sufficient to protect DZ from a forced marriage and to protect both children from removal from the jurisdiction. Indeed, in her statement to the court Ms Nevin was clear that "at this time it is not felt that an Interim Care Order is required if a Forced marriage protection order is made by the court."
- 25 As I have already recounted, on 12 August 2015 the children were removed into Police protection. It is clear from the minutes of the professionals meeting held on 11 August 2015 that the Police were considering removing the children from the father's care prior to the service of the forced marriage protection order and informed the mother of this. In response, the mother stated that she would like the father to be warned but that, if necessary, she did not object to the children being removed.
- 26 When the police and the social worker attended the family home on 12 August 2015 the children were found to be in the care of a lady called FG. Having regard to the s 9 statement prepared by the Police officer in charge following the removal of the children, the basis on which the officer in charge appears to have concluded that the children's safety required their immediate removal from the family home and from the care of their father appears to have been as follows (emphasis added):
- "The reasons I believed that the children were at risk of immediate significant harm were as follows. The father *has* agreed that his daughter would marry his brother's adult son. As the order is now prohibiting him from doing so, his family honour *would* be tarnished. He *was* due to get a large amount of money in exchange for his daughter. Not getting this *would* anger him. He *has* a history of domestic violence and depression. I believed that once we left the address he could harm the children – honour based violence – and possibly himself. He *was* not honest about the planned trip to Afghanistan and ways of contacting the birth mother. The children refer to [FG] as "Mum" and he denied being in a relationship with [FG]. The father returned home with a newly purchased uniform for his son but none for his 10 year old daughter. I would expect a parent to be horrified at the allegation that he is arranging his 10 year old daughter's marriage. He seemed more interested in the source of the information."
- 27 In the circumstances, it would appear that the Police decided to remove the children from their home and the care of their father based on settled conclusion of the Police that the father *was* going to remove DZ to Afghanistan for the purposes of forced marriage as a matter of established fact, that he *would* treat his inability to do so as a stain on his honour as a matter of established fact and that he *would* respond with anger and possibly self harm to the extent that the children could be harmed as a matter of established fact. On the face of it, no one, either in the local authority or the Police appears to have considered the possibility that the various allegations made

against the father might be untrue or the possibility that the situation was more nuanced than it first appeared given the aforementioned inconsistencies in the mother's account.

- 28 I have before me a further statement from the Police officer in charge prepared for the purposes of these proceedings. That statement details view of the officer that the making of a forced marriage protection order, the placing of the children's names on the port alert system in consequence thereof and any undertakings from the father not to remove the children from the jurisdiction or to apply for passports is not sufficient protection against DZ being removed from the jurisdiction for the purposes of a forced marriage (no mention is made of SZ).
- 29 The officer's explanation of why she asserts this to be the case is limited to the assertion that "In my professional experience having subjects circulated on PNC and/or placed on the Watch List does not guarantee that they will be stopped when leaving or entering the UK." Ms Savage tells me that the officer has further advised the local authority that the Port Alert system is compromised by the fact that not all airlines carry out checks, particularly if tickets are purchased close to the date of travel, and that it is possible to travel to another European country for onward travel without passport checks being undertaken. The officer told the local authority that she has personal experience of individuals being able to leave the country notwithstanding a Port Alert being in place. The local authority has not sought to adduce any other evidence regarding the efficacy or otherwise of forced marriage protection orders and/or the Port Alert system.
- 30 Subsequent to the granting of the forced marriage protection and interim care orders, the local authority identified what it considered to be concerns which corroborated the mother's allegation of forced marriage. In a series of statements from Ms Nevin the following assertions are set out:
- (a) That the father has been obstructive in relation to requests by the local authority to inspect his mobile telephone and has deleted applications (including his 'WhatsApp' application) and deactivated an email account before messages in those programmes could be viewed in order to frustrate such investigations (an expert analysis of the phone by a Digital Forensic Analyst instructed by the Police revealed no evidence of significance);
  - (b) That the father's text messages and bank statements disclose that he had an appointment in June 2015 to renew his passport and he had received information from a friend advising him of solicitors that could assist him in applying for a British passport for DZ. The local authority points out that the father accepts he renewed his passport. Enquiries of the Afghan Embassy by the local authority lead it to be concerned that if the father has identification for the children he could secure Afghani passports for the children without the need to take them to the Embassy;
  - (c) That the social worker having reviewed his bank statements, the father appears to have an income greater than would be expected given the benefits that he is claiming. The local authority suggests that the father has lied about his employment arrangements and in respect of his denial of being heavily involved in the running of a business in England;

- (d) That the father was overwhelmed in caring for DZ and SZ in the absence of the mother and largely delegated his care of the children to FG and QZ, the latter of whom presents a risk of physical abuse to the children.
- (e) That the father has lied about his relationship with FG and sought to replace the mother with her;
- (f) That there is a difference in the way the children “are treated / potentially parented” by the father, with SZ having an iPhone 6 but DZ having no phone, SZ having a bank account but DZ not and DZ’s attainment in reading and writing being low.
- (g) That the father suffers from certain mental health issues which impacted on his care of the children (whilst the local authority now also seeks to use the report of the expert psychologist in this case to bolster its case on forced marriage, Dr Parsons is clear that any views he expresses in that regard come from a position of having *no* expertise on that issue and must be considered to be only a *lay* perspective).

### *The Father’s Response*

31 The father denies the allegations made by the local authority that he perpetrated domestic violence against the mother, that he has stranded the mother in Afghanistan and that he intends to force his daughter into marriage and give SZ up for adoption in Afghanistan.

#### (i) Domestic Violence

32 The father refutes the allegations of domestic violence made by the mother and the allegations made by HZ. Whilst he accepts that the allegations were made, he explains those allegations by reference to the mother sustaining bruising accidentally and by reference to HZ bearing a grudge against the father’s father. It is acknowledged by the father that QZ accepted a caution for assaulting a cousin or niece of the father’s in 2004. As I have already noted, in the absence of the mother dealing with the allegations of domestic violence in her statement, there is no first hand evidence before the court dealing with the allegations.

#### (ii) Stranding

33 The father denies deliberately stranding the mother in Afghanistan. In his statement the father states that there is no functioning British Embassy in Afghanistan and that the nearest embassy that can assist the mother is in Islamabad in Pakistan, thus the mother has not been able to obtain the proper documents for FZ. I pause to note that this appears to be corroborated by the advice given to the local authority by the Forced Marriage Protection Unit in this case who are recorded by the local authority as advising “It would be beneficial to get the mother and FZ to Islamabad where the mother would need to make an application for a re-entry visa”. This reflects what the father told the social worker on 12 August 2015. However, in his oral evidence he contradicted this version of events.

34 In support of his case that he has not stranded the mother, the father has produced a letter dated 15 May 2014 from the midwife at the Royal Free Hospital in London

which records that the mother travelled to Afghanistan due to a family emergency and tried to return on 6 May 2015 but was not permitted to fly. The letter is dated proximate to FZ's birth and states that the mother wishes to return to her husband and children. The father says he secured this letter from the midwife in order to assist the mother to return to the United Kingdom. He told Dr Parsons he sent the letter to Kabul to speed up her return. The father repeated this assertion in evidence, which evidence was not challenged in cross examination. I of course bear in mind that the letter would have been based solely on what the father told the midwife.

- 35 In seeking to rebut the assertion that the father has stranded the mother he further contends that he has been in regular communication with the Mother. Whilst the local authority asserts in its closing submissions that there are no messages on the father's phone indicating that he is in contact with the mother and only one missed call from the mother on 22 September 2014, the mother *herself* told those assisting her in Afghanistan that she and the father continued to speak on the phone prior to the alleged conversation regarding the marriage of DZ. The mother *herself* also made plain to the local authority during the course of the professional's meeting on 11 August 2015 that if the father has not called her for a period of time she 'miscalls' him and he calls her back. It is also plain that the parents have been in telephone contact over the days leading up to this hearing and, indeed, on the morning of the hearing. The father further relies on the exchange of pictures by text message via her brother's telephone which he says reflect regular communication between him and his wife. He says pictures are used due to fact he cannot read or write.
- 36 During his oral evidence regarding the allegation that he has stranded the mother in Afghanistan the father also produced four money transfer vouchers dated between August 2014 and July 2015 evidencing, he says, the financial support he has been providing to the mother and FZ. The purpose stipulated on each of the vouchers is "Family Support". The father states that the sum of \$1000 sent on 29 July 2015 was for the purpose of allowing the mother to take the steps that she needed to take to secure a passport for FZ. Dr George points out that this is over a year after FZ was born. It is of note that the name of one of the people to whom the voucher's indicate money was sent to be passed on to the mother is a person who is mentioned in the transcript of the conversation between the father and the mother that I deal with below regarding money being sent to Afghanistan. Finally, the mother *herself* confirmed to professionals on 11 August 2015 that the father sent her money which she had saved and was living on.
- 37 In his statement and in his evidence the father stated he wishes to be reunited with his wife. He rejects the allegation levelled at him by the local authority that he had replaced the mother with FG. Exhibited to the father's statement is a signed letter from FG (together with a copy of her passport). No party sought to dispute the provenance of that letter although it of course does not amount to a statement in the proper form. FG refutes any suggestion she and the father were in a sexual relationship, insisting that their association arose out of family friendship. FG states the reason she told the police that she was in a relationship with the father was due to the shock of them attending the property. She states that she left the father's home on 17 August 2015. Attached to the letter is a copy of a flight manifest indicating FG was booked to fly to her country of origin on 30 August 2015.

(ii) Allegation of Forced Marriage

- 38 The father categorically denies intending to take DZ to Afghanistan to marry her to her cousin. He describes the allegations as being 'beyond belief'. He states that he

wishes DZ to go to university and to have a career, saying that DZ wants to be a doctor. The father exhibits to his statement a letter from his older brother, BZ (together with a copy of BZ's passport). Again, no party disputed the provenance of this letter, although again it is, of course, not a statement of evidence in the proper form. BZ is the father of the cousin the mother alleged that DZ was to be married to. BZ refutes the allegation of forced marriage, stating that it is beyond his comprehension.

- 39 In answer to the local authority assertion that he has obstructed the investigation of his telephone in order, the local authority suggests, to obstruct the investigation into the allegation of forced marriage the father denies that he has done so. Whilst I was unconvinced by the father's denial that he had deleted items from his phone it is also important, once again, to treat the local authority's evidence with regard to the father's telephone with some caution.
- 40 Ms Nevin sets out in her evidence the results of what purports to be a detailed analysis of the father's telephone following the hearing on 14 August 2015, the father having agreed to provide his telephone to Ms Nevin on that date. Ms Nevin relates that when discussing with the father whether he would consent to his phone being looked at the father had a WhatsApp icon on his phone and an email icon. Ms Nevin states that father was unwilling for her to view his WhatsApp messages on the basis that they were "private" and that, prior to the phone being given to her, the father had deleted his WhatsApp application and deactivated his Apple email account. I note in this context that father had not, however, taken the opportunity to delete text messages that indicated that the father had renewed his own passport and received advice about applying for a British passport for DZ in June 2015.
- 41 Ms Nevin provides no record of precisely what she saw on the father's phone but rather a selective narrative in statement form. There is no readout from the phone or pictures of the phone. Further, Ms Nevin is not an expert forensic digital analyst and is not equipped to provide the court with comprehensive evidence on the provenance of what was seen on the father's phone. For example, in her final statement Ms Nevin confidently states, in the context of the father conceding he communicated with his brother BZ between June and July 2015, that "In the call log taken from [the father's] phone and in the iCloud backup download there are no calls logged between 22/2/2015 and 18/7/2015. This suggests that the logs of these calls may have been deleted before the phone was backed up to the iCloud." However, Ms Nevin does not provide, and does not have the expert qualifications to assist the court with any other technical explanations for this situation, for example a back up failure. Rather, Ms Nevin purports to give opinion evidence and then leaves an adverse implication hanging without further comment. By contrast, the Digital Forensic Analyst instructed by the Police to examine the phone, very properly, draws no conclusions from the fact that the backup contained no additional data of interest.
- 42 A further example of the caution needed when considering the forensic value of the Ms Nevin's evidence concerning the father's phone is a serious mistake apparent from her penultimate statement that was only noticed and corrected by her later. In her penultimate statement Ms Nevin contends that she saw on the father's phone messages related to a forced marriage passing between the father and the brother of the father whose son it is alleged DZ would be marrying. Ms Nevin records that on 11 August 2015 that the father's brother messaged the father stating "When y want to came afgh" and that the reply from the father *appeared* to be "now". Ms Nevin goes on to observe that there are a number of telephone calls between the father and his brother spanning July and August 2015. Whilst Ms Nevin describes this as providing

some support for the alleged forced marriage, her analysis is, in fact, critically flawed by reason of the fact that the messages are passing between the father and the mother's brother.

- 43 In seeking to refute the allegation of forced marriage the father himself relies on a transcript of a telephone call between him and the mother which he recorded on 8 December 2015. It is not disputed by the mother that the telephone call took place and that she said the things that are recorded in the transcript before the Court. In the transcript the father asks the mother, in relation to the allegation that the father was going to take DZ to Afghanistan to be married, "Did you say this or anyone else?" The mother confirms she made the allegation. When the father asks on what basis she did so the mother replies "I said this so I could leave here. It is just for this purpose and an excuse".
- 44 Through Dr George the mother contends there were other telephone calls in which context the call I have just recounted must be placed, in one of which calls the mother says she reiterated to the father that he had indeed said what she alleged that he had said in relation to the marriage of DZ. Within this context the mother, the local authority and the Guardian further attack the credibility of the evidence of the telephone call of 8 December on the basis that the call appears to start mid-conversation and father has deleted the call log in respect of the recorded call, suggesting the call may have been longer. Through Dr George the mother is tells the court that she does not know why she said something that she claims is untrue, namely that "I said this so I could leave here. It is just for this purpose and an excuse".
- 45 With respect to the issue of passports, the father concedes that he applied to renew his United Kingdom passport in June 2015. He states that this was because it was due to expire and that, given his situation as an immigrant in this country, he regularly requires use of his passport. The Police investigation log confirms that the father's United Kingdom passport expired on 11 July 2015 and thus was indeed due for renewal at the time he renewed it.
- 46 As regards the local authority's allegations concerning his income and employment, the father denies that his financial situation is evidence of his intending to force DZ into marriage or have SZ adopted in Afghanistan. Once again, caution is required when considering Ms Nevin's evidence in this regard.
- 47 For example, Ms Nevin's says in her evidence that "[the father] has paid £320.40 to the post office: this could be to send items abroad or to change monies into alternative currency". It could, of course, also be for any number of other things. Ms Nevin's overall analysis of the father's bank accounts draws the conclusion that there is some £5,500 "unaccounted for". She does not however say what the significance of this is but again simply leaves the ominous implication hanging. Ms Nevin does not consider alternative explanations to the implication that the father's financial situation is somehow suggestive of a scheme of forced marriage, for example that it is as a result of the father's own father being, as he told Dr Parsons, "wealthy to a certain degree".
- 48 As to the assertion by the local authority that the forced marriage allegation is further evidenced by the father being overwhelmed in caring for DZ and SZ in the absence of the mother and his largely delegating his care of the children to FG and QZ, the father again refutes this allegation. I pause to note that both the local authority and the Children's Guardian appear to put their respective cases on the father's motive for

seeking a forced marriage for DZ as being practical rather than cultural or religious in nature.

- 49 The evidence grounding the contention that the father sought the forced marriage of DZ and the adoption of SZ because he was overwhelmed by their care and that children were often left with QZ and FG originates, once again, from the mother. The local authority and the Guardian also point to the fact that the children called FG “mum” on 12 August 2015, and subsequently described her as a new mother and to the fact the children had stayed with their paternal aunt the night before they were removed from the family home.
- 50 Within this context, it is important to note that the mother told professionals on 11 August 2015 that the allegation that the father was going out with FG and leaving the children in the care of QZ, who abused them, was an allegation made by an unidentified friend of the mother’s brother in London, the unidentified friend making the allegation to the mother’s brother, who in turn repeated the allegation to the mother, who then passed it on to professionals. The local authority and the Guardian’s case that it was not the father who has cared for the children but rather the father’s sister whilst the father pursued a new relationship with FG is thus based, in part, on fourth hand hearsay from an unidentified source.
- 51 FG told the local authority that she moved in with the family in June 2015 (which is over a year after the mother left for Afghanistan) and that she left on 17 August 2015, so was with the family a little over 9 weeks. She describes her involvement with the children over that period as assisting with breakfast and brushing teeth and on some occasions with school. She stated that after school the father would do the chores at home, and would cook for and feed the children and get them ready for bed, which would be at approximately 8.30pm. FG reported that the father did not work much and was mostly with the children. She said that the father is the main carer but that his sister supports him with childcare. It is of note that, when interviewed, SZ stated that his father does the cooking. FG put the children referring to her as ‘mum’ down to the fact she had been teaching them her language and had taught them that word.
- 52 During the course of his cross-examination the father produced documentary evidence regarding his care of the children, including reports from the children’s schools, which reports span the 2014/2015 school year for DZ and a similar period for SZ and thus the period during which the mother has been in Afghanistan and a much wider period than that over which FG says she was involved with the family.
- 53 Within the context of Ms Nevin having concluded in her first statement that “both children are at risk of neglect and significant emotional harm due to the mental health issues of the father and his ambivalence and ability to care for them”, the documents produced by the father relating to DZ describe a child who settled well in school from September 2014 and is an engaging and considerate child who consistently works hard across all subjects. Her homework is handed in on time and completed to a high standard. Her attendance is described as excellent at 99.02%.
- 54 SZ is described in documents from his school as a gentle, thoughtful child who brings much joy to the classroom. He is said to be a hardworking boy who grew in confidence throughout the year and made big improvements in his behaviour and academically. In relation to religious education he is described as having a good knowledge of the Bible. He was considered to be a clean and well presented child.

- 55 Attendance at parent / teacher meetings in respect of SZ is recorded as 100%. The school recorded that the father would speak to the class teacher, had a good relationship with the class teacher and that it was the father who would usually drop SZ at school although “In the summer term sometimes another lady would collect” SZ. This corroborates what FG told the local authority about her involvement with the family during the summer of 2015. It is clear that SZ’s school were surprised that the local authority was involved with the family. It is also noteworthy that the only criticisms concerning SZ’s education occur *after* his reception into foster care, with concerns being expressed regarding behaviour and his reading diary not being returned each day.
- 56 Within the context of the local authority asserting that the father treated the children differentially, with SZ having a bank account and DZ not, during the course of cross examination the father produced further documents which demonstrate that, at least up until 29 January 2013, DZ had a Stakeholder Child Trust Fund in the same way as SZ, the statement relating to SZ’s account being dated 11 February 2015. DZ’s account held significantly more money than SZ’s.
- 57 There is no suggestion that the father has been anything other than dedicated to attending contact with the children three times per week. The contact recording in this case, in general, paints a picture of a good level of emotional warmth between the father and the children, with a good level of physical affection. The contact recording does not appear to bear out the allegation of differential treatment. There have been occasions when the father has been challenged by SZ’s behaviour but is also recorded as dealing with difficult behaviour effectively. Concerns regarding the children’s diet likewise appear to have been addressed. It is of note that the contacts that have taken place involving QZ have likewise been generally positive.
- 58 Whilst Ms Hopkin has pointed out on behalf of the Guardian a single entry in the contact recording for 29 November 2015 that noted “Dad struggles to manage their behaviours so is not in tune with their feelings and is uncertain how to manage this” it would be extremely unwise to attach forensic significance to a single observation during supervised contact in preference to considering the progress of contact overall. I pause to note that the father contends that the Guardian has neither seen nor spoken to him during the course of these proceedings. The Guardian has not produced an initial analysis and recommendations report and did not give evidence at this hearing.
- 59 The allocated social worker made clear in her oral evidence that both DZ and SZ wish desperately to return to the care of their father. Whilst an episode of DZ clinging to her father at the end of contact occurred in the context of a recent change of carers, the allocated social worker emphasised in her oral evidence that both DZ (aged 10) and SZ (aged 6) consistently tell her that they wish to return to the care of their father. During his oral evidence the father produced a series of letters written to him by DZ. It is clear from these letters that DZ is close to her father and loves him very much. They emphasise how much DZ misses her father. In several of the letters DZ states her wish to come home, pointing out in one that SZ says the same thing. Several of the letters contain drawings of the father, DZ and SZ as a family group. Once again, this material does not bear out the allegation of differential treatment.
- 60 With respect to the local authority’s contention that the father has mental health issues which have impacted on his care of the children, as I have noted, the court now has the benefit of a jointly instructed expert report from a Dr Parsons, Clinical Psychologist. Recognising that the questions of domestic violence and forced marriage are matters of fact for the court to determine, Dr Parson’s concludes that the

father presents clinically as having no current psychological difficulties and no evidence of a personality difficulty.

- 61 Finally in the context of it being alleged by the local authority that he intended to force his daughter into marriage the father has produced information regarding his family in Afghanistan, contending that he comes from a well educated, metropolitan family for whom forced marriage would be an anathema. The father told the court that his one of his sisters is a doctor, one is a teacher and one of his brothers is a retired senior army officer. No one has sought to challenge that evidence. I also note in this context that the father told Dr Parsons that he and the mother met when she was 25 and he was 28 and that they met through being neighbours, his mother feeling the mother was suitable and introducing the couple. For her part, the mother alleged to professionals on 11 August 2015 that the father's mother was married when she was 14 and had her first child at 15 and that, accordingly, child marriage was a feature of the paternal family.
- 62 It is of note that in this context that the record of the local authority's Section 47 Investigation records under the hearing 'Wider Family' only that "There are no extended family members in the UK as they are all in Afghanistan". It is unfortunate that in a case where an allegation of forced marriage has been made against the father that the local authority do not appear to have taken the trouble to ascertain in detail the father's family background in order to ascertain the wider familial context in which the allegation fell to be investigated.
- 63 Within the foregoing context, the current allocated social worker conceded in cross examination by Ms Hopper that none of the messages that she has seen on the father's phone father related to a forced marriage in respect of DZ. She further conceded that there is no evidence in this case in the form of airline tickets or bookings, visas for Afghanistan or specific correspondence (electronic or otherwise) between relatives. She accepted, as indeed is the case, that there is no evidence that the father has endeavoured in the past to remove DZ to Afghanistan and, moreover, that it was the father who brought SZ back from Afghanistan in 2012.
- 64 The previously allocated social worker, Ms Nevin, likewise made clear that neither DZ nor SZ have made any "disclosures" or comments about going to Afghanistan (DZ did talk of travelling to FG's home country and Afghanistan to stay at a hotel by the beach and about spending a month or a year in Afghanistan, although this latter statement appears to relate to the past). DZ is also recorded as saying that "[FG] said when I am older I'll get a boyfriend or husband". FG told the local authority that she was not aware of any plans for the father and the children to travel to Afghanistan although she reported that the father had stated he wanted to travel to Afghanistan to visit his father, who FG says is ill.
- 65 Overall the allocated social worker conceded that, subject to the interpretation that is placed on circumstantial evidence, and in particular the father's conduct in respect of his mobile phone, his bank account and his passport, there is no evidence before the court which corroborates the allegation of forced marriage of DZ and adoption of SZ made by the mother.
- 66 Within this context, the new allocated social worker further conceded during the course of her oral evidence that, absent the local authority's view that the forced marriage protection order provides insufficient protection against the removal of DZ from the jurisdiction for the purposes of forced marriage, there are no concerns regarding the

father's parenting that would militate against the return of the children to their father's care.

## The Law

- 67 Pursuant to s 38(2) of the Children Act 1989 the court may make an interim care order only where it is satisfied that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in section 31(2) of the Children Act 1989, namely that the children concerned are suffering, or are likely to suffer significant harm attributable to the care given to them, or likely to be given to them if a the order were not made, such care not being what it would be reasonable to expect a parent to give them.
- 68 It is important to remember that the satisfaction of the interim threshold criteria set out in s 38(2) of the Children Act 1989 does not automatically satisfy the test for *removing* the children from the care of the parents. The question of whether the test for removal is met is separate from the question of whether the criteria for making an interim care order are made out.
- 69 Within this context, the authorities make clear that at an interim stage removal of the children from the care of their parents should not be sanctioned unless it is demonstrated that the children's safety, using that word in a broad sense to include psychological welfare, requires removal and that that removal is proportionate to the risk identified (*Re B (Care Proceedings: Interim Care Order)* [2010] 1 FLR 1211 and *Re G (Interim Care Order)* [2011] 2 FLR 955). Where children have been removed from the care of their parents their continued removal must be proportionate to the risk of harm to which they would be exposed if they were allowed to return to the care of their parents (*Re B (Interim Care Order)* [2010] 2 FLR 283 cited with approval in *Re S (Care Proceedings: Human Rights)* [2012] 2 FLR 209).
- 70 The removal of children from the care of their parents constitutes a serious interference in the Art 8 right to respect for family life of the children and the parents. Art 8 accordingly demands that there exist, in the particular circumstances of the case, reasons justifying the removal of the child as being necessary (*Kutzner v Germany* [2003] 1 FCR 631). Taking a child into public care should normally be regarded as a temporary measure to be discontinued as soon as circumstances permit (*Johansen v Norway* (1996) 23 EHRR 33 at [78]).
- 71 The object of an interim care order is to hold the balance pending the final hearing so as to cause the least possible harm to the children (*Hampshire County Council v S* [1993] 1 FLR 559). It is not an advance judgment by the court on the overall merits of the case. Within this context, the court should avoid making findings of fact at the hearing of an application for an interim care order. That said, there must of course be a proper evidential basis for the court to be satisfied that the criteria in s 38(2) are met and a proper evidential basis for any decision to remove a child temporarily from the care of his or her parents under the auspices of an interim care order.
- 72 The Forced Marriage (Civil Protection) Act 2007 (amending the Family Law Act 1996) constitutes legislation specifically targeted to providing protection from forced marriage. Under this legislation, a forced marriage protection order may be made for the purposes of protecting a person from being forced into marriage or from any attempt to force them into marriage. The Family Law Act 1996 s 63A provides as follows:

### **63A Forced marriage protection orders**

- (1) The court may make an order for the purposes of protecting—
  - (a) a person from being forced into a marriage or from any attempt to be forced into a marriage; or
  - (b) a person who has been forced into a marriage.
- (2) In deciding whether to exercise its powers under this section and, if so, in what manner, the court must have regard to all the circumstances including the need to secure the health, safety and well-being of the person to be protected.
- (3) In ascertaining that 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 in the light 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 coerce by threats or other psychological means (and related expressions are to be read accordingly); and

“forced marriage protection order” means an order under this section.

- 73 As can be seen from the terms of s 63A, in deciding whether to make a forced marriage protection order the court is required to consider all the circumstances of the case. The essential question is whether the person will be forced into marriage unless the court prevents this from occurring. A forced marriage protection order may contain such prohibitions, restrictions or requirements and such other terms as the court considers appropriate for the purposes of the order (Family Law Act 1996 s 63B).
- 74 The provisions of the Family Law Act 1996 governing the making of forced marriage protection orders do not preclude the use of other protective measures. The Family Law Act 1996 s 63R provides as follows in this regard:

### **63R Other protection or assistance against forced marriage**

- (1) This Part does not affect any other protection or assistance available to a person who—
  - (a) is being, or may be, forced into a marriage or subjected to an attempt to be forced into a marriage; or

(b) has been forced into a marriage.

(2) In particular, it does not affect—

(a) the inherent jurisdiction of the High Court;

(b) any criminal liability;

(c) any civil remedies under the Protection from Harassment Act 1997 (c. 40);

(d) any right to an occupation order or a non-molestation order under Part 4 of this Act;

(e) any protection or assistance under the Children Act 1989 (c. 41);

(f) any claim in tort; or

(g) the law of marriage.

75 The Government has issued guidance in respect of forced marriage in the form of *The Right to Choose: Multi-agency statutory guidance for dealing with forced marriage* (HM Government June 2014). The guidance includes a non-exhaustive summary of the potential warning signs or indicators of forced marriage. These potential warning signs or indicators include the intended victim becoming anxious, depressed, emotionally withdrawn and suffering low self-esteem and/or persistent absence from school or a decline in behaviour, attendance or punctuality or poor school results and/or a family history of forced or early marriage, self-harm or suicide of siblings, the death of a parent or family disputes and/or reports of domestic abuse at the family home, threats to kill or harm and reports of other offences such as rape or kidnap (*The Right to Choose: Multi-agency statutory guidance for dealing with forced marriage* HM Government June 2014, pp 12-13). The guidance also sets out clearly the adverse consequences of forced marriage.

### **Submissions:**

76 The local authority's case at the outset of this hearing that the interim care orders should continue and that the children's safety required the continued removal from their father's care was based, in summary, on the following contentions:

(a) The father was planning to arrange an immediate forced marriage for DZ, who is only ten years old, to an eighteen year old cousin in Afghanistan;

(b) The children have been exposed to the effects of domestic violence perpetrated by the father against the mother;

(c) The children have been the direct recipients of violence at the hand of the father or the paternal aunt;

(d) The children have been exposed to harm as a result of an enforced separation from their mother and sister, which separation was caused by the father deliberately stranding the mother in Afghanistan;

- (e) The Father suffers from episodes of fragile mental health and has been diagnosed with post traumatic stress disorder, which mental health issues mean he is likely to have difficulty in coping with two children alone.

- 77 As I have already noted, the allocated social worker conceded during her evidence that were it not for the concerns regarding the efficacy of the forced marriage protection order and the Port Alert system as articulated by the police officer in charge, the local authority would not be seeking the continued removal of the children from their father's care. She made clear that "it is the risk of removal and not any concerns about his parenting" that grounds the local authority's application for interim care orders.
- 78 In the circumstances, the local authority now places its case, that the interim care orders should continue and that DZ's safety requires the continued removal from their father's care until such time as the allegation of forced marriage made by the mother can be addressed at a hearing at which the mother is present, squarely on the submission that the risk of abduction to Afghanistan is so high in this case, and the consequences of that risk becoming manifest so grave, that a forced marriage protection order is not sufficient protection against that risk in circumstances where such an order and the safeguards that go with it can be ineffective. It is not clear from the local authority's written closing submissions that this submission is also made in relation to the father's alleged wish to have SZ adopted but for the purposes of this judgment I have assumed that it is. The local authority says that the children should remain in foster care until the mother returns to this jurisdiction in order that her allegations can be adjudicated with her present. As I have already observed, there is at present no timescale for the mother's return. The submission of the local authority is supported by Ms Hopkin on behalf of the Children's Guardian.
- 79 On behalf of the mother Dr George submits that given the magnitude of harm that would befall DZ were she to be removed from the jurisdiction and forced into marriage in Afghanistan, even a low risk of such a course of events coming to pass justifies significant protective measures, in this case an interim care order with a care plan of continued removal of both children from their father's care in addition to the continuation of the forced marriage protection order. Like the local authority, the mother says that the children should remain in foster care until the mother returns to this jurisdiction in order that her allegations can be adjudicated with her present. Again, as I have observed, Dr George is not able to provide any definitive timescale for the mother's return to this jurisdiction.
- 80 On behalf of the father Ms Hopper submits that the risk of removal of DZ from the jurisdiction for the purposes of forced marriage and of SZ is contained effectively by the granting of the forced marriage protection order and that, within this context, it cannot be said that the requirements of s 38(2) of the Children Act 1989 are made out and, moreover, balancing the risks to the children presented by a return to their father's care with the risks of keeping them in foster carer for an as yet indeterminate period of time until the mother returns, the continued removal of the children from the care of their father is not required to ensure their safety nor proportionate in the circumstances.

### **Discussion:**

- 81 Having considered carefully to the evidence in this case I have decided that in circumstances where there is a forced marriage protection order in force that I am

satisfied adequately addresses the risk in this case of forced marriage in respect of DZ and the risk of removal from the jurisdiction in respect of SZ, there is no proper basis for continuing the interim care orders in respect of the children, that those interim care orders should be discharged and that the children should return to the care of their father pending the final determination of the local authority's substantive applications. My reasons for so deciding are as follows.

- 82 The local authority submit that, on the evidence before the court, interim care orders are necessary because a forced marriage protection order is not effective in this case to protect DZ from forced marriage and SZ from being given up for adoption in Afghanistan such that, absent an interim care order, the children will suffer or be likely to suffer significant harm and their safety requires their continued removal from their father's care. There are two key elements to this argument. First, the efficacy of forced marriage protection orders in general and, second, whether the nature and extent of the risks identified in this case are met adequately by a forced marriage protection order.
- 83 As to the efficacy of forced marriage protection orders in general, the evidence before the court that such orders are not effective is limited to the unchallenged evidence of the police officer in this case. As will be recalled, the officer's evidence was to the effect that a forced marriage protection order does not "guarantee" that a person will be stopped from leaving the United Kingdom. As I have recounted above, the officer's assertion is based on her contention that not all airlines carry out checks, particularly if tickets are purchased close to the date of travel, and that it is possible to travel to another European country for onward travel without passport checks being undertaken.
- 84 I am, perhaps unsurprisingly, not prepared to find on the basis of the police officer's anecdotal evidence that the regime put in place by Parliament in the form of the Forced Marriage (Civil Protection) Act 2007 to protect against forced marriage is a regime that is, to all intents and purposes, ineffective. The local authority has adduced no other evidence to support its contention that forced marriage protection orders are ineffective in preventing the removal of children from the jurisdiction for the purposes of forced marriage, for example by way of research or statistical evidence. I am not aware of any reported cases in which children have been removed from the country despite the existence of a forced marriage protection order and a Port Alert nor have any such cases been drawn to my attention by the advocates. In the foregoing circumstances, I am not prepared to find that, as a general proposition, forced marriage protection orders are insufficient protection against forced marriage.
- 85 No system is perfect and all human systems are, to an extent, fallible. Within this context, in deploying the systems of protection available to it the court cannot deal in the creation of certainty but rather must deal in the management of risk. As such, there can never be a "guarantee" that a forced marriage protection order will prevent a child being removed from the jurisdiction for the purpose of a forced marriage. Indeed, to seek such certainty in every case would be a recipe for disproportionate intervention.
- 86 The local authority's case concerning the efficacy of force marriage protection orders, if followed through to its logical conclusion, amounts to a submission that in every case concerning the alleged forced marriage of a child (including cases, such as this one, advanced on the basis of a largely uncorroborated allegation made by one parent against another) the child must be removed from the care of his or her parent or parents under the auspices of a interim care order in order to provide him or her with

sufficient protection against any identified risk notwithstanding the existence of the forced marriage protection legislation promulgated and introduced by Parliament. In circumstances where the risk of forced marriage varies from case to case such an approach would result regularly in the risk of disproportionate levels of intervention.

- 87 This does not of course mean that there will never be a case of alleged forced marriage in which additional relief under the Children Act 1989 is required. As noted above, the Family Law Act 1996 s 63R(2) specifically provides that the forced marriage legislation does not affect any other protection or assistance that is available. The 2014 Guidance makes plain that they will be cases of alleged forced marriage where immediate emergency action to remove children using police protection powers or an emergency protection order is necessary (*The Right to Choose: Multi-agency statutory guidance for dealing with forced marriage* HM Government June 2014, p 21).
- 88 Further, it also does not mean that there will never be cases of alleged forced marriage where continued removal under the auspices of a care order is required notwithstanding the existence of a forced marriage protection order (see *A v SM and HB (Forced Marriage Protection Orders)* [2012] 2 FLR 1077). It is possible to envisage cases where, notwithstanding the general position that forced marriage protection orders provide effective protection, there is clear and cogent evidence that the protection afforded by a forced marriage protection order will be circumvented by those bound by that order, for example where there is clear evidence of involvement in people trafficking or smuggling or evidence of prior successful evasion of border controls, such that continued removal under an interim care order is also necessary. There will be other examples. Finally, there will, of course, be cases where there are issues above and beyond the risk of forced marriage which may require removal under an interim care order in tandem with a forced marriage protection order.
- 89 In all such cases the test for whether an interim care order with a plan of removal should be made remains the same, namely that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in section 31(2) of the Children Act 1989, that the child's safety, using that word in a broad sense to include psychological welfare, requires removal and that that removal is proportionate to the risk identified.
- 90 As to the question of whether the nature and extent of the risk in this case is adequately met by a forced marriage protection order, I turn first to consider the nature and extent of the risk in this case.
- 91 It is not appropriate at an interim stage for the court to make findings in relation to the matters in dispute between the parties, particularly in circumstances where the father has not had an opportunity to cross examine the mother. However, whilst there are in my judgment significant issues with respect to the evidence grounding the mother's allegation, having regard to the evidence currently available, and on an interim basis, I am satisfied that the evidence indicates an elevated risk of removal of DZ from the jurisdiction for the purposes of forced marriage. I am not persuaded that the evidence indicates the same nature or degree of risk in relation to the removal of SZ although that risk can not be entirely discounted on the evidence I have heard.
- 92 As to whether the elevated risk I have identified in this case can be met adequately by a forced marriage protection order, I am not satisfied, having regard to the evidence I have recounted above, that the local authority has demonstrated that the forced marriage protection order already in place provides inadequate protection against the risk identified. This is not a case in which the local authority has adduced clear and

cogent evidence that the protection afforded by a forced marriage protection order is likely to be circumvented by the father. For example, whilst the local authority contend that the father *could* obtain Afghan passports for the children there is no evidence that he has attempted to do so, either before or after the making of the forced marriage protection order, notwithstanding that the local authority's evidence is that he could do so without needing to produce the children at the Afghan embassy.

- 93 In dealing with the local authority's application for an interim care order I must first ask myself whether, pursuant to s 38(2) of the Children Act 1989, I am satisfied that there are reasonable grounds for believing that the circumstances in respect of DZ and SZ are as set out in s 31(2) of the Act, namely that the children are suffering, or are likely to suffer significant harm attributable to the care given to them, or likely to be given to them if an interim care order is not made, such care not being what it would be reasonable to expect a parent to give them in circumstances.
- 94 The "circumstances in respect of" DZ and SZ for the purposes of s 38(2) include the fact that there is in place a forced marriage protection order. For the reasons I have already set out, I am satisfied that that forced marriage protection provides the children with sufficient protection against the elevated level of risk I have identified pending the final determination of these proceedings.
- 95 The forced marriage protection order already in force prevents the father from causing, permitting, aiding or abetting DZ to undergo marriage, whether within or outside the jurisdiction, from forcing DZ to undergo marriage, whether within or outside the jurisdiction, from using or threatening violence or otherwise harassing, pestering DZ in anyway directly or indirectly and from applying for any passport of any nationality (including an adult passport on which the child is entered) for DZ; In relation to both DZ and SZ it prevents the father from removing or attempting to remove DZ or SZ from England or Wales until further order. Within this context, and having regard to the evidence I have analysed above, and to adopt the submission of Ms Hopper, I am satisfied that the forced marriage protection order contains the elevated level of risk that I have identified on the evidence presently available to the court.
- 96 The father has conceded that the interim threshold criteria are met in this case. However, in circumstances where the local authority concede that the matters it relies on above and beyond the forced marriage application do not meet the interim threshold, and in circumstances where I am satisfied that, contrary to the submission of the local authority, the pre-existing forced marriage protection order sufficiently protects DZ against the elevated risk of forced marriage and sufficiently protects SZ against an elevated risk of removal, I am not persuaded that it can, in fact, be said in this case that, pursuant to s 38(2) of the Children Act 1989, there are reasonable grounds for believing that the circumstances of DZ and SZ are such that they are suffering, or are likely to suffer significant harm attributable to the care given to them, or likely to be given by the father if an interim care order were not made where the "circumstances in respect of" DZ and SZ for the purposes of s 38(2) include the fact that there is already in place a forced marriage protection order, which order is, as I find, effective to meet the risks.
- 97 Further, having regard to the matters set out above, even had I been satisfied that the interim threshold criteria were met, in circumstances where there is already a forced marriage protection order in place which I am satisfied sufficiently protects DZ and SZ against the elevated risk that I have identified on the evidence, and given the concessions made by the local authority in respect of the other issues of concern, it would not have been open to me to conclude that the children's safety required their

continued removal from the care of their father under the auspices of an interim care order or that such continued removal would be a proportionate interference in the right to respect for family life of the children and the father having regard to the nature and extent of the risks that removal was intended to address. This is particularly the case in circumstances where the local authority seeks to continue the removal of the children from their father's care under the auspices of interim care orders for an indeterminate period of time pending the return of the mother to the jurisdiction.

### **Conclusion:**

98 I accept that it is axiomatic that were DZ, aged 10 years old, to be removed from the jurisdiction and forced to marry an adult she would suffer significant harm within the meaning of the Children Act 1989. It is further axiomatic in my judgment that were DZ removed from this jurisdiction to Afghanistan for the purposes of forced marriage the ability of the court to remedy that situation by recovering DZ to this jurisdiction would be extremely circumscribed. In reaching my decision I have borne very carefully in mind the words of Munby J (as he then was) in *NS v MI* [2007] 1 FLR 444 at [3] and [4]:

“I repeat what I said in *Re K, A Local Authority v N* [2005] EWHC 2956, (Fam) [2007] 1 FLR 399, at para [85]: ‘Forced marriage is a gross abuse of human rights. It is a form of domestic violence that dehumanises people by denying them their right to choose how to live their lives. It is an appalling practice. As I said in *Singh v Entry Clearance Officer, New Delhi* [2004] EWCA Civ 1075, [2005] 1 FLR 308, at para [68]: “forced marriages, whatever the social or cultural imperatives that may be said to justify what remains a distressingly widespread practice, are rightly considered to be as much beyond the pale as such barbarous practices as female genital mutilation and so-called ‘honour killings’.” No social or cultural imperative can extenuate and no pretended recourse to religious belief can possibly justify forced marriage.’ Forced marriage is intolerable. It is an abomination. And, as I also said in *Re K*, at paras [87]–[88], the court must bend all its powers to preventing it.”

99 However, for the reasons I have set out above, and having regard to all of the powers available to the court, I am satisfied that on the evidence before the court the forced marriage protection order at present in place is sufficient to protect against the elevated risk in this case of these events occurring pending the final determination of the local authority's substantive applications such that recourse to interim care orders and the continued removal of the children from their father's care is not necessary.

100 In the circumstances I have set out above I accordingly discharge the interim care orders made on 14 August 2015 with the result that the children will return to the care of their father. The forced marriage protection order will continue in force as will the strict prohibitions contained in it. The forced marriage protection order will be amended to add the following additional terms:

- (a) There be leave to the Applicant's to disclose this order to the Police;
- (b) There be leave to the Applicant's to disclose this order to the Embassy of the Islamic Republic of Afghanistan in London;

(c) This Honourable Court respectfully requests the Embassy of the Islamic Republic of Afghanistan not to issue any passports (whether substantive or emergency) or other travel documents to DZ or SZ until further order of this court.

101 Per these additional terms of the forced marriage protection order, the local authority will serve a copy of the amended order on the Police and will liaise with the Police to ensure that the names of DZ and SZ remain on the Port Alert 'stop list' pending the determination of the substantive applications of the local authority.

102 That is my judgment.