

In the High Court of Justice

Family Division

And

In the Family Court sitting at D city

In the Matter of HA

And in the Matter of the Children Act 1989

JUDGMENT

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

The Background

1. HA was born on [on a date in] 2014 and will therefore be 5 years old in a little over a week. His mother is BN, the First Respondent (hereafter 'the Mother'). She has a learning disability, a full scale IQ of 58 and lacks capacity to litigate and acts in these proceedings by her litigation friend, the Official Solicitor. HA's father is HS who has very little English, comes from Pakistan and is currently working in Dubai. He has been unable to secure a visa to come to the UK and has attended these proceedings by telephone link from Dubai with the benefit of an interpreter.
2. HA has two brothers, BA, born on [on a date in] 2017, and AC born on [on a date in] 2018. These are both the Mother's children and their father is HI (no direct relation to HS). HI and the mother say they have gone through a form of Islamic marriage. The psychologist, Dr Whitwham's assessment of HI shows that he too scores within the learning disability range.
3. While HA and his mother are British citizens their ethnicity is Asian/Pakistani as is HS's, although his nationality is Pakistani. HA is entitled to Pakistani citizenship through his father.
4. There have been care proceedings in respect of all three children, although I am currently concerned only with HA. The local authority has been involved with the family for some 4 years, providing significant

support for the Mother to care for HA and subsequently BA. Proceedings in respect of HA were finally commenced on 14th July 2017, so this case is now in week 78. This is in itself unsatisfactory. Initially HA was subject to an interim supervision order but an ICO was made in respect of HA on 23.01.2018 in circumstances to which I will refer later. Between 18.07.2018 and 29.08.2018 HA was made a ward of court for the purposes of providing a protective legal status for him during a visit to his paternal family in Azad Jammu and Kashmir (I will refer to this semi-autonomous region of Pakistan as 'Kashmir' or AJK) between 15-22 August 2018. Although not expressed on the face of the order, it must be taken that the court discharged the ICO during the currency of the wardship. A further ICO was made by this Court on 29.08.2018.

5. As a consequence of the care order the local authority share parental responsibility for HA with the Mother. The parents were married when HA was born so that HA's father also has parental responsibility.
6. A care order and a placement order were made in respect of BA on 29.08.2018. The local authority seek a care order in respect of AC and adoption is an option in his case. He is currently in foster care subject to an ICO made on 05.10.18. Those proceedings, which were consolidated with the proceedings in respect of HA on 07.11.2018, are listed (in respect of AC only) for an IRH in February and a final hearing over four days starting on 1st April 2019.
7. The mother has a sister, BS, who lives in D city and is, of course, therefore HA's maternal aunt. She is married to MY who is HA's paternal uncle (HS's younger brother), until this week lived with his parents in Kashmir and assisted with HA's care when HA visited the paternal family in August 2018. BS has played an active role in the history of this case and supports the Local Authority's plan to place HA with his paternal family in Kashmir. She has visited the village where they live because in addition to her husband MY, she too has family there. While it was proposed that she would return to Pakistan with HA and provide support were he to return for further assessment with the family when that was to take place in November, she is not now able to do so, although she can assist with liaison at the D city end, since her return with MY and their young child yesterday.
8. The Mother, who is distantly related to the paternal family, was originally married to HS's brother, SX. It seems that SX was shot dead in about 2011 by HI's cousin. The Mother then married HS but that marriage failed when she returned to the UK, HS was unable to obtain a visa to join her, and then she formed a relationship with HI. HS is currently engaged to be married to MZ, his cousin. A wedding is planned for January or February 2019.
9. HS's father and mother I will refer to as PGF and PGM. PGM suffers from some medical problems which have been identified in the papers as

including anxiety (although it seems this does not warrant treatment), some kidney problems, high blood pressure (for which she was taking medication) and diabetes mellitus.

10. The paternal grandparents live in K village in AJK. The locality in is also home to the mother's parents, and HI's family. It is plain that they all know each other. The nature of their relationships is a matter of some relevance to this case.
11. In January 2018 the Mother moved to a mother and baby foster placement with the older two children but this placement broke down due to the Mother's failure to engage and her dishonesty with the foster carer, and then on 23rd March she moved to an assessment unit in another city for a residential parenting assessment with HI. As a result of his violent and intimidating behaviour, including an incident when he was allegedly seen on CCTV to deliberately hurt HA, HI was asked to leave that unit and the Mother, although she was asked to remain, subsequently on or about 03.04.18 also left the unit to be with HI, leaving the two boys at the unit. HA was then placed in foster care where he has remained since that time. All of HA's family are Muslim. The foster carers are not suitable to be his long term carers as they are unable to meet his cultural and religious needs. Nevertheless, a psychological assessment carried out by the expert Gillian Evans concludes that his foster carer is currently his primary attachment figure and he is thriving on a very high level of one to one attention, highly structured routines and boundaries, together with a sense of belonging.
12. On 2 September 2018 a Family Court judge delivered a written judgment following a two day hearing at the end of August which was to decide if there was any possibility of the Mother looking after either (or both) of her older children (AC having not at the time been born). The judge briefly sketched the history of the Mother's mental health problems, an incident in 2016 when she was made the subject of an order under the Mental Health Act after threatening to throw herself and HA off a bridge, the implementation of the pre-proceedings process because of concerns for her care of the children, and the violent and unstable nature of the relationship with HI. As indicated above, care proceedings were finally instituted in July 2017. The judge noted that there had been no challenge to the threshold criteria which are in the trial bundle at [A99] and which allege that as a result of the deficient care given to the children they had suffered and/or were likely to suffer significant harm, identified as emotional harm, physical harm and neglect, which is then particularised over three pages and includes domestic abuse, a lack of insight on the part of the Mother, and an inability on the part of the Mother to protect the children from HI's aggressive and violent conduct, while prioritising her relationship with him over her children. There are also allegations of unsafe handling of the children and an inability to recognise or anticipate danger, and an inability to supervise or to manage HA's behaviours. It is also alleged that there has been inconsistent engagement with

professionals, a failure to attend appointments and, in respect of HI, a failure to engage and dishonesty with professionals. I note, further, that HI did not take any part in the hearing in August, which, according to the judge's judgment, was by his own choice. He failed to attend this hearing on the first day and has not attended since.

13. The judge concluded, having reviewed and considered a PAMS assessment, a psychological report, a report from the assessment unit and social work evidence, as well as the Children's Guardian's views, and having considered the welfare checklist in s.1 of the Children Act 1989, that the children had "often" suffered significant harm in their mother's care and that there was overwhelming evidence that they would do so again if they lived with her in the future. He therefore found that it would be wholly wrong for either child to be placed with the Mother and, while recognising the Draconian nature of his order, not only made a care order and an order directing the placement of BA for adoption, dispensing with parental consent, but he also made a declaration that the Mother is excluded as a carer for HA in the future, and he continued the ICO.

The current application

14. The current application by the local authority is for authority to take HA to Kashmir for a period of three months for a further assessment as to whether it is in his best interests to live permanently with his father's family, and specifically with the paternal grandparents. For this purpose it is proposed that the current interim care order be discharged and replaced with an order making HA a ward of court, and granting permission for him to make this trip.
15. S.33(7) of Children Act 1989 ('the Act') provides that while a care order in respect of a child is in force no person may remove the child from the UK without the written consent of every person with parental responsibility or the leave of the court. Until recently the mother opposed this move so the local authority had to seek the court's permission.
16. It is clear from s.100(2)(c) of the Act that no Court may exercise the High Court's inherent jurisdiction with respect to a child so as to make a child, who is subject to a care order (which includes an interim care order), a ward of court.
17. S.100(3) provides that no application may be made by a local authority for a court to exercise its inherent jurisdiction with respect to a child unless the authority has obtained leave of the court which by s.100(4) may only be granted if (a) the court is satisfied that the result which the authority wish to achieve could not be achieved through the making of an order of a kind to which s.100(5) applies and (b) if the inherent jurisdiction is not exercised there is reasonable cause to believe that the child is likely to suffer harm. I take the expression "likely to suffer" as being interpreted in the same way that that expression has been interpreted where it appears in s. 31 as explained in re B (Care

Proceedings: Appeal [2013] 2 FLR 1075 and previously in re S-B (Children) [2010] 1 FLR 1181, that is to say “a real possibility, a possibility that cannot sensibly be ignored” having regard to the feared harm in the particular case. It will be for the local authority to prove such likelihood of harm and the more significant the harm the less the required level of likelihood (and vice versa). Abduction would, in my judgment, be significant harm and therefore the threshold of likelihood may be lower. However, the test is “reasonable cause to believe” which in my judgment imports the same grounds as are necessary under s.38(2), that is to say that there must be concrete evidence rather than mere speculation. Thus I must ask myself upon what basis can I find that there is reasonable cause to believe that HA will be abducted (which for current purposes means, in effect, not returned by the paternal family at the end of the assessment period or if it breaks down)?

18. S.100(5) applies to any order which is made other than in the exercise of the court’s inherent jurisdiction (so, for instance, an order made within the provisions of Part IV of the Act), and which the local authority is entitled to apply for (assuming leave were granted where necessary). No such alternative has been suggested to me, save an order made pursuant to paragraph 19 of Schedule 2 to the Act
19. Paragraph 19 provides (so far as relevant):
 - (1) A local authority may only arrange for, or assist in arranging for, any child in their care to live outside England and Wales with the approval of the court.
 - (2)
 - (3) The court shall not give its approval under sub-paragraph (1) unless it is satisfied that—
 - (a) living outside England and Wales would be in the child’s best interests;
 - (b) suitable arrangements have been, or will be, made for his reception and welfare in the country in which he will live;
 - (c) the child has consented to living in that country; and
 - (d) every person who has parental responsibility for the child has consented to his living in that country.
 - (4) Where the court is satisfied that the child does not have sufficient understanding to give or withhold his consent, it may disregard sub-paragraph (3)(c) and give its approval if the child is to live in the country concerned with a parent, guardian, special guardian, or other suitable person.

- (5) Where a person whose consent is required by sub-paragraph (3)(d) fails to give his consent, the court may disregard that provision and give its approval if it is satisfied that that person—
 - (a) cannot be found;
 - (b) is incapable of consenting; or
 - (c) is withholding his consent unreasonably.
 - (6)
 - (7) Where a court decides to give its approval under this paragraph it may order that its decision is not to have effect during the appeal period.
 - (8) In sub-paragraph (7) “the appeal period” means—
 - (a) where an appeal is made against the decision, the period between the making of the decision and the determination of the appeal; and
 - (b) otherwise, the period during which an appeal may be made against the decision.
 - (9)
20. The local authority’s case is that living outside England and Wales for the purpose of the assessment would be in the child’s best interests and this is not now controversial. The child is too young to give his consent but will be living with suitable people. Every person with parental responsibility agrees with this course. However, the local authority contends, in effect, that suitable arrangements pursuant to para 19(3)(b) for his welfare, and in particular with regard to HA’s return from Pakistan should there be any problem in that regard, cannot be made without the benefit of the status of being a ward of this court. They observe that this was the mechanism adopted in August 2018.
21. Originally there appeared to be a further matter which would have to be addressed before the Court could address these issues. Initially the local authority had hoped to take HA to Pakistan in November and it had been hoped to secure the Court’s order on 7th November. However on 5th November HI made an allegation to BA’s social worker, Mr F, that the paternal family in Pakistan had said they would sell HA back to the maternal family there for £3,500. This allegation was developed in a telephone call on 6th November and Mr F’s notes of these conversations are at [C583,584]. Then on 7th November at court HI repeated these allegations to the local authority’s solicitor and counsel for HA. Details of

this conversation are at [C578]. HI then made a statement described (wrongly in my view) as a 'position statement' dated 20th November 2018, which is at [A155]. I note this is dated in the index 7th December 2018. In any event it was filed in breach of the order made on 7th November 2018 by the Family Court which provided for it to be filed "by no later than 4 pm on 14th November 2018". This alleged that the Mother had asked him to attend court on 7th November and had told him that her father had spoken to PGF who had said he would be willing to return HA to the maternal family for £3,500. Further, HI alleged he himself had telephoned the paternal grandfather who had repeated the offer. His statement also alleges that his uncle (the father of the man who shot SX) paid money to PGF to drop the charges against the cousin, and that HI's family had also (and as I understand it separately) loaned £10,000 to HS's family, which they were struggling to repay. He also refers to the alleged fact that his maternal uncle, TT, is the chairman of the village where the family live and is the local arbiter of disputes (see Sanjog report at E387 para 6). It is suggested by HI that this gentleman witnessed the loan agreement, which was not reduced to writing. Finally he makes general comments about the existence of child trafficking in Pakistan, having suggested to the lawyers on 7th November that HA would be at risk of being sold into the sex trade.

22. His statement provided no explanation for the delay in making or filing the statement.
23. At the hearing before me on 12th December the Mother was represented by counsel but had not at that time the benefit of the support of the Official Solicitor. She did not dispute the findings of Dr Palmer in her report of 29th November 2018 which concluded that the Mother did not have capacity to litigate. Her counsel informed the Court that the Mother opposed HA's proposed move to Pakistan and she appeared to agree HI's allegations. HI himself failed to attend that hearing and his counsel was unable to advise his whereabouts.
24. This hearing, originally listed for two days to address the local authority's application to place HA in Pakistan for further assessment of the proposed placement with the paternal family, and the legal mechanism for that exercise, was extended to four days to include a finding as to the truth or otherwise of HI's allegations.
25. The Court now has the benefit of a position statement on behalf of the Official Solicitor acting for the Mother. While the Official Solicitor took a neutral position on the allegations, the Mother's position appeared to have changed. She contends the allegations came not from her but from HI and from conversations he has allegedly had with the paternal grandfather, and she does not believe her father would be involved. I should record here that the Mother has been unwell throughout these proceedings and only attended for part of the second day when she was supported by a worker from Communicourt.

26. In these circumstances it fell to me to decide whether there is any truth in the allegations which the paternal family, including the father, the paternal grandfather and the Mother's sister, all deny and which the local authority, having had inquiries carried out in Kashmir reject as having been made maliciously, and in this regard rely also on threats made by HI to Mr R, HA's social worker, as affecting the credibility of HI and providing context for the making of the allegations.
27. The Sanjog investigation (commissioned by the local authority) appears to refute HI' allegations in several respects:
- TT is not related to HI;
 - He is not currently the elected chairman, although he continues to exercise that role in the absence of an elected successor;
 - He is not aware of any loan agreement between the paternal and maternal families;
 - He has not been involved in arbitrating between the families (something confirmed separately by TT and both the paternal and maternal grandfathers);
 - The paternal family deny the allegations;
 - The maternal grandfather (and his wife) denied that he was ever offered HA in exchange for money by the paternal grandfather;
 - The maternal grandparents allege that HI is a liar "about many things";
 - The maternal and paternal families have a good relationship, the paternal grandfather being the maternal grandfather's maternal uncle. The maternal relatives visited during HA's stay in August;
 - The maternal grandfather denied any knowledge of the alleged loan;
 - The local police deny any case of child trafficking had been registered in the area and they were aware of "only two" child kidnapping cases "in past years";
 - The police advised that to place a child in another family for an exchange of money would be counter to local culture.
28. In addition to the fact that there appears to be absolutely no evidence to substantiate the allegations, I bear in mind the campaign of harassment, abuse and threats which are evidenced in the papers¹ before me and which HI has directed at HA's social worker, Mr R. Not only did HI

¹ C287 – 18.01.18

C507 – 07.03.18 abusive text

C402 – 4.4.18 see also C507/508

C411 – 6.4.18 and C508

C420 - 16.4.18 and C508 (including a threat to abduct HA)

C509 - 21.5.18 – threat to go to paternal family's home in Pakistan and remove HA – ALSO racist abuse and threats to consultant SW as well as Mr R

H104 – interview under caution 03.10.18 including re death threats

C584 – 14.11.18

C584e – 14.11.18 – death threat (notwithstanding the interview)

complain about the fact that his own sons have been removed but also that HA, who he refers to as his son as well as his stepson, had been removed and might be sent to Pakistan. Importantly on 16th April 2018 Mr R reports that HI said (on the telephone) “My cousin already shot his son (paternal grandfather), if you take him to Pakistan I will go to his house (paternal grandfather) and I will take him (HA) and have him live with me in my dad’s house (in Pakistan)”. Mr R then asked if he was telling the social worker that he would abduct HA from Pakistan and HI confirmed this before going on to threaten Mr R personally. This threat of abduction comes after a period in early 2018 when the Mother also threatened to remove HA should he move to Pakistan.

29. HI came before the Magistrates Court on Tuesday 8th January for sentencing for these offences and was sentenced to 12 weeks imprisonment suspended for 12 months, 150 hours unpaid work, 20 days of rehabilitative activity requirement, and a ‘Thinking Skills’ programme as well as being fined £775 with a £115 victim surcharge imposed and costs. However, no restraining order was made. Nevertheless it is evident that the Court took a serious view of the conduct for which he had pleaded guilty for which plea it is to be assumed he received some credit.
30. Given that no party to the proceedings, including the Official Solicitor on the part of the Mother, relies on these allegations and the Children’s Guardian does not wish to explore them, and HI did not attend to pursue them, I have been invited to decide whether to further investigate the allegations. Notwithstanding the inquisitorial role which this court may take in some circumstances, in my judgment it would not be proportionate to do so in circumstances where the allegations lack any evidential basis, derive from an unreliable source, are contained in a statement filed late without explanation, and are inconsistent with the whole body of evidence in the case as to the paternal family’s motivations, as well as being rejected by the maternal family to whom the offer was supposedly made. I therefore reject them and will not take them into account.
31. However, the fact of the threats to Mr R and the guilty plea to the charge of harassment and the threat to abduct HA are a different matter.
32. The unfortunate consequence of the allegations made by HI is that there has been further delay in a case which had already been progressing very slowly. As I have already noted, the case is now in week 78 and the original plan was for the assessment visit to Pakistan was intended to start in November 2018. The Act rightly sets out in s.1(2) the general principle that any delay in determining a question with respect to the upbringing of a child is likely to prejudice the welfare of the child. There can be no further delay in this case.
33. The decision as to the placement of HA with his paternal family is one which is governed, according to s.1(1) of the Act by the principle that his

welfare is the paramount consideration (and this is a factor under Sched 2 para 19(3)) and while the court must have regard to all the circumstances of the case certain specific factors are set out in s.1(4)

34. These factors are very familiar and do not need to be set out *seriatim*. I have them in mind and in particular I note:
- a. While a child not quite five is too young to have his views govern a decision I note he appears keen to live with his grandparents and the family in Pakistan. Mr R described how, despite Mr R's worries about the food, the heat, the cultural differences and the lack of the Western facilities, in fact HA "took to Pakistan like a duck to water";
 - b. His physical and educational needs will be met by the family and the school, which Mr R has investigated and will explore further during the proposed assessment. His emotional needs, which are particularly important at this stage of his development and having regard to his history and the emotional harm he had suffered in his mother's care, and which has been substantially, but not wholly healed by the skill of his current foster carer, will be met, on the evidence I have heard, by the love, commitment and care of the paternal family. I have read the assessments by CFAB, and the observations of Mr R during the August trip. I have heard, albeit over the telephone and via an interpreter (but, if I may say so, a very professional interpreter) the evidence of the grandfather and, briefly, the grandmother. I was impressed by the evidence of the grandfather, who I assessed as a genuine and reliable individual.
 - c. It is inevitable that there will be a huge change for HA. However, he cannot stay in his current foster placement in any event, and so there will be a change whether he is to stay in the UK or go to Pakistan. There is great difficulty in finding an appropriate foster care placement which meets his cultural and religious needs. He may well therefore have to be placed out of D city and will have to change school. He would move within the UK to an unknown family in an unknown area. On the other hand he has visited Pakistan already and so knows the location to some extent, and has become familiar with his carers there through that visit as well as regular skype contact.
 - d. His cultural and religious needs can be best met in Pakistan, where moreover he will be surrounded by people of his own ethnicity as well as the important consideration of being in the bosom of his paternal family with contact with the wider maternal family. He has very limited Urdu, but at his age I have little doubt this will be rapidly learned and moreover the school and the medics, from whom he may receive therapeutic input, use English, while several members of the family speak English.
 - e. I am satisfied that he will not be at risk of suffering harm with a family placement, whereas it is plain from the Family Court's

previous judgment that he would suffer harm with the mother. The change he will have to undergo in England might well be harmful.

35. It is important to bear in mind that I am not making a final order. I am being asked to approve a 3 month placement for assessment. HA's permanent placement will be decided upon the conclusion of that assessment. In my judgment the Children's Guardian was correct to conclude that HA deserves the chance to remain within his family. The Guardian, the foster carer and the social worker have all separately expressed their surprise at how well HA coped with and adapted to the family home in AJK in August, despite the worries they all had. The foster carer has noted how easily he fitted back into his routines on his return. He is now reported to be very settled and has benefited from the foster placement with the love he has received and the consistent boundaries. His behaviour at school has improved. The most disruptive element in his life appears to have been his contact with his mother, and even that has improved latterly.
36. The Guardian has told me that the foster carer's techniques and routines can easily be communicated to and replicated by the grandparents, and the grandfather and the father independently described how they dealt with the boy's meltdowns in a way which appears to reflect the foster carer's approach. Moreover, Mr R told me that the aunt, BS, was able before the August trip to visit the foster home and observe and learn the foster carer's routines which she passed on to the grandparents. She was available to step in during that trip to assist but (he told me) in the event she was able to sit back and let the grandparents and the father care for and relate to HA. The father was able to cope with HA's behaviours and BS did not, Mr R told me, need to get involved. She was available but Mr R did not see it as being necessary. This seems to be a good prognostic feature.
37. The Official Solicitor has been concerned at the level of faith being placed in the paternal family, and their willingness to co-operate and their reliability if it comes about that HA needs to be returned at the end of the assessment. However, all the evidence I have received points to a level of commitment, love and care, and a respect for the authority of this court, and a wish to pursue whatever course is deemed by professionals to be in HA's best interests, which justifies that level of faith in the grandparents and father, who have all, expressly and on oath, confirmed to me that they will co-operate in the boy's return, although separately and individually expressing the hope that it will not be necessary. On the evidence I have received there is no basis for rejecting their undertakings.
38. I have had some concern about the health of the grandmother. She has been variously described as suffering anxiety, kidney problems, high blood pressure and diabetes. It was said she was taking medication at least for the high blood pressure. Now she tells me her kidney issues have resolved and she is taking no medication at all. I find this difficult to accept. The assessment will reveal the truth but with the father, a further

maternal aunt (PM who was born in England, lives in D city, but is currently staying in the village following her re-marriage), the father's fiancée, the paternal grandfather and various other aunts and relatives all available to assist with HA's care I am satisfied that even if the grandmother were unable on her own to care for HA, she would have sufficient support from others.

39. As indicated above, originally it had been hoped that BS would be able to accompany Mr R and HA to Pakistan. Unfortunately that is not now possible, but I do not regard this as fatal, and the Children's Guardian does not regard it as a major problem. Mr R has experience of travelling to Pakistan and has significant experience of HA, and has travelled alone with him on the return leg in August. I hope that HS will be able to meet his son at the airport and assist on the three hour journey back to the village, driven apparently by the grandfather.
40. At [C597] Mr R sets out the balance sheet of factors in respect of long term foster care, adoption and a family placement. When I challenged him with the absence from the negative column in respect of the family placement of the risk of the placement breaking down due to HA's behavioural problems, and the psychological stress of the significant changes (given that HA is identified by the psychologist Ms Evans as not coping well with change) he answered, cogently in my judgment, that in his view the risks of breakdown would be less with the family because they are so committed to HA, are so keen to avoid him being placed within the care system, and will go above and beyond what a foster carer (who additionally might not fully understand his culture and identity in the same way as the family) might do, while the change is much more easily managed in light of HA having already visited and being familiar with the family through his Skype contacts. In evidence the father in particular accepted, and indeed himself articulated, the probability that in the beginning it will be difficult because everything will change for HA and it will be difficult for the child, but because it will be his second visit, and because there will not be the prospect of a return to the UK (as there was in August which HS implied had been a destabilising factor) and because HA has been asking for his father and seems keen to return to Pakistan, he believes, in effect, they will cope. However he and the grandfather made it plain (separately, and given that they were giving their evidence from locations thousands of miles apart) they will report difficulties to Mr R and seek advice from him, in the first place, or from BS. In answer to his father's counsel HS said he felt safe and loved when he was growing up.
41. In all the circumstances, and while it is not for me to make a final decision on permanence, it is appropriate that I consider what may be an appropriate outcome. Adoption, which would involve severance of what are solid and beneficial family ties, as well as significant change and an unknown prognosis, is not likely to be an option given the age of the child and since, in any event, it should be regarded as an option only when nothing else will do. Here plainly there is a good chance that something

else will do. Long term foster care has all the disadvantages and uncertainties previously set out and will probably not result in any closer effective contact with the mother than will the local authority's proposal (and plainly less effective contact with the wider family).

42. Despite her initial opposition to the plan, based to some extent on the reports of Gillian Evans and her own concerns about the reliability of the family, and the prospects of recovery of HA should the need arise, the Children's Guardian has changed her position and now supports the placement for the purposes of the assessment. I put it directly to her whether this was the least bad option or the best in HA's interests and she has clearly decided it is in HA's best interests to have this chance to be placed within his family.
43. The father and the paternal grandparents obviously support the proposal, but the mother, with the assistance of the Official Solicitor, who has looked at the whole package with his usual and appropriate thoroughness and care, does not now oppose the proposal subject to a number of conditions that have been satisfied concerning the level of contact, the basis of a narrative about his mother to be provided to HA, the provision of information and photographs² and confirmation that the father's new wife will be thoroughly assessed (which will happen on Mr R's week 6 visit), and subject to one issue about the date of departure.
44. On that issue the Mother asks that the date of departure, which it is proposed should be Wednesday 16th January, should be delayed until the next flight the following Sunday so that she can spend some time with HA on his 5th birthday on 17th January. While I am sympathetic to the Mother's wish, the evidence of the social worker and, importantly, the child's guardian is that for this child there is no magic in the specific date of his birthday, that he will enjoy a birthday celebration with his mother (which should take place) a day or two before his birthday as much as on the day itself, and that in reality the wish to be with him on his birthday is more for the Mother's benefit than for HA's. It is argued for the Mother that maybe the date, if it is the last time mother and son see each other face to face, will be important to HA in future years through his life story work, but I am far from convinced of this. For the local authority and the Guardian it is argued that it will be beneficial for HA to start to make new memories by celebrating his birthday with the wider family on the day of his arrival. That may have some merit, but the point is also made that a further delay in the departure date will make it quite a long wait for HA, and there is nothing to be gained by further delay. In the circumstances I find that the Wednesday flight is the appropriate departure provided a birthday celebration can be held in an extended contact visit with the Mother beforehand.

² These are addressed in a 'record of understanding' dated 7th January 2019 between the Local Authority and the Children's Guardian in response to the Official Solicitor's queries

45. In these circumstances I am satisfied that it is in the best interests of HA to be placed for three months with the paternal family but the legal basis of that placement and the terms of any arrangements for contact remain to be resolved and to that I now turn.
46. As indicated above the statute prevents this court exercising the inherent jurisdiction and specifically making the child a ward unless the result the local authority seeks to achieve cannot be achieved (in effect) through the Act. Even if this hurdle is surmounted the authority must prove the reasonable cause to believe that without exercising the inherent jurisdiction there is real possibility the child will suffer significant harm.
47. Taking these tests in reverse order, the authority's case is predicated on the reliability of the paternal family, and their commitment to the best interests of the child, and their commitment to the court process. I have been asked to accept, and have accepted that the family will co-operate with the professionals and comply with any order of this court and I have no evidence to suggest they will not do so. The only prospect of significant harm arising out of the placement itself, therefore, is if it breaks down and HA suffers emotional distress as a result, and in these circumstances the family have assured me they will seek support and assistance from appropriate professionals including Mr R, and will co-operate in HA's repatriation.
48. The only other risk, therefore, is of abduction by HI or (even more unlikely) the Mother. However, Mr R's evidence was that he did not believe the former represented a real or a credible threat nor was the latter a genuine threat. HI, I was told, had not been to Pakistan for some time and the family was able to protect the child from the Mother. However, were an attempt to abduct the child to occur any harm would not directly arise from the failure to exercise the inherent jurisdiction, but from the malefactor's action. In that respect I have been asked to and will make an injunction restraining HI from taking the action he has threatened.
49. In these circumstances I conclude that there is no reasonable cause to believe the child will suffer significant harm if I do not exercise the inherent jurisdiction.
50. However, and in any event, I am not satisfied that the result, namely the safe placement of the child with the family, which the local authority wishes to achieve, cannot be achieved without resort to the inherent jurisdiction (beyond the granting of the injunction).
51. If I make the child a ward then the interim care order has to be brought to an end. I could replace it with a supervision order, which would maintain the care proceedings in place, pending the final hearing, but the local authority would not have parental responsibility. While they would, as an interested party, be able to ask the court to act to protect its ward, they

would have no direct locus with a Pakistani court. In reality, however, they intend to exercise continuing parental responsibility, and to make the child a ward but to continue with the structure the authority propose would, in my judgment, amount to a fiction and exactly what s.100 was designed to avoid. What Mr R as the child's social worker proposes to do is to spend three or four days with the child this month and another week in six weeks time during which he will, in practice, be exercising parental responsibility while arranging for therapeutic sessions with Major Dr Y, liaising with the school, assessing the father's new wife and so on. If things are not going well he might be required to bring HA home. During weeks three and nine Sanjog, as the local agency, will be exercising, in effect, delegated PR in reviewing the situation in the home. On a weekly basis Mr R will having Skype meetings with HA and the family and they have been asked to liaise with him and seek his advice or report to him in the event of problems, and he will be liaising with health professionals and the school. As counsel for the local authority observed in submissions, the assessment is going to be quite intense. It would be wholly artificial, in my judgment, to create such a structure in the absence of the interim care order.

52. Further, during the period of the assessment the local authority will be arranging, controlling and keeping under review the contact between the mother and HA and indeed between HA and his maternal family. This is another reason why the local authority must retain parental responsibility, so that it can exercise control over this contact in HA's best interests.
53. As the result of the President's efforts in 2003, the Pakistan Protocol has been in force now for 15 years and is known to work. It is said on behalf of the local authority that it cannot be certain that the Protocol will apply within AJK. However, the advice received from Sulema Jahangir does not suggest any greater weight will be given to an order in wardship, as opposed to any other order, by the Pakistani or AJK courts. The report says at para 30 in specific response to the question of whether the legal framework should be that of wardship or under Sched 2 para 19:

“In the event that HA is a ward of the English Court or subject to any other order of the English Court, this may be a factor that the [*local*] court may consider when making a decision about HA's future but ultimately the court will have to make a determination according to HA's welfare” (my emphasis)

The author makes it clear throughout the report that the local courts' decisions will be governed by the paramount consideration of the child's welfare, albeit the assessment of his welfare may well be informed by a reasoned decision of the English court which has investigated the issue of welfare (see para 8).

54. The UK-Pakistan Judicial Protocol on Children Matters dated January 2003 provides that it is agreed that, in normal circumstances, the welfare of a child is best determined by the courts of the child's habitual or ordinary residence. In this case it is expressly agreed by all parties that, during the assessment, HA's habitual residence remains in England and that the English court retains jurisdiction, but that is in any event the effect of case law where a child, subject to an ICO is placed abroad (*Re H* [2006] 1 FLR 1140; *Greenwich LBC v S* [2007] 2 FLR 154). In such circumstances the protocol provides that if a child is retained in either country in breach of an order of the court of his habitual residence the judge of the court where the child is retained shall not ordinarily exercise jurisdiction over the child save in so far as it is necessary for the court to order the return of the child to the country of his habitual/ordinary residence (para 3). The President's guidance of 21 May 2004 advises that the protocol applies to cases within s.33(7) of the Act but (para 7) in analogous cases the same principle will apply.

55. The local authority in this case seek to differentiate this case from the decision of Eleanor King J (as she then was) in *Islington LBC v EV* [2011] 1 FLR 1681, refusing to make the child in question a ward. There the facts were extremely similar to the instant case but the country concerned was Turkey. Counsel for the local authority argues that whereas Turkey was a full and effective signatory to the Hague Convention, while Pakistan has acceded to the Convention, the EU does not recognise this accession. In my judgment, and given the existence of the Protocol, this is not a sufficient distinction to overcome s.100(4)(a). As Eleanor King J in that case observed at para [64]:

“These courts are familiar with abduction cases. There is a swift and well recognised procedure and raft of orders which can be obtained almost instantly, day or night, for use in such situations whether directly through the Central Authority or (in the event of a country not being a Hague signatory or in exceptional circumstances), under the umbrella of the court's inherent jurisdiction and wardship.” (my emphasis).

It is not necessary for the child to have been a ward before the steps are begun

56. She also referred to the inconvenience of having to apply for a further ICO on the child's return to this country at [60], the artificiality of the proposal at [54] and the importance in her view in that case (which in my judgment applies *a fortiori* in this case) of the local authority retaining parental responsibility. If the placement breaks down Mr R will need to go out to Pakistan and bring HA back and this process will be facilitated by his retaining, on behalf of the local authority, parental responsibility.

57. In these circumstances the local authority fails to satisfy either limb of s.100(4) and I am therefore prevented by statute from acceding to their

request to make the child a ward. In my judgment, therefore, HA should remain subject to an interim care order during the currency of the assessment and I give the local authority permission, pursuant to s.33(7) and Schedule 2 paragraph 19, to place HA with his parental grandparents from 16th January 2019 for 3 months, with a view to him remaining there if the assessment is successful, remaining subject to the ICO until this court has made a final order.

58. The remaining issue is the question of an injunction restraining HI, whether in Pakistan or in the UK, and whether by himself or by arranging for others to do so, from approaching the grandparents' home and removing or attempting to remove HA from the care and control of his grandparents. The evidence of his threat to do so in April of this year is recited above. The fact of his repeated threats and harassment of the social worker, Mr R, is likewise set out above as is his guilty plea and the sentence of the court. He has been guilty of repeated breaches of the orders of this court and has demonstrated his lack of respect for such orders. I have power to make an injunctive order under s.37 Senior Courts Act 1981 (as amended) while under PD12D para 1.1 it is the duty of the court under its inherent jurisdiction to ensure that a child who is the subject of proceedings is protected and properly taken care of. While I cannot make an order pursuant to the inherent jurisdiction where the issue can be resolved under the Children Act, a prohibited steps order, for instance, would be inappropriate and could not be made where there is a care order in force in any event. In my judgment this case falls within para 1.2(b) and (d). I will therefore make such an order, giving HI liberty to apply since the order is made in his absence, although he is a party to this consolidated case. The exact wording must be dealt with after this judgment is handed down.
59. I have addressed matters in some detail in this judgment on the basis that I anticipate the judgment accompanying the orders to be made, so that in the event that any court in Pakistan has cause to consider the orders, the background and the basis for them will be clarified.

Christopher Sharp QC
Recorder and Deputy High Court Judge (Family Division)

9th January 2019