Neutral Citation Number: [2021] EWHC 3411 (Fam)

Case No: FD21P00323

IN THE HIGH COURT OF JUSTICE FAMILY DIVISION

Royal Courts of Justice Strand, London, WC2A 2LL

Date: 5 November 2021

Before :

MR JUSTICE PEEL

- -

Between :

SW	**Applicant**
- and -	
MW	**Respondent**

- -

- -

Anita Guha (instructed by **Dawson Cornwell**) for the Applicant

Shaher Bukhari (instructed by **Noble Solicitors**) for the Respondent

Hearing dates: 1-4 November 2021

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Mr Justice Peel :

Introduction

1.
In **Re A [2019] EWCA Civ 74** Moylan LJ said this:

70.
“Transnational Marriage Abandonment:

The expression "transnational marriage abandonment" appears in Practice Direction 12J of the Family Proceedings Rules 2010 which deals with "Domestic Abuse and Harm". It states:

"3. For the purposes of this Practice Direction -

"domestic abuse" includes any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, psychological, physical, sexual, financial, or emotional abuse. Domestic abuse also includes culturally specific forms of abuse including, but not limited to, forced marriage, honour-based violence, dowry-related abuse and transnational marriage abandonment.

"abandonment" refers to the practice whereby a husband, in England and Wales, deliberately abandons or "strands" his foreign national wife abroad, usually without financial resources, in order to prevent her from asserting matrimonial and/or residence rights in England and Wales. It may involve children who are either abandoned with, or separated from, their mother".

It is clear from the Practice Direction that the words abandonment and stranding are not terms of art and that they are not intended to be applied in a formulaic manner. This is because there are a number of ways in which a spouse might be said to have been abandoned or stranded abroad or in which the other spouse might have sought to achieve this. I would agree with Mr Gration when he submitted that cases can include many differing elements which militates against their being placed in distinct categories.

71.
The core feature of the concept of stranding or abandonment is the exploitation or the attempted exploitation by one spouse of the other's vulnerability or weakness to seek to ensure that they are not able to come to or return to the UK. As Peter Jackson J (as he then was) said in ZM v

AM [2014] EWHC 2110 (Fam) , at [1], it can be the "opportunity" the secure immigration status of one spouse and the insecure immigration status of the other gives "the former to exploit the latter's weakness". However, as PD12J makes clear, it is based more generally on "controlling, coercive or threatening behaviour, violence or abuse".

78. As set out above, stranding is a broad concept and can include any action taken by a spouse which puts obstacles in the way of the other spouse being able to return to the UK. In some respects, it matters not whether the attempt is successful or not. Even if not successful it could still support a conclusion of controlling or coercive behaviour as referred to in PD 12J.”

2.
The children with whom I am concerned are girls aged 4 and 2. On the case of the Mother (“M”), she and they were left stranded and abandoned in Pakistan by F in November 2019. On 11 June 2021, M sought wardship orders, and various forms of ancillary relief. This is the final hearing of her application. It is the case of the Father (“F”) that M willingly left England to travel to Pakistan with the children, and has voluntarily remained there since. He denies having abandoned them, or any form of coercive, controlling, and abusive behaviour.

3.

At the Pre-Trial Review I directed that this final hearing should be used to determine the following issues:

i)
Whether M and the children were stranded by F in Pakistan in November 2019;

ii)
Habitual residence;

iv)
Whether the wardship should be continued;

v)
Whether orders for the return of the wards to this jurisdiction shall be made and any ancillary issues regarding the implementation of this order.

4.
I also determined that it would not be necessary for me to make findings upon the Scott Schedule which had been prepared, save insofar as relevant to the identified issues.

5.
I am not being asked to determine a forum conveniens dispute. Nor am I asked to make any child arrangements orders.

6.
Both children are British nationals. It follows that even if I were to find against M on habitual residence, it would be open to me to make orders on the basis of nationality alone, exercising the appropriate high degree of care required before doing so; **Re M [2020] EWCA Civ 922.** It seems to me that, if I conclude transnational abandonment has taken place as described by M, but the habitual residence criterion for making orders is not fulfilled, this might be just the sort of sufficiently compelling case where the court's inherent, protective jurisdiction would need to be invoked. I note that Deputy High Court Judge Richard Harrison QC reached the same conclusion, on similar facts in **Re J, K and L [2020] EWHC 2509 (Fam),** albeit he did not have to reach for the parens patriae route as he found in favour of the applicant mother on habitual residence.

The witnesses

7.
I have reminded myself of the dicta of Mostyn J in **Lachaux v Lachaux [2017] EWHC 385** and, in particular, the value of contemporaneous documentation to corroborate the witness evidence.

36.
In line with Leggatt J, I prefer to try to determine the truth by applying the dissenting speech of Lord Pearce in Onassis and Calogeropoulos v Vergottis [1968] 2 Lloyd's Rep 403, HL:

"'Credibility' involves wider problems than mere 'demeanour' which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. Credibility covers the following problems. First, is the witness a truthful or untruthful person? Secondly, is he, though a truthful person, telling something less than the truth on this issue, or, though an untruthful person, telling the truth on this issue? Thirdly, though he is a truthful person telling the truth as he sees it, did he register the intentions of the conversation correctly and, if so, has his memory correctly retained them? Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or

by over-much discussion of it with others? Witnesses, especially those who are emotional, who think that they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism, often used in accident cases, that with every day that passes the memory becomes fainter and the imagination becomes more active. For that reason, a witness, however honest, rarely persuades a Judge that his present recollection is preferable to that which was taken down in writing immediately after the accident occurred. Therefore, contemporary documents are always of the utmost importance. And lastly, although the honest witness believes he heard or saw this or that, it is so improbable that it is on balance more likely that he was mistaken? On this point it is essential that the balance of probability is put correctly into the scales in weighing the credibility of a witness. And motive is one aspect of

probability. All these problems compendiously are entailed when a Judge assesses the credibility of a witness; they are all part of one judicial process. And in the process contemporary documents and admitted or incontrovertible facts and probabilities must play their proper part."

37.
These views were echoed by Robert Goff LJ in The Ocean Frost [1985] 1 Lloyds Rep 1 at 57:

"Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, references to the witness' motives and to the overall probabilities can be of very great assistance to a Judge in ascertaining the truth."

These wise words are surely of general application and are not confined to fraud cases (although this case includes allegations of fraud). It is certainly often difficult to tell whether a witness is telling the truth and I agree with the view of Mr Justice Bingham that the demeanour of a witness is not a reliable pointer to his or her honesty."

8.
My impression of the witnesses was as follows:

i)
M in her oral evidence was, in my view, patently honest. She gave clear and consistent answers during lengthy cross examination. I detected no sense that she was trying to tailor her evidence. F through counsel put to her matters which were not contained in the evidence, but appeared for the first time in counsel's position statement, about litigation in Pakistan relating to her employment at a bank there. Additionally, documents were produced at the last minute by F, which M had no time to see in advance of her oral evidence. Confusingly, the additional documents were described as exhibits when they were no such thing. This disregard of basic procedural requirements should not have happened, but I gave F leeway and allowed the questioning (after some breaks so that material could be sent to M). M gave cogent and credible answers about all subjects on which she was asked questions. I accept the broad thrust of her evidence.

ii)
F, I am sorry to say, was an unsatisfactory witness. He was at times evasive, particularly when he had no good answer to questions put to him. I formed the clear impression that his primary loyalty is to his

wider family ahead of M. He automatically takes their side over M where there is a dispute about cross allegations of abusive conduct, even though he himself was not a witness to the arguments and can only rely on accounts given to him. His attitude to his wife appeared to me at times to be cavalier, unthinking, and dismissive. For example, he seemed unconcerned at the revelation during the trial that he caused M's private post to be opened by his brother, by which process he obtained copies of 6 years of bank statements which were not disclosed by him to M (the owner of the documents) until the eve of the trial. His defence of his parents' institution of guardianship proceedings against M in Pakistan was not very edifying either.

iii)
M's brother gave brief oral evidence. He was very partisan in M's favour, and most of what he said was based on what others (particularly M) had told him. Generally, I found his evidence to be of limited value.

v)
F's father was confused, unclear and, in my judgment, unreliable in his evidence. Counsel for M asked him careful questions, which were translated by an interpreter. He had every opportunity to give accurate answers. He repeatedly told me that the application made by him and his wife in Pakistan in respect of the children is solely to be able to see them, but could not explain how and why the court documents plainly show that they have applied for custody, and orders preventing M and the children from leaving Pakistan. I found it implausible that, as he claimed, he had not discussed the Pakistan court application with F in advance of making it, nor that he had been told nothing by F about the proceedings in England; remarkably, he said that he only found out about the wardship proceedings 3 days before his evidence, i.e the day before the case before me started. F, his parents, and his brother are all very close and the children had lived with F's parents for years. It defies credulity that they would not have discussed such matters. He was inconsistent and uncertain about how and when he purportedly registered the births of Z and X in Pakistan, giving various dates such as February 2021, corrected to February 2020, then June or July 2020 (all of which conflicted with F's evidence that registration took place in November or December 2019). He did not produce evidence of the fact of registration, or the date, which presumably would have been easy to obtain. He was unclear about whether or when M accompanied him for the registration. He could not explain satisfactorily why the Pakistani court application included copies of the passports of the children and M, taken after they had arrived back in Pakistan in November 2019. He appeared to say that he obtained the copies from the municipal council which held them from the time of registration, but could not explain how he acquired a copy of M's passport (M being an independent adult). What he said made little sense.

vi)
F's brother, like his father, was also unconvincing. Improbably, he said that his parents (with whom, I remind myself, he lives) did not tell him about the proceedings issued by them in Pakistan. Similarly, he said that he has not discussed the English proceedings (of which he has bene aware) with his parents. The idea that in some way he was protecting the parents, who have themselves been sufficiently robust to issue proceedings in Pakistan, was nonsensical.

The background

9.
I propose to incorporate in this narrative my factual findings, so far as relevant to the principal issues before me. In so doing, I take into account everything I have heard and read.

10.

F is a dual Pakistani/British national. M is a Pakistani national. They are respectively 38 and 37 years old. Both were born, and grew up in Pakistan. M obtained a Masters in MSc Accounting from [X] University in a city in Pakistan. In 2007 she secured employment at a bank in Pakistan as a credit analyst, where she worked until January 2018. F obtained a Masters in MSc Finance and Business at a university in England. Thereafter, he set up his own business which he has recently sold.

12.
F and M initially met when they both studied together for one semester at GIFT University, before F moved to Manchester in 2005. F married his first wife in 2010, from whom he was divorced in 2015; they lived together in England.

13.
In 2016, the parties married in in Pakistan. M moved to the paternal family home, living with F's family (his parents, brother, and brother's family) in a city in Pakistan, in accordance with accepted cultural norms. She was able to continue her employment at the bank. F returned to Manchester in September 2016, where he lived and worked, running a business. It seems that he was conducting a certain amount of business in Spain, where market conditions for his operations were more favourable at the time; so much so that he considered relocating there. He had rights of residency in Spain. He returned to Pakistan for visits in November 2016, December 2016, and January 2017.

14.
M says that F's family were very critical of her, denigrated her, treated her like a servant and tried to persuade her to give up her job. F, and his family, say that it was the other way round, and that M herself was abusive towards members of his family. There is very little real particularisation of the allegations on either side. In any event, I do not consider it necessary to resolve this particular area of dispute. Having heard the evidence, my assessment is that over the whole period when M lived with her in-laws, some 5 years, there were increasingly regular contretemps, angry exchanges, and flare-ups between them. It became an unhappy household, which is not altogether surprising. However, it is not directly relevant to the principal question before me, namely whether M was stranded in Pakistan by F. What is significant is that, as was clear from F's evidence, he (who had not been in Pakistan when these events occurred and was not a witness to them) largely took the side of his family, believing their version of events and not believing his wife.

15.
F says that his family, in accordance with custom, provided for M financially, and that he also sent her money. On the evidence it is reasonably clear that, although the precise amounts are in dispute, F provided M with a regular allowance, as did F's father, who in addition paid for all household outgoings. In addition, M, until early 2018, had her own earned income.

16.
Their first child, Z, was born in Pakistan on 12 May 2017.

17.
F, actively looking at moving to Spain, applied for a Spanish spousal visa for M which was granted on 23 July 2017. M says, and I accept, that the parties intended to move permanently to England to settle together as a family, but that did not in fact come to fruition. I do not accept F's contention that they always intended to live permanently in Pakistan, which is belied by the amount of time he actually spent in England away from M and the children. In September 2017, M travelled to Spain on her own for 4-5 days to apply for a residency permit on the strength of her spousal visa. An application was also made for residency for Z. In October 2017, M and F travelled together to Spain to submit papers

for Z's residency application. In December 2017, M and Z travelled to Spain where they received Spanish residency cards, which enabled them to travel on to England as EU residents. In England, they stayed at the house of a friend of F. F made an application for a British passport for Z during this stay which was in due course issued. On 30 December 2017, M and Z returned to the paternal family home in Pakistan.

19.
In January 2018, M left her bank job, saying she was pressured to do so by F and his family who wanted her to look after Z and F's parents; in particular, F told her that if she resigned, she would be able to move to England to live with him. That is denied by F who says she did not want to combine work with bringing up their child, and it was entirely her choice. I am quite sure that M's case on this is correct. During 2018, F returned to Pakistan twice to visit, and M and Z continued to live with his parents, brother, and brother's family.

20.
In December 2018, M and Z left the paternal family home for a short period and moved to M's parents' house after what M says was an assault on her by her sister-in-law (denied by F and his family, and an issue which I do not find it necessary to resolve). M was subsequently persuaded by her father to return to F's family home; her father, so I was told by M, held the view that she should live with F's family.

21.
M became pregnant with X after one of F's trips to Pakistan. According to M, and I accept, she and F agreed that she should move permanently to England with Z and their unborn baby to join him. M herself had no intention of returning thereafter to Pakistan with the children. M told me that "we planned to settle in the UK", that F intended to buy a home and they would live in this country, all of which I accept. According to F, M wanted to come to England to give birth, the medical facilities being better than those in Pakistan, whereupon she would return to Pakistan. On this significant area of dispute, I prefer M's account.

22.
In June 2019, M and Z flew to Spain, where they met F, and all travelled on to England. According to F, she arrived in this country on a Surinder Singh permit for 6 months; that was inconsistent with a copy of the entry in her passport which specifically states "No Time Limit" from the December 2017 stamp. That is the best evidence before me. There is no evidence that M's entry was limited in time as F says, and he has had ample time to obtain evidence thereof. Further, I reject F's claim (raised in his counsel's position statement, but not in his many witness statements) that M was, or should have been, barred from leaving Pakistan because of an ongoing case concerning her former employer which has now been resolved; she explained to me that she was not directly involved, had no arrest warrants against her, and was permitted to leave Pakistan. I was not quite sure what point F was seeking to make, but I unhesitatingly accept M's evidence on this matter.

23.
They lived in rented accommodation, first in Openshaw, Manchester, then in Longside. They were clearly a family unit at this time, all living together for an extended period for the first time since their marriage. For a period in summer 2019, F's parents visited.

24.
Prior to the birth of X, and indeed afterwards, I conclude that F did not forcibly prevent her from leaving the house. But it was made clear to M that F opposed her going out, or seeing people. These

matters are indicative of F's control of M in the marital relationship. True, M went to London on one occasion to visit her brother in London, but otherwise tended not to go out; when she saw neighbours, they would come to her house rather than her going to their houses. This was not imprisonment, but it was indicative of F's controlling attitude towards M in the marital relationship.

25.
X was born on 23 September 2019.

27.
According to M, F was angry when she told him beforehand that their unborn child was a girl. That is denied by F who produced statements from witnesses about F taking sweets (as his customary in his culture) to friends and neighbours to celebrate the birth, and messages between him and family members/friends about the birth. It seems to me that F was indeed disappointed that the second child was also a girl. He said different things to friends and family from what he said to M; I am quite satisfied that he would have preferred a boy, and his attitude to M changed after the birth of another girl. As she told me, his attitude was as if she had let him down, saying to her "You couldn't give me a son".

28.
It is clear that the marriage was in some difficulties from 2018 onwards. F told me, and I accept, that by mid to late 2019 the marriage was not going at all well. The time in England had not worked out happily. According to F, this was because of M's abuse directed towards his family. Whether that was indeed the case or not, I am satisfied that during this period F decided to ensure that M and the children would return to Pakistan and stay there, in the care of his parents, leaving him free to carry on an independent life in England relieved of the burden of caring for his family. In his mind, the intended permanency of their time in England changed as the relationship deteriorated.

29.
M's sister was due to marry in Pakistan in November 2019. M told me, and I accept, that she did not want to return for the wedding, mainly because of the recent birth of X who was still very young. It was F who made the travel plans and bought the tickets to travel on 20 November 2019. There is no evidence that M was physically forced to travel against her will, but I find that she was very reluctant to do so. She was assured by F that they would be returning, an assurance that proved to be hollow.

30.
On 19 November 2019 F obtained a British passport for X; thus, by then, both children had British passports a well as Pakistani passports. F had complete charge of these, as well as all other travel documents of the family.

31.
On the morning of 20 November 2019, M took X to see the Health Visitor in Manchester for a regular check up. There was no mention of returning to Pakistan permanently that evening. Moreover, X was booked in for a health immunisation programme, and had an appointment fixed on 20 December 2019.

32.
On 20 November 2019 the whole family travelled to Pakistan for the wedding of M's sister. At that point, M and Z had been in this country continuously for a period of about 5 months, and X for a period of 2 months since her birth. F told M they would return a few weeks later in December 2019 whereas he would return to England on 27 November 2019. F carried all the travel documents. I do not accept F's version that it was M who had the family's travel documents (including those of F) in

her bag during the trip. All their belongings, according to M, whose evidence I prefer on this, were left in England. F told me that, on the contrary, they brought 350kg of belongings to Pakistan, but he could not produce any evidence of having paid what must have been a hefty luggage surcharge. The plane tickets were return, rather than one way (albeit for a date in February whereas M expected to return in December). F's explanation is that he bought return tickets because it was the same price for a return as a one way, and a

refund could be obtained for the unused bit. That explanation may be correct, but it is consistent with him buying return fares, telling M that they would return, and in fact intending to leave M and the children in Pakistan and reclaim the unused return fare. In short, F in my judgment told M one thing but intended another.

34.
I unhesitatingly accept M's evidence that during the journey, and thereafter in Pakistan, all the travel documents for M and children were retained by F, or members of his family, and have never been handed over to her. The assertion by F that M has had all such papers in her possession all along is implausible, and I reject it.

35.
M and the children went initially to her mother's house from 22-25 November 2019. On 26 November 2019, M and the children moved back to F's family home. Subsequently F assured M that she and the children would return to England 2 weeks later. On 27 November 2019, F returned to England from Pakistan, leaving M and the children abandoned in Pakistan without their passports

36.
On 28 November 2019, M telephoned the health visitor in Manchester. The contemporaneous record reads "Phone Contact Telephone from [M]– she said she has been taken to Pakistan by her husband, said he tricked her and then, as a punishment, he has returned to UK with her passport and the children's passports. They are at the home of her husband in-laws….she then rang back and said she had spoken to her husband and he will bring her back in December so she will withdraw her complaint. I did not tell her that I had already called the police as felt this may put them in danger".

37.
On 18 December 2019, the health visitor reported to the Manchester police that F had taken M's passport and returned to the UK.

38.
On 21 December 2019, M reported to the police that the plan had been to stay for 3 weeks in Pakistan, with F returning after 1 week, that F had the travel documents, and that F had since told her they would return on 25 December 2019.

39.
F was unable in his evidence to explain plausibly why M said these things to the Health Visitor and the police if they were false. I can think of no reason why she would have told untruths to them. In my judgment these log records are corroborative of her case, and to my mind of significant evidential value.

40.
In January 2020, M, her brother, and F's brother had a conversation which M recorded. I read a short, translated transcript of one part of what was a 3-hour conversation. At first sight, it might support a

suggestion that F's brother admitted to having held the children's passports, contrary to F's case that M held them. However, having heard the evidence, I do not consider I can attach any weight to this brief transcript. It was one small part of a long conversation, with no context, and it seemed to me that there may genuinely have been confusion as to exactly what documents were being referred to (it is at the very least possible that F's brother was talking about F's passport, not the children's). I heard some evidence about other audio recordings made by the parties, but the picture was unclear, and I decline to make any findings about what recordings were made, the circumstances and the content of the recordings.

41.
On 10 February 2020, F, according to M and I accept, telephoned M and said that he would be moving house and getting rid of M's belongings.

43.
On 26 February 2020 F bought a property in Manchester for £281,000, subject to mortgage. The evidence (including tenancy agreements) suggests that the property is tenanted while F himself lives elsewhere in rented accommodation.

44.
During 2020, M's case is that she was distracted by lockdown and the death of her father in July 2020. In March 2021, she started making some enquiries of the British High Commission. She was not aware of her ability to make applications in England, still hoped that F would return and take them to England, and believed she would be able to obtain a visa to travel to the UK.

45.
During this period (2020 to early 2021), the ongoing simmering tensions between M and F's family erupted from time to time. Again, I do not consider it necessary to make specific findings on precise incidents as between M and F's family, nor are they set out in any real detail in the statements. I am confident that, at one level, F's family did not prevent M leaving their home. She told me that approximately once per month she and the children would go and spend a week with her own family who live in the same area. But in practice, she had no real options. F, and F's family, provided for her and the children; she was financially dependent upon them. Her own father, when she had previously attempted to leave, had encouraged her to return, and clearly opposed her separating herself from her in-laws. F had told her, as I accept, that if she attempted to leave his family permanently, he would remove the children from her care. He also told her that if she left, he would stop sending her money. And without travel documents she was unable to depart from Pakistan. She was, in practice, trapped, even if not forcibly confined. There was an obvious imbalance of power.

46.
On 10 June 2020 and 25 August 2020, F told the Manchester health visitor by telephone that the family would be returning to the UK, but were prevented from doing so by lockdown. The health service log sets these conversations out. F was unable to explain these conversations satisfactorily; plainly, they are inconsistent with his case that M was in Pakistan with the children voluntarily and permanently.

47.
In March 2021, M obtained a new Pakistan passport. She applied for a British visa under the family permit scheme which was refused in May 2021. She does not have passports for the children, but understands that they would be entitled to travel with her if she had permission to enter the United Kingdom. M applied in July 2021 for a EU settlement visa, which is awaiting determination.

48.
It seems that the marriage definitively broke down by March 2021. M and the children moved to live with her family, where they have been ever since. F stopped his financial payments to M.

49.
On 29 June 2021, F's parents applied in Pakistan for a "guardianship" order in respect of the children. F has repeatedly said to the court throughout the English proceedings that it is an application for contact, not an application for the children to live with them, not least because, so he says, his parents are too old and frail to care for the children. The translated Pakistani documents make it absolutely clear that the grandparents have in fact applied for (i) an order for the children to live with them, and (ii) an order preventing the children being moved out of the country, or to another area within Pakistan. Very serious allegations about M's care of the children are made, asserting

that M is an unfit mother. The clear inference is that they (with no resistance from F) aim to separate M from the children. I find it scarcely credible that, as F suggested, the application was made by his parents without either his knowledge or agreement, and he first knew about it when informed by his lawyers in this country. I did not believe him. They are bound to have consulted him beforehand about something as significant as this. Nor did I believe him when he told me that he did not see copies of the Pakistani court documents until M obtained them, and produced them in the proceedings before me, and that he did not even ask his parents for copies of the court documents. This was all very implausible. I am quite sure that F was aware of, and complicit in, the instigation of proceedings in Pakistan.

51.
The initial application by F's parents on 29 June 2021 was rejected, apparently because X had been born in England and there was accordingly no jurisdiction to make orders on the basis of the application as framed. The grandparents submitted an amended application dated 10 July 2021. Notably, paragraph 4 of the amended application states at the end in brackets "**Copies of the passports attached"**. That did not appear in the original application and was presumably added in the amended application to meet any jurisdiction issues, for the aim was to demonstrate that both children were Pakistani nationals. The copies attached to the application were of the Pakistani passports of both children and M, all bearing an entry stamp to Pakistan dated 21 November 2019. To which the obvious question was; how did the grandparents obtain copies of the passports, which must have been taken after 21 November 2019 when, according to F, they were in the possession of M at all times and there is no suggestion by him that either he, or his parents, or any other family members, had custody of them at any time? F said he thought (but it was clearly a guess) it was because the birth of X had been registered at the municipal office by his father shortly after arrival in Pakistan. He surmised, and it was never more than a surmise, that X's passport may have been copied for the purpose of registration, lay on municipal files, and was later extracted by F's parents for the purpose of the guardianship application. Quite apart from the fact that this was pure guesswork on his behalf, none of this was in his written evidence and it did not explain how Z's passport, and M's passport, came to be copied as well as X's. Nor could F explain how his parents could obtain copies of the children's passports from the municipal office, given that they are not these children's parents, let alone a copy of M's passport.

52.
As I have indicated, the evidence of the paternal grandfather on this was equally unpersuasive. These elaborate explanations made no sense. The true explanation, as I find it, is that the grandparents were

able to take copies because the passports, and other travel documents, were in the possession of F, or them, or F's brother. They were undoubtedly held within the paternal family, and M did not hold them.

53.
On 22 September 2021, F pronounced the first talaq.

54.
During the course of these proceedings F has said that it is his intention to relocate from England to Pakistan, although the precise timeline is not clear. F was ordered by me at the Pre-Trial Review to state his proposals as to child arrangements. He has said that if they come to the England, he will seek contact, but that "I would be seeking that the children remain in Pakistan and for me to go over and see them". He told me he does not want the children to live in England. He has described M as "cruel" which to my mind suggests that, contrary to his assertions to me, he would prefer the children to live

with his parents rather than M. His father told me that he considers M is not a good mother. His brother said categorically that M should not look after the children; he thought that the grandparents should do so. All of this is reflective of F's family sharing a similar view of M and, in my judgment, aligning against her.

Visa situation/immigration issues

56.
F says this application is brought by M because her visa application was turned down. He says it is nakedly designed to assist in her immigration application. I do not accept that submission. I am quite satisfied that this application is brought because of M's assertion that she was stranded in Pakistan in November 2019. It is completely understandable that M would, at the same time, seek to ensure that she can re-enter the United Kingdom; there is no inconsistency between that, and her primary case. After all, had she not been stranded in Pakistan, she would (i) still be living in England, having returned there at the end of 2019, and (ii) be in possession of a passport with no time limit on her entitlement to stay. Instead, her passport has been removed by F, and she has thereby lost the entry clearance previously secured by her. True, if M had somehow been able to secure the ability to re-enter the UK with the children, she might well not have instituted wardship proceedings; but that is not what has happened.

Conclusion on the core factual issue

57.
On the critical issue of abandonment, which in turn depends largely on my findings as to what became of the travel documents of M and the children, I conclude as follows:

i)
F's case that they always agreed to live permanently in Pakistan is belied by the fact that after marriage, for some 4 to 5 years, no steps were taken by him to do so.

ii)
F does not want the children to live in England. Nor, I judge, do his parents or his brother.

iii)

I reject F's explanation for this application brought by M which is, as his counsel put it, that M "wants to make life hell" for him. It was suggested on his behalf that when she spoke to the health visitor and the police it was all part of a plan to pave the way for this litigation, which struck me as improbable.

iv)
I reject also the suggestion that M's only interest in this application is to further her visa application. There is no contradiction here. M wishes to invoke wardship powers to assist her return to England. Had F not left her stranded, she would have had available to her all the relevant passports, including her own which allowed her to enter the UK with no time limit. It is because of the removal of the passports by F that she now has to secure fresh entry entitlement. Thus, the immigration position is bound up with the case on transnational abandonment.

v)
It seems to me that if M did indeed, as F says, hold her own passport and those of the children when returning to Pakistan, there is no obvious reason why she would not simply have come back to England. She had sufficient freedom to make those arrangements, and do so. The truth is that she could not, because she did not have the travel documents.

vi)
The direct contemporaneous records of the Health Visitor recording M informing the Manchester Health Service that they had been abandoned, and the

passports removed, are strongly corroborative of M's case. It is hard to conceive of any reason why M would have said this if it were not true.

viii)
Similarly, the direct, contemporaneous police records in the same vein support M's narrative.

ix)
M and the children had return flights to travel back to the UK after the family wedding. In my judgment, this reflected M's expectation, based on what she was told, that they would return to England. In fact, F had decided that he would not permit them to travel back to England. By then the marriage was in serious difficulty and in my judgment, F had decided that neither M, nor the children, should return to England.

x)
The family unit had been settled in Manchester. They all lived together. The children were registered with a GP in England and were having medical appointments and reviews (including for immunisations). British passports were obtained for the children. They were not there for a limited time.

xi)
F said for first time in a statement in September 2021 that M only went to UK for the birth of X, whereas M was consistent throughout the proceedings that the move to England in June 2019 was permanent and the settled plan was a life in England.

xii)
F told the health visitor in June and August 2020 that the family would be returning to England, but were prevented from so doing by the coronavirus lockdown. I see no reason why he would have said this if, in fact, M had no desire or intention to return to England.

xiii)
M’s own evidence, which I accept, and which has formed the basis of the factual narrative set out above, gives a true account of what happened. It is, in my judgment, clear that (a) the parties intended for M and Z to move to England permanently to set up home with F and their then unborn baby in June 2019, (b) F’s attitude changed as the marriage deteriorated and perhaps also because of his disappointment at the birth of a daughter rather than a son, (c) F at all times retained the whole family’s travel documents, (d) F decided that M and the children should not return to England, but should instead remain with his family in Pakistan, (e) F falsely assured M that she and the children would return to England at the end of November 2019, (f) F did not hand the travel documents over to M, (g) M was essentially trapped because she could not move permanently to her family, nor could she leave Pakistan.

xiv)
The application by the grandparents in Pakistan is consistent with F and his family seeking to control the movements of the children, and indeed M as their primary carer. F’s misrepresentation of the application (describing it as simply for contact) is telling. So, too, is the characterisation in the application of M as an unfit mother which reflects F’s family’s view of her. I am quite satisfied that this is part of an ongoing plan on the part of F to ensure that the children remain in Pakistan. The timing of the application is significant, made shortly after M’s wardship application in this country which, inter alia, sought a return order.

xv)
The grandparent’s’ application attached copies of the Pakistani passports of M and the children. For the reasons set out above, in my judgment this clearly demonstrates where the truth lies, namely that F, or his wider family, have at all times had custody of the travel documents of M and the children so as to prevent them from leaving Pakistan.

I find that M and the children were left stranded by F in Pakistan in November 2019, and that he/his family have at all material times had the passports and other travel documents of M and the children in their possession.

Habitual residence

58.
The law on habitual residence was summarised in by Hayden J in **In re B (A Child) (Custody Rights: Habitual Residence) [2016] EWHC 2174 (Fam),** which has been referred to with approval by higher courts in **In the Matter of L (Children) [2017] EWCA Civ 441** and **In re C and another (Children) (International Centre for Family Law, Policy and Practice intervening) [2017] EWCA Civ 980, [2018] UKSC**

8.
At paragraphs 17-18 he says this:

17.
I think that Ms Chokowry's approach is sensible and, adopt it here, with my own amendments:

(i)
The habitual residence of a child corresponds to the place which reflects some degree of integration by the child in a social and family environment (A v A, adopting the European test).

(ii)

The test is essentially a factual one which should not be overlaid with legal sub-rules or glosses. It must be emphasised that the factual inquiry must be centred throughout on the circumstances of the child's life that is most likely to illuminate his habitual residence (A v A, In re L).

(iii)
In common with the other rules of jurisdiction in Council Regulation (EC) No 2201/2003 ("Brussels IIA") its meaning is "shaped in the light of the best interests of the child, in particular on the criterion of proximity". Proximity in this context means "the

practical connection between the child and the country concerned": A v A , para 80(ii); In re B

, para 42, applying Mercredi v Chaffe (Case C-497/10PPU) EU:C:2010:829; [2012] Fam 22 , para 46.

(iv)
It is possible for a parent unilaterally to cause a child to change habitual residence by removing the child to another jurisdiction without the consent of the other parent (In re R).

(v)
A child will usually but not necessarily have the same habitual residence as the parent(s) who care for him or her (In re LC). The younger the child the more likely the proposition, however, this is not to eclipse the fact that the investigation is child focused. It is the child's habitual residence which is in question and, it follows the child's integration which is under consideration.

(vi)
Parental intention is relevant to the assessment, but not determinative (In re L, In re R and in re B).

(vii)
It will be highly unusual for a child to have no habitual residence. Usually a child loses a pre-existing habitual residence at the same time as gaining a new one (In re B).

(viii)
In assessing whether a child has lost a pre-existing habitual residence and gained a new one, the court must weigh up the degree of connection which the child had with the state in which he resided before the move (In re B —see in particular the guidance at para 46).

(ix)
It is the stability of a child's residence as opposed to its permanence which is relevant, though this is qualitative and not quantitative, in the sense that it is the integration of the child into the environment rather than a mere measurement of the time a child spends there (In re R and earlier in in re L and Mercredi).

(x)
The relevant question is whether a child has achieved some degree of integration in social and family environment; it is not necessary for a child to be fully integrated before becoming habitually resident (In re R) (emphasis added).

(xi)
The requisite degree of integration can, in certain circumstances, develop quite quickly (article 9 of Brussels IIA envisages within three months). It is possible to acquire a new

habitual residence in a single day (A v A; In re B). In the latter case Lord Wilson JSC referred (para 45) to those “first roots” which represent the requisite degree of integration and which a child will “probably” put down “quite quickly” following a move.

(xii)
Habitual residence was a question of fact focused upon the situation of the child, with the purposes and intentions of the parents being merely among the relevant factors. It was the stability of the residence that was important, not whether it was of a permanent character. There was no requirement that the child should have been resident in the country in question

for a particular period of time, let alone that there should be an intention on the part of one or both parents to reside there permanently or indefinitely (In re R).

(xiv)
The structure of Brussels IIA, and particularly recital (12) to the Regulation, demonstrates that it is in a child's best interests to have an habitual residence and accordingly that it would be highly unlikely, albeit possible (or, to use the term adopted in certain parts of the judgment, exceptional), for a child to have no habitual residence; As such, “if interpretation of the concept of habitual residence can reasonably yield both a conclusion that a child has an habitual residence and, alternatively, a conclusion that he lacks any habitual

residence, the court should adopt the former” (In re B supra).

18.
If there is one clear message emerging both from the European case law and from the Supreme Court, it is that the child is at the centre of the exercise when evaluating his or her habitual residence. This will involve a real and detailed consideration of (inter alia): the child's day to day life and experiences; family environment; interests and hobbies; friends etc and an appreciation of which adults are most important to the child. The approach must always be child driven…”

59.
It is convenient to note that in **Re M** **[2020] EWCA Civ 1105** at paragraph 63 Moylan LJ cited Hayden J’s summary, commenting that he considered subparagraph (viii) (set out above) should be omitted as it “might distract the court from the essential task of analysing "the situation of the child" at the date relevant for the purposes of establishing jurisdiction”.

60.
In my judgment, the children were habitually resident in England and Wales at the date of the application to the English court for the following reasons:

i)
F, the father of these children, has lived and worked in the UK since 2005, and has been a British citizen since 2013. He owns a house here. He was clearly habitually resident here at all material times.

ii)
M and the children were habitually resident in England and Wales prior to 20 November 2019, and had been so since June 2019. M and Z had arrived in June in 2019 on the clear basis that the family would settle in England together. They were living with F in rented accommodation. X was born in England. The children were registered with GPs, and having regular appointments and reviews with health visitors. X was booked to have her immunisation appointment on 20 December 2019. There

was no mention to the health visitor on the morning of 20 November 2019 that they were leaving England for good.

iii)
Both children had British passports as well as Pakistani passports.

iv)
It was intended that they would continue living in England. The trip to Pakistan in November 2019 was a one-off holiday for a family wedding with return flights booked. Their inability to return was because of F's conduct in retaining the passports and abandoning them.

v)
M clearly expected to return to England, as she told both the health visitor and the police.

vi)
F told the health visitor in 2020 on various occasions that the children would return to live in England and had only not returned because of lockdown.

vii)
For a combination of reasons (lockdown, the death of M's father and her ignorance as to possible legal remedies), M did not apply to the courts in England.

viii)
The habitual residence of the children did not change from England to Pakistan. They, and M, were stranded. They had no ability to return to their country of habitual residence. Their autonomy was removed. The true family unit was intended to be in England with F, rather than in Pakistan with M's in-laws.

Parens patriae

61.
If I am wrong about habitual residence, I conclude that in any event this would be an appropriate case to exercise the powers available to me by virtue of the parents patriae jurisdiction, founded on the nationality of the children.

62.
In Re M (supra), after a survey of the law relating to parens patriae, Moylan LJ summarised the position as follows:

103.
"What are my conclusions?

104.
I understand why, given the wide potential circumstances, concern was expressed in In re B that the exercise of the jurisdiction should not necessarily be confined to the "extreme end" or to circumstances which are "dire and exceptional". But I do not consider that this means that there is no test or guide other than that the use of the jurisdiction must be approached with "great caution and circumspection". The difficulty with this as a test was demonstrated by the difficulty counsel in this case had in describing how it might operate in practice.

105.

In my view, following the obiter observations in In re B , whilst the exercise of the inherent jurisdiction when the child is habitually resident outside the United Kingdom is not confined to the "dire and exceptional" or the "very extreme end of the spectrum", there must be circumstances which are sufficiently compelling to require or make it necessary that the court should exercise its protective jurisdiction. If the circumstances are sufficiently compelling then the exercise of the jurisdiction can be justified as being required or necessary, using those words as having, broadly, the meanings referred to above.

106.
In my view the need for such a substantive threshold is also supported by the consequences if there was a lower threshold and the jurisdiction could be exercised more broadly; say, for example, whenever the court considered that this would be in a child's interests. It would, again, be difficult to see how this would be consistent with the need to "approach the use of the jurisdiction with great caution or circumspection", at [59]. It is not just a matter of procedural caution; the need to use great caution must have some substantive content. In this context, I have already explained why I consider that the three reasons set out in In re B would not provide a substantive test and, in practice, would not result in great circumspection being exercised.

107.
The final factor, which in my view supports the existence of a substantive threshold, is that the 1986 Act prohibits the inherent jurisdiction being used to give care of a child to any person or provide for contact. It is also relevant that it limits the circumstances in which the court can make a s.8 order. Given the wide range of orders covered by these provisions, a low threshold to the exercise of the inherent jurisdiction would increase the prospect of the court making orders which would, in effect, "cut across the statutory scheme" as suggested by Lord Sumption in In re B , at [85]. This can, of course, apply whenever the jurisdiction is exercised but, in my view, it provides an additional reason for limiting the exercise of the jurisdiction to compelling circumstances. As Henderson LJ observed during the hearing, the statutory limitations support the conclusion that the inherent jurisdiction, while not being wholly excluded, has been confined to a supporting, residual role.

108.
In summary, therefore, the court demonstrates that it has been circumspect (to repeat, as a substantive and not merely a procedural question) by exercising the jurisdiction only when the circumstances are sufficiently compelling. Otherwise, and I am now further repeating myself, I do not see, in practice, how the need for great circumspection would operate.”

63.
In my judgment, if the children were not (contrary to my findings above) habitually resident in England and Wales at the relevant time, and had in fact become habitually resident in Pakistan, that is as a direct result of being trapped in Pakistan by reason of F’s controlling conduct. Neither they nor M were free to leave Pakistan and return to England. If they lost English and Welsh habitual residence because of their powerlessness in the face of abandonment by F who had removed their passports and means of travel, it would, in my view, be unjust to deny them the parens patriae jurisdictional basis of exercising the court’s powers. This is exactly the sort of case where that power, to be exercised only when the facts are sufficiently compelling to warrant it, would be legitimately invoked for the protection of British subjects.

Orders and conclusions

65.

I will declare and order as follows:

i)
Having satisfied myself as to habitual residence, it follows that the English court has primary jurisdiction under Article 5 of the 1996 Hague Convention.

ii)
If I am wrong about habitual residence, I would in any event, on the exceptional and compelling facts of this case, be minded to make orders under the parens patriae jurisdiction.

iii)
Given the gross interference by F with the autonomy of M, and the children's welfare, the wardship orders shall continue.

iv)
I shall make an order for the summary return of the children to this jurisdiction, to be effected as soon as possible after the return of the travel documents.

v)
I shall order F to deliver up, or cause to be delivered up, the travel documents of M and the children which were removed from them in November 2019 to either M, or M's solicitors, within 14 days of the date of the order.

vi)
The order will record the grandfather's clear acknowledgment that he will withdraw the proceedings in Pakistan if I decide (as I have done) that the children should return to England, and F must produce evidence of the same.

vii)
I shall direct that this judgment, and consequential order, may be disclosed to the Pakistani court.

viii)
I will order F to pay for the flights of M and the children to this country, which he has previously offered; the precise cost thereof will need to be agreed between the parties, and in default of agreement shall be referred back to court.

ix)
I order F to pay £500 within 21 days of the date of the order to enable M to obtain a legal opinion from a lawyer about the most appropriate visa route, but at this stage will make no further orders in respect of financial provision to assist M in obtaining the necessary visas or permits, it being unclear precisely what is or may be required.

x)
I will not reverse the order of Judd J by which F's passport was released to him. That decision was made on proper grounds and not appealed. I bear in mind that M and the children are now living separately and independently from F and his family. There is a property in this country against which enforcement can be taken in the event of non-compliance.

Immigration

66.

Nothing in this judgment is in any way designed to influence the Home Office, or any other agency considering applications by M for visa and/or permits enabling her and the children to enter this country.