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No: FD21P00029 and FD21F05001

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 2 August 2021

IN THE MATTER OF THE FORCED MARRIAGE (CHILD PROTECTION) ACT 2007
AND IN THE MATTER OF THE FAMILY LAW ACT 1996
AND IN THE MATTER OF THE SENIOR COURTS ACT 1981
AND IN THE MATTER OF THE CHILDREN ACT 1989

Before:

MR DAVID REES QC

(Sitting as a Deputy Judge of the High Court)

(In Private)

B E T W E E N :

V

Applicant

And

N

Respondent

- -

Emily Rayner (instructed by Dawson Cornwell) for the **Applicant**
Basharat Hussain (instructed by Greens Solicitors) for the **Respondent**

Hearing date: 20 July 2021

I direct that no official shorthand note shall be taken of this Judgment and that copies of this judgment as handed down may be treated as authentic. Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be at 10.00am on 2 August 2021.

David Rees QC Deputy High Court Judge

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.

Mr David Rees QC :

Introduction

1. This application relates to two children: L who is now aged 15 and his sister M who is now aged 13. Both children are currently living in Pakistan with their paternal grandmother and aunt. Their mother, V seeks orders from this court directing their return to England and Wales. The orders are resisted by the children's father, N. Both parents are currently in England and Wales. I will refer to the parents throughout this judgment as "the Mother" and "the Father" respectively.

2. The Mother was born in the UK and is a British national, although she has family members living in Pakistan. The Father was born in Pakistan but has since acquired British citizenship.

3. The parents married in February 2005. Throughout their marriage they have lived in England. They have five children in total all of whom are dual British and Pakistan nationals. L and M are the two eldest. The three younger children are presently aged between 2 and 11. They live with the Mother in England and Wales.

4. The parents separated for the first time in October 2009, but reconciled a year or so later. They continued to live together, although the Mother's case is that she experienced significant domestic abuse in the form of coercive control throughout her relationship with the Father.

5. In December 2016, a few weeks before her 9th birthday, M was sent to Pakistan to undertake the Hifz, that is the memorisation of the Quran. The Mother's case is that she did not truly agree to this, her apparent consent having been obtained through the Father's coercion. In any event, she says that to the extent that she did consent, it was only for the limited period whilst M was undertaking the Hifz. L followed his sister to Pakistan about six months later in June 2017. At the time he was 11 years old. He was not undertaking the Hifz but appears to have gone to keep his sister company and to go to school there. The Father denies that the children's stay in Pakistan was ever intended to be for a limited period. His case is that both parents:

> "…had concerns regarding British schools teaching children about LGBT and sexual education and therefore we both agreed it would be better for the children to move to Pakistan and remain there until they were adults."

6. M initially attended a madrassah in Pakistan solely for the purpose of undertaking the Hifz. She received no other formal education. She completed the Hifz, becoming a Hafiza in 2019. Since then, she has attended school in Pakistan. She has not returned to the UK at any point since she left in January 2017. She was due to visit the UK in 2020, but this visit was cancelled as a result of the coronavirus pandemic. L has been at school in Pakistan since his arrival in 2017. He has since returned to the UK for one short visit

in 2018. In the intervening period the Mother has been able to visit Pakistan twice. Once for 3 weeks in January 2018 and then for a longer trip of three months from June 2019. The Father has also visited Pakistan during this period.

7. The parents' relationship broke down irrevocably on 6 December 2020. An altercation took place which led to the Father being arrested for assault. The cause of that argument appears to have been a discovery by the Father that M had had access to an Instagram account and had been messaging members of the Mother's family. I understand that matter is currently awaiting a charging decision from the Crown Prosecution Service. Following that incident, the parents separated and the Mother and the three younger children left the matrimonial home. The Mother issued separate proceedings in the Family Court on 8 December 2020 for prohibited steps orders in relation to the three younger children. On 29 March 2021 the Father issued a C2 application within those proceedings for Child Arrangements Orders.

8. On 18 January 2021 the Mother issued proceedings in the High Court seeking Forced Marriage Protection Orders and wardship orders in relation to M and L. The Father was due to fly to Pakistan on 29 January 2021 and Williams J made a passport order against him on 18 January 2021.

9. On 24 February 2021 Poole J made Forced Marriage Protection Orders in relation to both M and L. He also gave directions for a hearing to determine whether the English High Court has jurisdiction to deal with matters pertaining to the children's welfare, listing three preliminary issues for hearing:
   a. Where the children were habitually resident at the time that the Mother made her applications to the Court;
   b. Whether the Court has jurisdiction to make return orders in relation to the children under the inherent jurisdiction; and
   c. Whether the Court should exercise its inherent jurisdiction to make the return order.

10. Those issues came before me for determination on 20 July 2021. The Mother was represented by Ms Emily Rayner and the Father by Mr Basharat Hussain. Both counsel agreed that although there were factual issues in dispute, cross-examination was unlikely to shed much additional light on matters and they both invited me to determine the factual issues summarily from the parties' written evidence. I have done so. I am grateful to both counsel for the practical way in which they approached this hearing and for their helpful and focussed oral and written submissions.

The Parties' Positions

11. In summary the Mother's primary position is that L and M are habitually resident in England and Wales and that this court therefore has jurisdiction to order their return and make decisions about their welfare under section 3(1)(a) of the Family Law Act 1986. Her alternative case is that even if I were to find that L and M are habitually resident in

Pakistan, this Court should nonetheless make return orders pursuant to its inherent jurisdiction on the basis of their status as British nationals.

12. The Father's position is that both children are currently habitually resident in Pakistan. He accepts that the children are British Citizens so that this court retains a residual *parens patriae* jurisdiction. However, the Father argues that the stringent conditions for the exercise of the inherent jurisdiction in relation to children who are neither present nor habitually resident in England and Wales are not made out in this case.

Jurisdiction

13. The parties were broadly agreed as to the legal analysis regarding the court's jurisdiction in this case:
    (1) There is no applicable reciprocal jurisdictional scheme between Pakistan and England and Wales.
    (2) If the children were habitually resident in England and Wales on 18 January 2021 (the date upon which the Mother commenced these proceedings), then pursuant to sections 1 to 3 of the Family Law Act 1986 this court has jurisdiction to make orders in relation to the children under both section 8 of the Children Act 1989 and under its inherent jurisdiction (including orders giving care of a child to any person or providing for contact with or the education of a child).
    (3) If the children were not habitually resident in England and Wales on 18 January 2021 then the court may exercise its inherent jurisdiction over them on the basis of their British nationality subject to the restriction imposed by section 2(3) of the Family Law Act 1986. This subsection prevents the court from making orders under the inherent jurisdiction giving care of a child to any person or providing for contact with or the education of a child.
    (4) However, the circumstances under which the court should exercise its inherent jurisdiction in relation to children who are neither present nor habitually resident in England and Wales are tightly drawn. They have recently been reviewed by the Court of Appeal in *Re M (A Child)* [2020] EWCA Civ 922; [2021] Fam 163 and by MacDonald J in *K v H (Exercise of Jurisdiction Based in Nationality*) [2021] EWHC 1918 (Fam).

Habitual Residence

14. The concept of habitual residence is one that has been the subject of a number of decisions from the appellate courts in recent years (see *A v A (Children: Habitual Residence) (Reunite International Child Abduction Centre intervening)* [2013] UKSC 60; [2014] AC 1; *In re L (A Child) (Custody: Habitual Residence) (Reunite International Child Abduction Centre intervening)* [2013] UKSC 75; [2014] AC 1017; *In re LC (Children) (Reunite International Child Abduction Centre intervening)* [2014] UKSC 1; [2014] AC 1038; *In re R (Children) (Reunite International Child Abduction Centre intervening)* [2015] UKSC 35; [2016] AC 76; *In re B (A Child) (Habitual Residence: Inherent Jurisdiction)* [2016] UKSC 4; [2016] AC 606.) This jurisprudence was summarised by Hayden J in *Re B (A Child) (Custody Rights: Habitual Residence)* [2016]

EWHC 2174 (Fam); [2016] 4 WLR 146 at [17] and that summary was subsequently approved, with one qualification, by the Court of Appeal in *Re M (Children)(Habitual Residence: 1980 Hague Child Abduction Convention)* [2020] EWCA Civ 1105; [2020] 4 WLR 137. Counsel are agreed that the summary provided by Hayden J in *Re B*, as qualified in *Re M* represents an accurate summary of the relevant law. It consists of twelve points (the Court of Appeal in *Re M* having concluded that point (viii) of the thirteen points originally identified by Hayden J should be omitted). These are as follows:

"(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 lose a pre-existing habitual residence at the same time as gaining a new one (*In re B*).

(viii) [Omitted]

(xi) 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*).

(xiii) 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)."

The Inherent Jurisdiction

15. As set out above, it is accepted by both parties that even if the children were not habitually resident in England and Wales on 18 January 2021, the court may still have available to it its *parens patriae* jurisdiction because both L and M are British Citizens. That said, the circumstances under which the inherent jurisdiction can be used to make

orders in relation to a child who, although a British Citizen, is neither present nor habitually resident in England and Wales are restricted both by statute and by authority.

16. The type of order that may be made by the court in such circumstances are restricted by section 2(3) of the Family Law Act 1986, the effect of which is to prevent the court from using the inherent jurisdiction to make an order giving care of a child to any person or providing for contact with or the education of a child. I return to this later in this judgment.

17. Moreover, even where this jurisdiction is potentially available, the circumstances under which it should be exercised have been the subject of judicial consideration in a number of cases. These authorities, including the decision of the Supreme Court in *Re B (A Child)* [2016] AC 606, were analysed in detail in the judgment of Moylan LJ in the Court of Appeal in *Re M (A Child)* [2020] EWCA Civ 922; [2021] Fam 163. The learned judge set out his conclusions at [104] *et seq*

> "[104] I understand why, given the wide potential circumstances, concern was expressed in *In re B (A Child)* [2016] AC 606 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 (A Child)*, 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 para 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 (A Child)* 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 section 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 JSC in *In re B (A Child)*, para 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."

18. The reference by Moylan J at [106] to "the three reasons set out in *In re B (A Child)*" was to three possible reasons for caution when a court is considering exercising the inherent jurisdiction in this manner that were identified in the joint judgment of Baroness Hale DPSC and Lord Toulson JSC at [59] in *Re B (A Child)*. These were as follows:

> "There are three main reasons for caution when deciding whether to exercise the jurisdiction: first, that to do so may conflict with the jurisdictional scheme applicable between the countries in question; second, that it may result in conflicting decisions in those two countries; and third, that it may result in unenforceable orders."

Baroness Hale and Lord Toulson went on to comment that none of these reasons had much force in the circumstances that pertained in *Re B* (which also involved an application for a return from Pakistan)

> "It is, to say the least, arguable that none of those objections has much force in this case: there is no applicable Treaty between the UK and Pakistan; it is highly unlikely that the courts in Pakistan would entertain an application from the appellant; and it is possible that there are steps which an English court could take to persuade the respondent to obey the order."

19. Referring to these three reasons in *Re M* , Moylan LJ stated as follows at [94] *et seq*:

> "[94] In my view, they were not being put forward as providing a test or guide for the court to use when deciding whether to exercise the jurisdiction. They are general

reasons explaining why the court should take a cautious approach although, no doubt, they will provide a specific reason or reasons why the jurisdiction should not be exercised in an individual case. The difficulty in using them as a guide to the exercise of the jurisdiction is that they would, in practice, provide a very low threshold which would not support the need for "great caution or circumspection": *In re B (A Child)* , para 59.

[95] In respect of the first reason, there are numerous countries with which the UK has no applicable reciprocal jurisdictional scheme. For example, whilst it has achieved significant support around the world, the main international convention, the 1996 Hague Child Protection Convention, applies in only 52 countries (including the UK). As for the second reason, there are likely to be many situations when conflicting decisions are, in fact, unlikely because, for example, the parent in the other state will not seek to invoke that court's jurisdiction. In addition, I can see evidential difficulties if the court is to be expected to make a specific determination as to whether the exercise of the jurisdiction "may result in conflicting decisions".

[96] As to the third reason, it will often be difficult for a court to determine whether an order will or may be unenforceable. Even though there was expert evidence in the present case, it did not address this issue in respect of Algeria. However, the judge concluded, at para 50, that there was "no suggestion that orders of this court may be unenforceable in Algeria". It is not clear to me how orders would be enforceable in Algeria, given the absence of any reciprocal jurisdictional scheme, but this demonstrates the approach a court might understandably take to this question in the absence of expert evidence, which is likely in many private law cases. In addition, it is not clear what weight the court should give to this question when, as suggested in *In re B (A Child)* [2016] AC 606, para 59 , there may be steps which the "court could take to persuade the respondent to obey the order". This, again, is not a high threshold. There are often steps which a court could take."

20. In the recent decision of *K v H (Exercise of Jurisdiction Based on Nationality)* [2021] EWHC 1918 (Fam) MacDonald J, with characteristic clarity and concision, having considered the judgment of the Court of Appeal in *Re M* summarised the applicable principles at [35]

"Having regard to the foregoing exegesis, the following cardinal points of principle govern the determination of whether the court should accede to the mother's submission in this case that the court should exercise its residual *parens patriae* jurisdiction based on the children's British Citizenship:

i) Subject to the terms of the Family Law Act 1986, the court retains a residual *parens patriae* jurisdiction in respect of a child who is a British Citizen, which is exercisable notwithstanding that the subject child is outside the jurisdiction of England and Wales.

ii) The residual *parens patriae* jurisdiction of the court is protective in nature.

iii) The threshold for exercising the residual protective jurisdiction of the court is substantive and requires more than simply whatever the court considers to be in the subject child's best interests.

iv) In order for the court to exercise its residual *parens patriae* jurisdiction there must exist circumstances which are sufficiently compelling to require or make it necessary that the court should exercise its protective jurisdiction with respect to the subject child.

v) The need for caution when exercising the residual *parens patriae* jurisdiction of the High Court in respect of a child outside the jurisdiction of England and Wales is grounded in the well-recognised adverse consequences of the domestic court overreaching the jurisdiction of another State that has jurisdiction in respect of the child based on the primary connecting factors of habitual residence or physical presence."

The Evidence

21. As set out above, the parties have invited me to determine the issues in this matter summarily and without hearing oral evidence and I have done so. Neither party has sought to rely on any expert evidence regarding Pakistan law.

22. The Mother relies on her own witness statements as well as statements from relatives including her father, her brother (who is a serving Police Officer in the UK), her sister and her uncle (the latter living in Pakistan). The Father relies on his own statements and a statement from another uncle of the Mother.

23. There is plainly now a deep rift between the two sides of the family. The Mother and the other family members who have filed statements on her behalf claim that she was the victim of domestic abuse through coercive control throughout the marriage.

24. The Father denies this and alleges that these allegations have been fabricated by the Mother. Mr Hussain, for the Father urges me to approach the evidence filed on behalf of the Mother with caution, arguing that the Mother appeared to have been influenced by other members of her family who have an *animu*s against the Father. In particular he points to the fact that the Mother did not raise any allegation of coercive control against the Father until after they had separated in December 2020. Mr Hussain also points to the various Instagram messages said to have been exchanged between M and her maternal uncle and aunt in late 2020. He argues that I know little of the context in which these messages were written. He also points to apparent inconsistencies in the Mother's account, observing for example that she apparently was able to complain to members of

her family in 2016 that she did not wish M to travel to Pakistan, but that she said something different to the Police when they became involved at that time.

25. I do not have to resolve all of the many factual disputes raised by the parents for the purposes of the decision I now have to make and what follows in this judgment focusses on those points in the evidence that seem to me to of greatest relevance to the issues that I have to determine. I make clear though that in reaching my conclusions I have taken the totality of the parties' evidence into account.

26. The Mother's evidence provides an account of the level of control that she says was exercised by the Father during the marriage, with her and the children being banned from watching English television programmes or reading books and newspapers. She states that she had to ask the Father's permission to see her parents, that the Father would prevent the maternal grandparents from seeing the children and that at times the Father would force her to put her phone onto speaker when speaking to family members. Her case is that she was not financially independent and that the Father limited and controlled access to her bank accounts.

27. The Mother's case is that the Father placed pressure on her in 2016 to permit M to travel to Pakistan to undertake the Hifz. I understand that an alternative that M should undertake her Hifz in the UK was rejected as being too expensive. The Mother did not want M to leave, but the Father assured both the Mother and M that she would be able to travel back to England to spend holidays with her family (effectively as if she was attending a boarding school) and the parents would also be able to travel to Pakistan regularly to see her. She states that the visit was only ever intended to last two years to enable M to complete her Hifz. L was sent to Pakistan in June 2017. He was close to his sister and the Mother's case is that he was sent to Pakistan to support M (although he was not to undertake the Hifz himself) and that it was intended that he would return to the UK at the same time as M.

28. Although a Forced Marriage Protection Order is now in force the Mother remains of the view that the Father intends to marry M to his nephew. She says that the Father has said many times that L will only marry someone from Pakistan, and of his choice, and she is concerned that he will "manipulate and coerce the children into this".

29. The Mother also expresses concern about the children's safety in Pakistan referring to Father having enemies and to an uncle of the Father having been murdered over a land dispute.

30. The Mother's father gave evidence of an application that he had brought for a non-molestation order in 2011 against the Father, alleging domestic violence and intimidation on the Father's part against the Mother and their three children. It is common ground that these proceedings were brought but were dismissed following mediation and reconciliation meetings between the parents. At around this time the Father was given a

warning notice by the police alleging that he had engaged in conduct capable of amounting to harassment.

31. The Mother's brother gave evidence of a number of WhatsApp messages that he had exchanged with his sister in December 2016 a few days before M was sent to Pakistan. I accept these messages as genuine, and it is clear from their tenor that the Mother was (a) extremely concerned about M travelling to Pakistan alone at this time but (b) felt unable to challenge the Father directly on this issue. The messages show the Mother felt unable to speak out directly, instead asking her brother (who at that time was a civilian Police employee) whether the Police could say that it was not in M's best interests to go on her own. One message sent by the Mother to her brother on 26 December 2016 states "…if something can be done 2 stop M from going or that is delayed & he doesn't find out u or me r involved then do that…". I understand that the Police were contacted and attended the parents' home before M left for Pakistan. However, the Father informed them that it was a joint decision that had been made by the family and the Mother did not demur from this account. The Mother's brother also gave an account of attending family weddings in Pakistan in October 2018 and August 2019. He stated that his contact with L and M on these occasions appeared to be observed or monitored by members of their paternal family. On the second occasion he was able to have a short conversation with M who told him that she missed her family, friends and life in the UK and wanted to return.

32. The Mother's brother and sister have both provided evidence of Instagram messages that they were able to exchange with M in November 2020. These text messages (and I accept them as genuine) appear to show M being unhappy in Pakistan and wishing to return to England, but feeling unable to raise this subject with her Father. The Mother's brother suggested to M that she should try to discuss her wish with her Father. She replied "I tried speaking three days ago about what I'm feeling and he said I've done [the Hifz] I'm happy in Pakistan and I shouldn't feel what I was about to say … I tried in 2017 and I received a full 2 hour lecture in return". On another occasion she stated "That's papa you're talking about. He broke me when I talked to him last time. Saying I should care only about what others would think of me. And I'm meant to be perfect … He even insulted mama and I couldn't do anything as he was fully Ahmad at me ... But what he said really got to me I cried for 45 minutes in the phone and half an hour after.".

33. Of the greatest concern are references by M in these messages to suicide and self harm. One message from M records that after a call with her father "I kind of went to the kitchen and took out a knife and lightly scarred myself". Her aunt begged her never to do that again and M responded that it was "not deep or bad though" and sent the aunt a picture of her wrist on which a red scar is clearly visible. Instagram contact ceased when the Father discovered that M had access to an account. I have also seen a transcript of a telephone conversation that took place between M and her aunt in November 2020. In this conversation M described her home as being "England" and described her Father as having "made me live in fear".

34. I have also been provided with copies of the Police disclosure. These documents confirms that Police became involved in December 2016 because of concerns raised by the maternal aunt that M was being taken to Pakistan for a forced marriage. The Police attended the parents' home and the family confirmed that M's travel was for educational purposes. I consider this record to be consistent with the messages that were exchanged between the Mother and her brother at this time, which show that the Mother was extremely anxious that the Father should not become aware that she was seeking to stop M travelling to Pakistan. The Police disclosure also provides details of the incident on 6th December 2020. It appears to have arisen as a result of the Father becoming aware that M had been exchanging text messages with her aunt. The Mother gave an account of the Father's controlling behaviour to the Police that is consistent with the evidence provided by her in these proceedings.

35. The Father's position is that the decision to send M to Pakistan for her Hifz was the start of a process by which the whole family would eventually move there. He states that this plan was "escalated" in December 2019 when LGBT education was made mandatory in schools in England. The Father states that the Mother has visited Pakistan twice whilst the children have been there. He says that he has visited "less often" – I assume this means he has visited only once during this period - but ascribes this to the cost of travel and the imposition of travel restrictions following the coronavirus pandemic. He has provided evidence that more recently flights were purchased for him, the Mother and the younger children to travel to Pakistan in January 2021. His first witness statement describes this proposed trip as a holiday, although his most recent statement appears to suggest that it was intended as a prelude to a permanent move by the family and younger children to Pakistan.

36. He denies ever having been abusive to the Mother or trying to control her or her finances. His position is that whilst in the UK, both parents have been able to communicate freely with M and L and that save for one occasion the children "have always had full privacy" when speaking to the Mother. He does not accept that the children are unhappy in Pakistan He accepts that he was angry upon discovering that M had access to an Instagram account but says that this is because she is too young to have such an account. He blames his poor relationship with the Mother's wider family on a dispute arising from a broken engagement and asks for this complex family dynamic to be taken into account by the court. On the subject of marriage, the Father states that he believes in the freedom to marry the person of your choice and that "there is no way I would not give this freedom to my children too". His evidence is that there are no plans for M to marry her cousin and he would not let this happen.

FCDO Interviews

37. Both children were interviewed on 16 February 2021 at the direction of this Court by a member of the Foreign, Commonwealth and Development Office consular staff in Pakistan. L told the consular staff:

(1) That the Father wanted him to remain in Pakistan and the Mother wanted him to return to the UK.

(2) He wanted to return to the UK to see both of his parents; to live with his Mother and see his Father.

(3) He had ample communication with his Father. However, he expressed a wish to speak to his Mother more frequently and stated that a family member sat with him on any calls between him and his Mother.

(4) He described living with his paternal grandmother, aunt and her teenage child in Pakistan. He described attending school which he said he had been able to choose for himself. He mentioned that he had friends whom he met outside of the school environment.

(5) He stated that marriage plans had not been discussed with him and he was not aware of any future arrangements to be engaged or enter into a marriage.

38. M's conversation covered similar ground:

(1) She also confirmed that the Father wanted her to remain in Pakistan and the Mother wanted her to return to the UK. She said that her ideal outcome would be for the parents and siblings to be living together either in Pakistan or the UK. She also stated that she wanted what is best for the family as a whole and has worried that she would be forced to choose between her parents. She does not want to just go to her Mother, as she regards her Father highly.

(2) She described speaking to her Father daily. Prior to December 2020 she had had regular contact with her Mother but was subsequently restricted from contacting her Mother for a period of time.

(3) She described attending school and also continuing her Quran studies after school with a tutor. She has friends in Pakistan, whom she described as having supported her through difficult times.

(4) She said that her grandmother and aunt had not discussed marriage plans with her and she was not aware of any future arrangements for her to be engaged or to enter into marriage.

Legal Proceedings in Pakistan

39. In late December 2020, shortly after the Father's arrest and the parents' separation, the paternal grandmother issued proceedings in Pakistan before the local Guardian Judge for her appointment as the children's guardian in Pakistan. I have been provided with some of the documents from these proceedings, but it is unclear whether I have the totality of the documents. Neither parent was named as a respondent to the application, service apparently being effected on "the Public at Large" through a newspaper advert in Pakistan. The application was for the grandmother's appointment as guardian (depending upon which translation is used) either for "education and other governmental matters" or "Education Institutions and other departmental activities". Counsel were agreed that this appeared to be a limited authority entitling the grandmother to deal with schools and other officialdom on behalf of the children and was not equivalent to the concept of

parental responsibility. The grandmother's affidavit in support of her application for guardianship provides no information as to why such an application was considered necessary at that time. Indeed, little detail of the circumstances surrounding the children was provided, save to assert that each child had been left with her with the free consent of the parents 4 years ago and that the children were attending school in Pakistan and that their parents and siblings visit Pakistan every year to see them (a statement which appears to be incorrect). The Father's evidence within the current proceedings suggests that the application was made because the Mother had granted a power of attorney to her uncle to act on behalf of the children in Pakistan.

40. Guardianship orders appear to have been pronounced on 24 December 2020 although the formal certificates are dated 4 January 2021. The guardian certificates state "you (petitioner /guardian) will not remove the minor from territorial jurisdiction of this court without permission of the guardian court." A further hearing appears to have taken place on 25 January 2021 at which some form of temporary injunction appears to have been sought against unnamed respondents. The record of that hearing states:

> "respondents are hereby directed not to snatch the minors [M and L] from the custody of the petitioner illegally and unlawfully without due course of law till further order of the court. It is made clear that present injunctive order will not effect upon the proceeding / order of any other competent court / authority"

41. The Mother's evidence, which I accept on this point, is that she had no notice of these proceedings and has had no contact with the Pakistan court in relation to this application.

42. There also appears to have been allegation of harassment raised in Pakistan by the grandmother against members of the Mother's family there. Statements appears to have been provided by L and M in relation to that allegation. L's statement reads:

> "I am happy with my grandmother here. No one has told me anything and I have no fear. I don't want to go to the UK at the moment. Ever since the series started, I am talking to Dad, not Mom, he would be happy if she wanted to talk."

The relevant part of M's brief statement is (allowing for possible translation issues) almost word for word the same.

Health and Education

43. M and L are currently registered with a GP in the UK. They have been registered with that practice since June 2012 – some five years or so before they travelled to Pakistan and have remained registered there throughout their stay in Pakistan. The Mother has produced letters from the surgery dated 9 July 2021 which state that the GP understood that M travelled to Pakistan to complete her Hifz with a view to returning to the UK once it was completed, and that L travelled to support his sister, again with a view to returning to the UK when she had completed her Hifz. These statements are, of course, consistent with the Mother's case. However, as the GP does not provide details of the source of this

understanding or when this information was provided to him, I do not give these comments any great weight.

44. The children are also registered with a doctor in Pakistan. The Father's witness statement of 30 June 2021 exhibits a letter dated 1 June 2021 from Dr H, a Family Physician and Consultant Children Specialist confirming that they are both registered with him and that they attend his surgery for regular check-ups (although there is no suggestion in this brief letter that either child has any medical issues which would require regular attention). When interviewed by consular staff in February this year neither child reported any health issues, although L mentioned that he had seen a doctor last year but could not recall why.

45. The Mother has also provided letters from the Assistant Principal of the school that M and L had attended in the UK before travelling to Pakistan. The Assistant Principal confirmed that she was told by the Mother when M was in year four that M would be going to Pakistan to complete the Hifz "and would return before moving to secondary school". She describes M as a very bright and able pupil. She states that L left in the summer term of year six to support his sister as he had missed her but that she was told by the Mother that he would return with M once she had completed her Hifz. She refers to both children as having had a strong and positive network of friends and that they had formed good relationships with their teacher. The Assistant Principal states:

> "M and L were both very emotional when leaving and spoke of looking forward to returning to the UK in a few years' time. M particularly was looking forward to coming back and reuniting with her friends."

46. Since moving to Pakistan both children have been receiving education in that country. Between January 2017 and the middle of 2019 M was not within the formal school system but was attending a madrassah for her Hifz. She was enrolled in school in September 2019, although this has been significantly disrupted due to lockdowns caused by the coronavirus pandemic. She is a year below where she would have been had she remained in the UK because of the time she has spent out of the formal school system. L has been in the formal school system throughout his time in Pakistan. However, he has had to repeat a year and I am told by the Mother that he is now two years below where he would have been had he remained in the UK. The Father has produced recent letters confirming that both children are registered at schools in Pakistan and has produced a document which purports to give details of L's recent school grades. The Mother makes these point that these recent grades (which are excellent) are wholly out of line with L's previous school performance.

The Health of the Primary Carers

47. A final matter (and somewhat curious) which needs to be recorded relates to the state of health of the paternal grandmother and aunt with whom the children are currently living. I understand that at a previous hearing on 21 April 2021 the court was informed that they were unwell and that this was relied upon by the Father in support of an application for

the return of his passport to enable him to travel to Pakistan. Arbuthnot J ordered the Father to file a statement providing an account of their illnesses by 30th April 2021. The Father did not comply with this order or provide any detail in this regard until the day of the hearing before me when two letters from Dr H, (the same doctor with whom the children are registered) were provided to the court and to the Mother's solicitors. No explanation was provided as to why it had taken so long to provide these letters (both of which were dated 1 June 2021), particularly as a third letter from Dr H of the same date (relating to L and M) had been exhibited to the Father's witness statement of 30 June 2021.

48. Save for certain details, the two letters that were disclosed at the hearing are in similar form. The letter that relates to the grandmother states that she:

> "is a patient of Hepatitis C and also a patient of Hypertension and she also had a faulty Liver and she needs continues (*sic)* treatment and medication and for that she needs regular medication and she also needs regular medical check-up and she has no other person to look after her and she needs all the time some person with her for care"

The letter for the aunt is in similar form. She is said to be a patient of "Renal Stones and Hypertension". Dr H states that she too also needs regular medical check ups and "she has no other person to look after her and she needs all the time some person to be with her".

49. For the Mother, Ms Rayner makes the point that it is extremely concerning that the two adults with whom the children are living and who are responsible for their care are said to be so ill that they both need require to have someone else with them all the time. I agree. Given the brevity of the two letters and the obvious similarities between the grandmother's and the aunt's stated needs I have some scepticism about the reliability of Dr H's evidence. That said, Mr Husain for the Father did not feel able to ask me to disregard it and I am not immediately clear what purpose would be served by Dr H exaggerating the state of the grandmother's and aunt's ill health. Even if Dr H has overstated the position, that does little to assuage my concerns for the position of L and M. Dr H is also their registered GP. Thus, if Dr H's evidence is reliable, L and M are currently living under the care of two adults who are themselves so infirm that they also require the assistance of a third party to be with them all the time. If Dr H's evidence is not reliable, then L and M are under the care of a doctor willing to provide exaggerated and unreliable accounts of his patient's condition. Neither is an acceptable state of affairs.

Conclusions on the Evidence

50. As set out above, for the purposes of the issues before me today I do not have to resolve all of the factual disputes that exist between the parents. However, I have reached the following conclusions on some of the key matters in dispute, although I recognise that I

am doing so only on the basis of written evidence and submissions and without having heard full oral evidence on these issues:

(1) I broadly accept the Mother's account of the marriage; that the Father has sought to exercise control over her and the children. This seems to me to be consistent with a large part of the other written evidence that has been placed before the court, including the proceedings brought in 2010 by the Mother's father; the messages sent by the Mother to her brother in 2016 shortly before M's departure to Pakistan; and the account M herself gives of her Father in the Instagram messages sent to her aunt (which she had no reason to suppose would ever be produced in court). The messages the Mother sent to her brother in 2016 when she appears to have been looking for a way to prevent M travelling to Pakistan, without the Father becoming aware that she herself had raised an objection are, to my mind, particularly important evidence in this regard. Whilst I note Mr Hussain's argument that I should not conclude that there had been a controlling relationship because the Mother herself did not make any complaints in this regard to the Police or other welfare bodies prior to December 2020, this does not in my view take matters any further. A key feature of a coercive or controlling relationship is that the victim may not make complaints whilst under that control.

(2) I accept the Mother's evidence that the parties' original plan had been for M to travel to Pakistan solely to undertake the Hifz and that it was intended that she would then return to England once this had been completed. The original intention regarding L was that he should go to Pakistan to support M and return when she did. This is reflected in the contemporaneous conversations that the Mother had with the children's school that have been recounted in the Assistant Principal's recent letter. Given the conclusion that I have reached regarding the Father's control over the Mother and the messages that the Mother exchanged with her brother in December 2016, I find that the Mother's consent to this arrangement was obtained through the Father's control over her. I do not accept the Father's evidence that it had always been the parties' intention that the children should remain in Pakistan until they had completed their education.

(3) I find that both L and M have both expressed recent wishes to return to England. L has done so openly in his discussions with consular officials. M made her views clear in the messages that she exchanged with her maternal aunt in November 2020. I accept that her discussion on this issue with the consular staff were more equivocal. However, I take the view that the private messages exchanged with her aunt are likely to be a more reliable expression of her true views than statements made in an interview the contents of which she knew would be revealed to both parents.

(4) I am also satisfied having regard to L's statements to consular staff and to the evidence of the Mother and her brother that members of the children's paternal family have sought to oversee conversations (both telephone and in-person) between L and M and the Mother and other members of the maternal family and that attempts have been made at time to restrict contact between the Mother and the children.

(5) Given my findings regarding the control that the Father has sought to exert over both the Mother and the children in the past, I consider that notwithstanding the Father's

denials there remains a risk that, in the absence of the FMPO, M and L, could be subject to a forced marriage in Pakistan.

Habitual Residence

51. In considering the children's habitual residence I start from the position that both M and L were born in England and Wales and lived here with their parents until they travelled to Pakistan in January and July 2017 respectively. I have no doubt that they were habitually resident in England and Wales when they left in 2017. The question I have to address is whether they have since lost that habitual residence and acquired a new habitual residence in Pakistan in the intervening period. They had been living in that jurisdiction for four, and three and a half years, respectively as at the date of issue of this application.

52. Notwithstanding the period of time that they have been living in Pakistan, Ms Rayner for the Mother sought to argue that both children remained habitually resident in England and Wales. She points to a number of factors in support of that conclusion:

(1) The social and family environment in which the children are living. Ms Rayner makes the point that the parents and other siblings have remained living in England and Wales throughout the time that M and L have spent in Pakistan. The same is true of the majority of other members of their maternal family and some of their paternal family. Although they have been living with members of their paternal family in Pakistan, the Mother argues that these were not known to the children prior to their arrival there and that the children are experiencing control and coercion at their hands. Ms Rayner also referred me to dicta of Lord Wilson in *Re B* [2016] UKSC 4l [2016] AC 6060 at [46]. Although Ms Rayner referred me to only the third of the suggestions made by Lord Wilson in that paragraph, it seems to me that all three of the point made in that passage have relevance to the issue before me:

> "The identification of a child's habitual residence is overarchingly a question of fact. In making the following three suggestions about the point at which habitual residence might be lost and gained, I offer not sub-rules but expectations which the fact-finder may well find to be unfulfilled in the case before him: (a) the deeper the child's integration in the old state, probably the less fast his achievement of the requisite degree of integration in the new state; (b) the greater the amount of adult pre-planning of the move, including pre-arrangements for the child's day-to-day life in the new state, probably the faster his achievement of that requisite degree; and (c) were all the central members of the child's life in the old state to have moved with him, probably the faster his achievement of it and, conversely, were any of them to have remained behind and thus to represent for him a continuing link with the old state, probably the less fast his achievement of it."

(2) The children's lived experience. Ms Rayner argues that both children are desperately unhappy in Pakistan and that they have never accepted that this is where they live. In

support of this, Ms Rayner points to the Instagram messages between M and her aunt and uncle to which I have already referred and in particular the aunt's evidence that M had engaged in self-harm and the fact that when the Father found out about these messages contact ceased. Ms Rayner also observes (as I have found) that the children's contact with the Mother and maternal family is supervised by the paternal family. Ms Rayner also identified that L had expressed a clear wish to return to England. She accepted that M's responses to the consular staff were less clear cut, but noted that she appeared to be concerned about what her Father would think about her answers. Ms Rayner argues that, by contrast, the Instagram messages M exchanged with her aunt and uncle show her to be clearly keen to return to the UK.

(3) The parties' original intentions. Ms Rayner argues that the parties' original intention was that M would travel to Pakistan for a limited period and purpose – to complete the Hifz, and that L travelled to support his sister during that time, and this is confirmed by the contemporaneous conversations that the Mother had with the children's school. She points to the fact that the children have remained registered with a GP surgery in the UK, to the fact that the Father continued to claim child benefits for M and L until the parents separated in December. She also notes that the children's British passports were renewed by the Father from the UK and the address given for them was the parents' UK address.

(4) Vitiation of consent. The Mother also argues that the apparent consent that she gave to the children being taken to Pakistan in the first place was vitiated by the Father's coercive control and that she effectively had no choice about it. I have already referred to the evidence that the Mother relies upon to establish her accusation of control by the Father.

(5) Broader issues. The Mother accepts that the children are able to socialise with other young people in Pakistan to some extent but argues that this is limited, and they miss their friends in England. She also observes that the children's education opportunities have also been highly limited. Overall, the Mother asserts that the children's integration into Pakistan is very limited.

53. For the Father, examining the children's social and family environment, Mr Hussain accepts that the children are living away from both of their parents and their other siblings. However, he argues they are living with members of their paternal family that are well known to them and who have now cared for them for the last 4 years. He points to visits that have been made by both the Mother and the Father to Pakistan whilst the children have been living there. L was able to return to the UK for a visit to see his parents; there was also plans for M to return for a visit last year, but these had to be cancelled because of the pandemic. The Father argues that the governing factor in relation to visits to and from the children has largely been the affordability of flights. He asserts that both he and the Mother have been able to contact the children at any time.

54. In relation to the children's lived experience in Pakistan, Mr Hussain argues that the children are content remaining in Pakistan and have not raised any real concerns with the professionals that have seen them, such as the consular staff. He dismisses L's stated

wish to return to the UK as being most likely to have arisen from an awareness of and anxiety surrounding the the conflict that exists between the parents. He points to M's statements to the consular staff as demonstrating a wish to remain in Pakistan to finish her education and having no fear of a forced marriage. As to the parties' original intentions he arguers that it was always the parties' joint plan that the children would finish their education in Pakistan that that there had been a plan that the family as a whole would relocate to Pakistan this year.

Discussion – Habitual Residence

55. For the reasons that I have already set out, I broadly accept the Mother's evidence in relation to (a) the coercive nature of her relationship with the Father; (b) the fact that the M and L's stay in Pakistan was originally intended to be for a limited purpose and period, until M had completed her Hifz; (c) the fact that the Instagram messages exchanged between M and her aunt and uncle last November are reliable expressions of her wishes and feelings unfiltered by members of her paternal family; and (d) the fact that communication between L and M and their Mother and other maternal relatives has been controlled and mediated by members of the Father's family.

56. Ms Rayner has done her best with the material that is available to her to argue that the children have remained habitually resident in England and Wales throughout the period that they have remained in Pakistan. However, I have concluded that the children have now acquired a habitual residence in Pakistan, and had done so prior to the issue of these proceedings. They have both lived in that country now for substantial periods of time. They live with members of their extended family. They go to school there. They are registered with a doctor there. They both have friends in Pakistan. L talks about meeting his friends outside school; M describes her friends as having supported her through difficult times. In my judgment these are all matters pointing firmly towards both children having acquired some degree of integration in a social and family environment. It is, of course, established that it is not necessary for the child to have become fully integrated before becoming habitually resident there and given the factors identified above, I consider that, it is clear that there is a considerable measure of stability to the children's residence in Pakistan.

57. I entirely accept that the factors do not all point one way. The fact that the children's parents and younger siblings have remained in the UK, as Lord Wilson observed in *Re B (A Child)* will have meant that acquisition of a habitual residence in Pakistan took longer than it would have done if the family had moved there together as a unit. Likewise, it is clear that both parents have behaved at times in a manner inconsistent with the children having acquired a habitual residence in Pakistan (such as the Father continuing to claim child benefit for them in the UK and the Mother retaining their registration with a UK GP). The children have also expressed a wish to return to the UK (L to the FCDO Consular staff; M to her aunt). I have also accepted the Mother's evidence that it was originally intended that the children's stay in Pakistan should be for a limited purpose and

period, and that her consent to even that was obtained through the exercise of the Father's control.

58. Nonetheless, the intentions of the parents (and the children) are merely one part of the factual inquiry that the court must undertake. Ultimately, it is important that the court should not lose sight of the wood for the trees. Standing back for a moment, it is clear to me on the evidence that given the circumstances of the children's lives in Pakistan, the stability of their day to day experience in that country and the length of time that they have now spent there, they are habitually resident there.

Discussion – the Inherent Jurisdiction

59. Having concluded that L and M are (and were, as at 18 January 2021) habitually resident in Pakistan, I now turn to consider Ms Rayner's secondary position; that I should exercise this court's *parens patriae* jurisdiction to order their return to England and Wales on the basis of their British Citizenship. I propose to address this issue in two stages. First to consider whether, having regard to the relevant authorities, I consider that I should exercise this jurisdiction and secondly, if I am minded to exercise that discretion, to consider whether the orders sought by Ms Rayner are consistent with the restriction on the exercise of the inherent jurisdiction found at s2(3) of the Family Law Act 1986.

60. As set out above, and accepted by both counsel, the threshold for the exercise of the court's residual *parens patriae* jurisdiction is a substantive one. I cannot make an order simply because I consider it to be in the child's best interests. I can only make an order if I am satisfied that there exist circumstances which are "sufficiently compelling to require or make it necessary that the court should exercise its protective jurisdiction".

61. Both counsel are also agreed, and I accept, that I have to consider the position of L and M separately. It is possible that the conditions for the exercise of the inherent jurisdiction could be made out in respect of one but not the other. In practice, most of the factors that have led to my decision are common to both children. Whilst I have identified (as set out below) one important factor relates primarily to M, rather than L directly, they are ultimately living in the same surroundings and cared for by the same people and it seems to me that if I am satisfied that the circumstances for the exercise of the court's *parens patriae* have arisen in relation to one child, it would be extremely difficult for me to reach a different conclusion in relation to the other.

62. I have concluded that this is a case where the circumstances are sufficiently compelling to require, or make it necessary, that I should exercise the court's inherent jurisdiction and order the return of both L and M to England and Wales for their protection. In reaching this conclusion I have taken into account the totality of the evidence that has been presented by and on behalf of both parents' and their respective counsel's submissions. The following points are in my view of particular importance.

63. First, and in my view crucially, both parents and the children's other siblings are all present in England and Wales. There is currently no one present in Pakistan who has parental responsibility for either M or L. Although the Guardian Judge in Pakistan appears to have appointed the children's paternal grandmother to be their guardian for educational and other "governmental" or "departmental" matters (translations vary) this appears to be a limited appointment focussed on an ability to represent or act on behalf of the children in dealings with schools and government authorities. Neither counsel suggested that it confers rights equivalent to parental responsibility under the Children Act 1989 or the 1996 Hague Convention upon her.

64. Moreover, as set out above, even these limited powers appear to have been conferred upon the grandmother without notice of her application having been given to either parent.

65. I am also extremely concerned by the Instagram messages that M sent to her maternal aunt in November 2020. In these she refers to the possibility of suicide and talks about harming herself with a kitchen knife, sharing a photograph in which a scar is visible on her wrist. Whilst I accept that M did not repeat these thoughts when interviewed by FCDO consular staff, I do not find this surprising. I am sure that it is much easier for a girl in M's position to express her feelings when instant messaging a relative whom she knows rather than in an interview (however carefully conducted) with a stranger whom she has never met before. In my judgment the fact that a 12 year was sending messages in such terms is a matter of grave concern and emphasises the need for her to be in the same jurisdiction as a person who has parental responsibility for her.

66. I am also concerned about the apparent state of health of the grandmother and aunt. If they are genuinely as unwell as Dr H presents such that they themselves need a third party with them at all times, then obvious and serious concerns arise about their ability to provide suitable care for L or M. Alternatively, if Dr H has exaggerated their health problems, then it is extremely concerning that the doctor with whom L and M are registered with would act in this manner. On either footing this reinforces my view that this court is required to intervene to provide protection to these children under its *parens patriae* jurisdiction.

67. Another factor which, whilst not by itself justifying the intervention of this court, adds weight to the conclusion that I have reached, is the evidence of L (in his interview with consular staff) that members of his paternal family are with him when he speaks to his Mother and effectively monitor his conversations. I consider that it is likely that the same situation pertains to M, notwithstanding the apparent statements to the contrary that she and L made in the Pakistan legal proceedings. I have also considered M's statement that there was a period of time following her parents' separation during which she was restricted from having telephone contact with her Mother. Again, all of these matters point towards a need for the children to be in the same jurisdiction as a person with parental responsibility. I also take into account that, unlike the position in *Re M* where the

application related to a 12 year child who had lived in Algeria virtually all her life, both M and L have lived in the UK for the greater part of their lives and have previously attended school here. Neither counsel has suggested to me that a return order would pose any significant risk of harm to either child and I do not consider that it would.

68. Both parties in their submissions made reference to the three reasons for caution identified by Baroness Hale and Lord Toulson in *Re B (A Child)* at [59] that I have already mentioned. For the reasons set out by Moylan LJ in *Re M* at [94] *et seq* I accept that these reasons present difficulties in using them as a guide to the exercise of the inherent jurisdiction. Nonetheless I have considered them in the context of this case, and do not consider that any of them detract from the conclusion that I have already reached that it is necessary for me to exercise the inherent jurisdiction to protect M and L.

69. In the present case, the first reason, the risk of conflict with a jurisdiction scheme applicable between the countries in question, does not apply as Pakistan is a country with which the UK has no applicable reciprocal jurisdictional scheme.

70. So far as the second reason (the risk of conflicting decisions) is concerned I accept the Mother's argument that this is a case where she will struggle to invoke the jurisdiction of the Pakistan courts in a meaningful way given the difficulties posed by instructing and paying for lawyers in a foreign jurisdiction. Whilst I accept that limited legal proceedings relating to the children are on foot in Pakistan, having been instigated by the paternal grandmother, I note that these have to date involved neither parent and have been confined to relative narrow issues regarding the appointment of a guardian to deal with educational and governmental matters only. Moreover, to the extent that the Pakistan court has sought to make an order preventing the children's removal from Pakistan, I note that this was expressly made subject to any alternative order made by any other competent court / authority. As such the risk of conflicting substantive decisions appears to me to be limited in this case, and certainly do not outweigh the other factors pointing to the necessity of the court's intervention to protect the children.

71. As to the third reason, the risk that an order may prove unenforceable, this is unlikely to apply in the present case. The Father is present in England and Wales, a Passport Order having been made by Williams J on 18 January 2021, and there are thus steps that this court can take to persuade him to obey any order that it makes.

72. In *Re K v H (Exercise of Jurisdiction Based on Nationality)* [2021] EWHC 1918 (Fam) MacDonald J also took into account the fact, having regard to *forum conveniens* principles, that the convenient forum for the determination of the dispute in that case was the Sudan. In that case there had been welfare proceedings in the Sudan that had been ongoing for three years prior to the applicant Mother's application to invoke the inherent jurisdiction and both parties had already accepted the jurisdiction of the Sudanese Courts. By contrast, given that both parents in the present case are resident in England and Wales, there are obvious arguments that this would be the more convenient forum for the

determination of any dispute. However, I did not hear detailed argument on this point, and give this point only limited weight in my conclusions.

73. Finally then I turn to consider the terms of the order sought by Ms Rayner and whether it can lawfully be made under the inherent jurisdiction having regard to the terms of section 2(3) of the Family Law Act 1986. The Mother seeks an order making M and L wards of court and ordering their return to England and Wales. I understand that in the first instance she would be willing for the return to be effected by a member of the paternal family (subject to agreement on their identity). However, if this order is not complied with, she would seek orders to enable the return to be effected by a member of the Mother's family. She also asks me to order that the costs of the return should be met by the Father.

74. In *Re M*, one of the criticisms made by the Court of Appeal of the first-instance judge's order was that the purpose of the order was to deal with the issue of who should care for the child. The Court of Appeal judgment records at [136] that an order providing for the child's care needed to be made before the child arrived here because the necessary arrangements needed to be in place but observes that such an order would have conflicted with the provisions of the 1986 Act (or if it gave care to a local authority with the provisions of section 100 of the children Act 1989).

75. In the present case any return that I direct will have to be carried out in accordance with the relevant regulations that apply to international travel as a result of the coronavirus pandemic. Pakistan is currently on the UK Government's "red list" meaning that upon arrival in accordance with my order the children will need to quarantine for 10 days in a managed quarantine hotel with whoever has accompanied them. That person will need to themselves be a British national or have residence rights in the UK. Government guidance indicates that it is not presently possible for the children to travel to UK unaccompanied without prior permission from the Department of Health and Social Care. The obligation to quarantine is a statutory one imposed by the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 (SI 2021 /582).

76. Given this statutory requirement to quarantine it seems to me that I can make the order sought by Ms Rayner without breaching the terms of section 2(3) of the Family Law Act 1986. I will make the children wards of court and, I will direct their return to the UK. The order will include an express recital that I consider it necessary to exercise the inherent jurisdiction for the children's protection. My order will provide for the children's return to be effected in accordance with the relevant statutory regulations. This will mean that the children will need to quarantine in the first instance with the person who accompanies them. I will direct that the matter should then be listed for an urgent directions hearing before a High Court judge within 48 hours of the children's arrival in England.

77. As to the costs of the return and quarantine, I am satisfied that my order should provide for these to be met by the Father. As I have found above, the parties' original intention was that M and L should return to the UK once M had completed her Hifz. It is the Father who has been responsible for ensuring that they have remained in Pakistan beyond that date. Whilst both parties assert that they are of limited means, I also accept the Mother's evidence that the Father had effective control of her finances through the marriage and I consider that of the two parents he is the more likely to be in a position to meet this liability. I consider that he should meet the costs of the children's return and the applicable period of quarantine.