



Neutral Citation Number: [2023] EWHC 195 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/02/2023

Before:

MRS JUSTICE KNOWLES

Between:

P
- and -
Q

Applicant

Respondent

Re P (Appeal: Forced Marriage Protection Order: Jurisdiction)

Mr Teertha Gupta KC and Miss Naima Asif (instructed by **Dawson Cornwell**) for the
Applicant

The Respondent was not present or represented

Hearing date: 9 January 2023

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

THE HONOURABLE MRS JUSTICE KNOWLES

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.

Mrs Justice Knowles:

Introduction

1. On 2 November 2022 District Judge Orchover (“the Judge”) dismissed an application for a Forced Marriage Protection Order (“FMPO”) pursuant to Part 4A of the Family Law Act 1996 (“the Act”) on the basis that the Act prevented her from making such an order to protect the Appellant, because the Appellant was neither physically present in this jurisdiction nor a British citizen. The Appellant (hereinafter referred to as “P”) sought permission to appeal that decision. As the grounds of appeal raised some important matters of jurisdiction, the application for permission was referred to the Family Division for determination and, on 25 November 2022, Sir Jonathan Cohen - the judge in charge of appeals in the Division - gave directions for an oral permission hearing with the appeal to follow immediately if permission was granted. The matter was listed before me originally on 8 December 2022 but, when a hearing on that date was not practicable, it was re-listed on 9 January 2023.
2. The Respondent is P’s husband (hereinafter referred to as “Q”). He played no part in the proceedings before the Judge despite being served with notice of the proceedings in the Central Family Court. Indeed, the Judge’s clerk telephoned Q on 1 November 2022 and explained who she was and why she was ringing but, before she could speak to Q, the call was terminated. Persistent efforts were made to personally serve Q with notice of the appeal and the hearing date and the directions made by Sir Jonathan Cohen, but he failed to respond to numerous telephone calls or attendance at his home address. Service was eventually effected by posting the relevant documents through the letterbox at his home address. All subsequent efforts to communicate with Q have met with a deafening silence: he failed to respond to emails sent by my clerk and by those representing P in respect of this hearing. I concluded that Q knew about the proceedings and about his right to be heard but did not wish to play any part in the appeal hearing. I considered very carefully whether I should proceed in Q’s absence given the important, though narrow, jurisdictional issues raised by this appeal and concluded that I should as he had been given every opportunity to involve himself in the proceedings but had chosen not to do so.
3. The appeal hearing took place remotely given that P was resident in the United States and, as expected by reason of his past conduct, Q did not attend. I read the appeal and authorities bundles and also received an oral update as to P’s personal circumstances from Mr Gupta KC. During the hearing, I indicated that I would give permission on two of the three grounds of appeal advanced and I heard more detailed submissions on those two grounds. At the conclusion of submissions, I indicated that I would reserve my judgment for a brief period.

4. In summary, I allowed P's appeal, holding that the judge did have jurisdiction to make a FMPO to protect P in circumstances where Q was a British citizen and was habitually resident here. I made a FMPO to protect P from further harassment and intimidation by Q.
5. I wish to record my thanks to Mr Gupta KC and Miss Asif for representing P pro bono. The same thanks are also due to P's solicitors, Dawson Cornwell. Without the willingness of counsel and solicitors to work for no payment, some parties in family proceedings would be unrepresented in circumstances where they could not hope to advance their case as ably as it deserves.

Background

6. P is Pakistani by descent but was born in the United States of America and is a US citizen. She grew up in the United States and is now 27 years old. She has two brothers and a sister. Q is P's first cousin, and he is either 39 or 40 years old. He was born in Pakistan and has dual British and Pakistani nationality. He lives in this jurisdiction and was living here immediately prior to his marriage to P.
7. P began to attend college in August 2013, but her studies were interrupted by the death of her father in November 2013, causing her to take leave of absence. In April 2014, P's mother told her that the family would be travelling to visit her father's grave in Pakistan. The plan was for them to stay in Q's family home and, on arrival in Pakistan, P and her family travelled there. On 28 May 2014, P overheard a discussion to the effect that her older brother would be marrying Q's sister. This came as something of a surprise as neither P nor her siblings had any idea that marriages were being arranged for them. The following day, P travelled to the ancestral home of her mother where P observed preparations for a large feast, but assumed this was in connection with the ceremonies surrounding her father's death. P was then told that she should get dressed and prepared for her wedding to Q. P had not been told of any plan to marry her to Q - a relative she had never met before - and found herself unable to resist, having no money and no access to a telephone. She had no idea how to summon help in these circumstances. Her mother told P that, if she did not comply, she would lock her in the bedroom until the wedding ceremony. During P's childhood, P's mother had always been clear that she would arrange marriages for her children as this was in accordance with Islam. P was frightened of her mother who had been physically and emotionally abusive to her in the past.
8. Later that evening, an imam came to the property to perform the marriage ceremony. Accompanied by her mother, the imam came to see P to ask if she consented to the marriage. P said she did because she was afraid of what might happen to her if she did not consent. The nikahnama (marriage contract) was

written in Urdu, a language which P cannot read, and photographs were also taken to support an application for a UK spousal visa for P.

9. Following the marriage ceremony, P and Q returned to his family home and Q raped P on their wedding night despite her protestations that she did not consent to have sex with him. Q continued to rape P each night until he returned to the UK on 6 June 2014. P remained with Q's family and was not allowed to return to the United States. Her mother also withheld her passport to stop her leaving. P felt trapped and did not know what she could do, fearing she might bring shame upon the family if she were to repudiate the marriage. Members of Q's family threatened P that, if she did anything wrong or dishonoured Q's family, there would be serious repercussions for her.
10. Q told P that he wanted her to come to the UK, but told her not to tell the Border Force that she was married to him and instructed her to say that she was visiting a cousin. P arrived in the UK on 18 July 2014 and was questioned at length by Border Force officials, eventually admitting that she was married to Q. P was denied entry to the UK and was booked by Border Force officials on a flight to the United States on 21 July 2014. However, she was permitted to stay at Q's home until that flight as she had nowhere else to go. P was raped by Q each night until her departure on 21 July 2014. Upon her arrival in the United States, P stayed with friends and discovered that she was pregnant. She came under considerable pressure from her family to reconcile with Q and, by November 2014, P was feeling suicidal on account of the abuse she had experienced from Q and the pressure that had been brought to bear on her by her family. Later that month and also in January 2015, P found the strength to tell Q she wanted a divorce and did not want him to contact her. P gave birth to baby boy - hereinafter referred to as Y - in April 2015. Y has had no direct or indirect contact with his father at all.
11. Eventually, P was reconciled with her mother who supported her in seeking a divorce from Q. P sought advice from different imams about a divorce but was advised that her position was complex because the marriage had been forced upon her. In 2018, P obtained advice from a legal centre and applied for a nullity petition in the United States. Q was served but never acknowledged the petition. In December 2021, the court dismissed the petition as neither P nor Q were present at the hearing. P was not present because the court had changed the date of the hearing and had failed to inform her about the new date.
12. Though P and Q last saw each other in July 2014, from about 2018 Q has tried to contact P by ringing her from a variety of UK phone numbers. This behaviour has made P very frightened for her safety and that of Y. She suffers from post-traumatic stress disorder and, despite therapy, every attempt by Q to contact P has been traumatising for her. In January 2022, P received a notification on Instagram that Q wanted to follow her, so she blocked him. She then found out

that he had been following her friends and co-workers at her place of employment. He also followed her place of employment on Instagram. P told her employer, the administrator of her housing, and Y's school that she was worried about her safety in consequence of Q's behaviour. More recently, Q has been sending her friend requests on social media. P has been unable to obtain relief from harassment by Q in the United States because he resides in the UK and the police in the United States will take no action against him.

13. P issued proceedings in this jurisdiction in October 2022 and the matter came before the Judge on 1 November 2022. The Judge adjourned the matter until 2 November to allow P's legal representatives an opportunity to clarify the question of jurisdiction which was clearly troubling her.

The Judge's Decision

14. In a short ruling, the Judge set out Q's failure to involve himself in the proceedings and then summarised the background set out in P's statement. She made it plain that she accepted the contents of that statement, in particular that P had been forced into marriage with Q. The Judge then indicated that she did not believe she had jurisdiction to make the order sought by P as P was neither a resident nor a citizen of the UK. She stated as follows:

“... I've been referred to Re K (Forced Marriage: Passport Order) [2020] EWCA Civ 190 which dealt with the forced marriage protection order jurisdiction where the subject was an adult who does or does not have mental capacity. The difficulty with that case is that it is completely different on the facts and the applicant was a British citizen.

5. I've discussed this case with HHJ Sapnara who was one of the architects of the FMPO as to whether or not there is some mechanism by which I might find sitting as Deputy Judge of the High Court to have any jurisdiction. There is no doubt that the applicant is a deserving litigant. Re K does not help Ms Asif but what she submits is this, that the legislation does not prohibit me making an order, but it is plain on the face of the FMPO legislation who can be protected. The FMPO legislation was inserted in the FLA 1996 [Family Law Act]. It was inserted by [the] Forced Marriage Civil Protection Act 2007. Nowhere does it suggest that the Court, most unusually, can make orders to protect foreign citizens who are not in the UK. If [P] was in the UK I would be able to make [an] order. She is in [the United States] and it would be expensive and troublesome for her to travel, however she is not in the jurisdiction; neither is she a British citizen.

6. I have a very wide discretion as to the nature and extent of my jurisdiction. I read from the Red Book [The Family Court Practice]; I

have power to make wide prohibitive orders to safeguard the person to be protected. Applications and other occasions for making orders is dealt with under section 63C FLA 1996. The court may make [an] order [on an] application being made by the person to be protected or that, of course, of a relevant third party. When I look at [the] note underneath that part of [the] legislation, the person to be protected; the applicant must be able to establish, especially when the person is not within [the] jurisdiction, that the applicant and respondent are in direct contact and the PTBP [person to be protected] had been living in [the] jurisdiction shortly before the application was made. In Re KBH (Forced Marriage Protection Order: Non-resident British Citizen) [2018] EWHC 2611 (Fam) the Court dealt with protection for a non-resident person. In that case the application was made by siblings who were British citizens and [the] Court declined to make orders. There is an enormous amount regarding orders for people with or without capacity. There is no question this legislation is not designed nor is likely to be designed to protect foreign citizens. The applicant either needs to be in this jurisdiction or a citizen and on that basis I decline the application as I do not have jurisdiction to hear it.

7. I make it plain for [the] avoidance of doubt, in the hope that it may help the applicant, if I did have jurisdiction, I would have no difficulty in finding this was a forced marriage and that the applicant needs protection from harassing behaviour.”

15. The note of the Judge’s ruling was hastily prepared and contained a number of abbreviations and omitted words which I have inserted and explained in the extract quoted above.

Grounds of Appeal

16. Mr Gupta KC advanced three grounds of appeal, two of which addressed the difficulties with the Judge’s decision and one of which contended that there were compelling reasons for the appeal to be heard. The grounds were as follows:
 - a) The Learned Judge was wrong in law in refusing the application on the ground that she did not have jurisdiction to grant a Forced Marriage Protection Order because the applicant was neither physically present in England nor a British citizen;
 - b) The Learned Judge erred in concluding that she could not grant the order sought by the applicant when the respondent, whose behaviour was the subject of the application, was both a British citizen and physically present in the United Kingdom;

- c) (i) A serious procedural irregularity occurred when the Learned Judge conferred with and relied on the statutory interpretation of another judge (in Chambers prior to the hearing commencing on 2 November 2022), in reaching her conclusion that she did not have jurisdiction to make the order sought, thereby presenting Counsel with a *fait accompli*; and (ii) further, the protective/injunctive jurisdiction of the Forced Marriage (Civil Protection) Act 2007 needed to be proactively considered. It was extraterritorial in its application. This was particularly important in a world of global social media and other internet platforms, and this appeal raised an important point of public policy, especially considering the sensitive nature of this case which concerned allegations of forced marriage and rape.
17. In exchanges with Mr Gupta KC, I indicated that I would grant permission on grounds 1 and 2 since he had established in accordance with rule 30(3)(7)(a) of the Family Procedure Rules 2010 that the appeal had a real prospect of success. Further, I was persuaded that the appeal raised an important point of public policy as set out in ground (c)(ii). However, I was not persuaded that ground (c)(i), which was critical of the Judge, crossed the necessary threshold for permission in circumstances where counsel's perception of the Judge's conduct was the only basis upon which this ground was advanced. There was nothing in the judgment which indicated that the Judge had not come to her own conclusions, having considered the matter carefully in the light of counsel's submissions. Mr Gupta KC did not dispute that analysis.
18. I propose to summarise the submissions made by Mr Gupta KC in support of the grounds on which permission was given. The court's jurisdiction to make protective orders to protect a foreign national from the behaviour of a British national was the nub of the case. Mr Gupta KC pointed to the powers set out in the Act to protect a person from being forced into marriage or to protect a person who had already been forced into marriage and he observed that the legislation was drafted in the widest and most flexible terms. The only specific requirement for the court to consider when making a FMPO was to take account of "*all the circumstances*". There was nothing in the Act which required the court to apply any given criteria beyond the matters identified in s.63(A)(2), these being "*all the circumstances including the need to secure the health, safety and well-being of the person to be protected*". Mr Gupta KC submitted that the judge was wrong to impose a threshold criteria which went beyond the matters identified in s.63A(2). Had Parliament wished to limit the court's jurisdiction by reference to physical presence and/or citizenship, it would and could have done so. The wording of the legislation permitted applications to be made by applicants who were neither British citizens nor physically present in the jurisdiction at the time

the application was made. That wording was consistent with the spirit and purpose of the legislation.

19. Mr Gupta KC relied on paragraph 17 of the decision of Sir Nicholas Wall P in *Chief Constable and another v YK and others* [2010] EWHC 2438 (Fam) which stated that the Act was extraterritorial in its application. He also drew the court's attention to s.121 of the Antisocial Behaviour, Crime and Policing Act 2014 which created the separate criminal offence of forced marriage. Section 121(7) explicitly gave extraterritorial effect to offences committed under s.121(1) by providing that an offence was committed when, if at the time of the conduct or deception, (a) the person or the victim or both of them were in England or Wales; (b) neither the person nor the victim was in England or Wales but at least one of them was habitually resident in England and Wales; or (c) neither the person nor the victim was in the United Kingdom but at least one of them is a UK national. By analogy, Mr Gupta submitted that the jurisdiction of the Act thus encompassed protection for a foreign national and non-resident applicant such as P if, leaving aside presence in this jurisdiction at the time of the acts complained about, the respondent was either habitually resident in this jurisdiction or a British citizen.
20. Mr Gupta KC also submitted that the Act would fail to achieve its objectives if an applicant had to be physically present or a British citizen in order to obtain protection against a respondent. The only recourse left open to such applicants would be through the criminal courts. Non-British victims living outside the UK, who had been forced into marriage with respondents who lived in this jurisdiction and/or were British nationals, would be left without civil protection. He invited me to interpret the Act in a way which was compatible with human rights law given that forced marriage was a serious interference with the rights guaranteed under Articles 3, 4 and 8 of the European Convention on Human Rights. Finally, Mr Gupta KC submitted that the interpretation for which he contended was compatible with the international treaty obligations entered into by the United Kingdom which aimed to protect adults and children from forced marriage and domestic violence.
21. If I was minded to allow the appeal, Mr Gupta KC invited me to remake the decision and to grant an order protecting P from ongoing harassment by Q.

The Legal Framework

22. The Forced Marriage (Civil Protection) Act 2007 amended the 1996 Act to insert sections 63A-63S and the relevant sections for the purpose of this judgment are contained in sections 63A-63CA. The 1996 Act was further amended by s.120 of the Anti-Social Behaviour, Crime and Policing Act 2014 to include s.63CA which concerns the offence of breaching an order.

23. Section 63A - entitled “**Forced Marriage Protection Orders**” - reads as follows:

- (1) The court may make an order for the purposes of protecting –
 - a) a person from being forced into a marriage or from any attempt to be forced into a marriage; or
 - b) a person who has been forced into a marriage.
- (2) In deciding whether to exercise its powers under this section and, if so, in what manner, the court must have regard to all the circumstances including the need to secure the health, safety and well-being of the person to be protected.
- (3) In ascertaining that person’s well-being, the court must, in particular, have such regard to the person’s wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate in the light of the person’s age and understanding.
- (4) For the purposes of this Part a person (“A”) is forced into a marriage if another person (“B”) forces A to enter into a marriage (whether with B or another person) without A’s free and full consent.
- (5) For the purposes of subsection (4) it does not matter whether the conduct of B which forces A enter into a marriage is directed against A, B or another person.
- (6) In this Part –

“force” includes coerced by threats or other psychological means (and related expressions are to be read accordingly); and

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

24. Section 63B provides for the contents of orders as follows:

- (1) A forced marriage protection order may contain –
 - a) such prohibitions, restrictions or requirements; and
 - b) such other terms:

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

- (2) The terms of such orders may, in particular, relate to –

- a) conduct outside England and Wales as well as (or instead of) conduct within England and Wales;
 - b) respondents who are, or may become, involved in other respects as well as (or instead of) respondents who force or attempt to force, or may force or attempt to force, a person to enter into a marriage;
 - c) other persons who are, or may become, involved in other respects as well as respondents of any kind.
- (3) For the purposes of subsection (2) examples of involvement in other respects are –
- a) aiding, abetting, counselling, procuring, encouraging or assisting another person to force, or to attempt to force, a person to enter into a marriage; or
 - b) conspiring to force, or to attempt force, a person to enter into a marriage.
25. Section 63C - entitled “**Applications and other occasions for making orders**” - provides relevantly as follows:
- (1) The court may make a forced marriage protection order –
- a) on an application being made to it; or
 - b) without an application being made to it but in the circumstances mentioned in subsection (6).
- (2) An application may be made by –
- a) the person who is to be protected by the order; or
 - b) a relevant third party.
- (3) An application may be made by any other person with the leave of the court.
- (4) In deciding whether to grant leave, the court must have regard to all the circumstances including –
- a) the applicant’s connection with the person to be protected;
 - b) the applicant’s knowledge of the circumstances of the person to be protected; and

- c) the wishes and feelings of the person to be protected so far as they are reasonably ascertainable and so far as the court considers it appropriate, in the light of the person's age and understanding, to have regard to them.
 - (5) An application under this section may be made in other family proceedings or without any other family proceedings being instituted.
 - (6) The circumstances in which the court may make an order without an application being made are where –
 - a) any other family proceedings are before the court (“the current proceedings”);
 - b) the court considers that a forced marriage protection order should be made to protect a person (whether or not a party to the current proceedings); and
 - c) a person who would be a respondent to any such proceedings for a forced marriage protection order is a party to the current proceedings.
 - (7) ...
 - (8) ...
26. Section 63CA is entitled “**Offence of breaching order**” and, relevantly, reads as follows:
- (1) A person who without reasonable excuse does anything that the person is prohibited from doing by a forced marriage protection order is guilty of an offence.
 - (2) In the case of a forced marriage protection order made by virtue of section 63D(1), a person can be guilty of an offence under this section only in respect of conduct engaged in at a time when the person was aware of the existence of the order.
 - (3) Where a person is convicted of an offence under this section in respect of any conduct, that conduct is not punishable as a contempt of court.
 - (4) A person cannot be convicted of an offence under this section in respect of any conduct which has been punished as a contempt of court.
 - (5) A person guilty of an offence under this section is liable –

- a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;
- b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine, or both.

(6) ...

(7) ...

I note that section 63D concerns the making of ex parte orders.

27. Section 63CA was inserted into the Act by s.120 of the Anti-Social Behaviour, Crime and Policing Act 2014. Section 121 of that Act created the criminal offence of forced marriage in England and Wales and its provisions, where relevant, are germane to the issues in this appeal. It reads as follows:

(1) A person commits an offence under the law of England and Wales if he or she –

- a) uses violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage, and
- b) believes, or ought reasonably to believe, that the conduct may cause the other person to enter into the marriage without free and full consent.

(2) In relation to a victim who lacks capacity to consent to marriage, the offence under subsection (1) is capable of being committed by any conduct carried out for the purpose of causing the victim to enter into a marriage (whether or not the conduct amounts to violence, threats or any other form of coercion).

(3) A person commits an offence under the law of England and Wales if he or she –

- a) practices any form of deception, and
- b) intends the other person to be subjected to conduct outside the United Kingdom that is an offence under subsection (1) or would be an offence under that subsection if the victim were in England or Wales.

(4) “Marriage” means any religious or civil ceremony of marriage (whether or not legally binding).

- (5) “Lacks capacity” means lacks capacity within the meaning of the Mental Capacity Act 2005.
- (6) It is irrelevant whether the conduct mentioned in paragraph (a) of subsection (1) is directed at the victim of the offence under that subsection or another person.
- (7) A person commits an offence under subsection (1) or (3) only if, at the time of the conduct or deception –
- a) the person or the victim or both of them are in England or Wales,
 - b) neither the person nor the victim is in England or Wales but at least one of them is habitually resident in England and Wales, or
 - c) neither the person nor the victim is in the United Kingdom but at least one of them is a UK national.
28. The first reported family case to comment upon FMPOs was *Chief Constable and AA v YK and others* [2010] EWHC 2438 (Fam), a decision by the then President of the Family Division, Sir Nicholas Wall. After setting out sections 63A-63G, Sir Nicholas Wall P commented that:

“17 Two aspects of the Act are immediately striking. The first is that it is very widely drawn. It is extra-territorial in its application and orders may be both made and discharged ex parte. Secondly, the Act plainly creates a protective/injunctive jurisdiction. Its object is to prevent forced marriages by protecting those who may be, or have been, forced into marriage....”

He went on to state that:

“18 Although the court is required to take into account “all the circumstances” when deciding whether or not to make an order there is nothing in the Act which requires the court to apply any given criteria beyond the matters identified in section 63A(2). There is, moreover, nothing in the Act to stop the court acting on hearsay evidence, or information provided to it by the police which has not been disclosed to the respondents.”

29. In *Re K (Forced Marriage: Passport Orders)* [2020] EWCA Civ 190 (“*Re K*”), the Court of Appeal emphasised the wide ranging and flexible jurisdiction of the family court to make forced marriage protection orders by stating as follows:

“30 All of the parties are agreed that the legislation is cast in the widest and most flexible terms. FLA 1996, s 64A simply gives the court jurisdiction to make an order for the purposes of protecting a person from being forced into a marriage, or from any attempt to do so, or protecting a person who has been forced into a marriage. The court must “have regard to all the circumstances including the need to secure the health, safety and well-being of the person to be protected” (s 63A(2)).

31 By FLA 1996, s 63A(3) there is a requirement that “in ascertaining that person’s well-being, the court must, in particular, have regard to the person’s wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate in the light of the person’s age and understanding.”

32 In contrast to some other similar provisions, Parliament has neither imposed a threshold criteria nor a checklist of factors that the court is required to consider. Further, in the context of the present case, it is of note that the person’s “wishes and feelings” are expressly positioned as part of “that person’s well-being” rather than as a specific factor in their own right. Further, with regards to “wishes and feelings” the court is given a wide discretion to have regard to that factor “as the court considers appropriate in the light of the person’s age and understanding”.

33 The court was taken to extracts from the Parliamentary debate as recorded in Hansard. The purpose of that reference was not to assist in interpretation but merely to illustrate that the broad and flexible jurisdiction given to the court by the wording of the Statute reflects the tone and content of the debate.

34 The jurisdiction is for the purposes of protecting “a person” (s 63A(1)). The word “person” is not further defined. It is not limited by any reference to age. Importantly, there is no reference to the person’s capacity to make decisions...”.

30. In *Al-Jeffrey v Al-Jeffrey (Vulnerable Adult: British Citizen)* [2016] EWHC 2151 (Fam), Holman J considered whether he should make a forced marriage protection order with respect to a 21 year old dual British and Saudi Arabian citizen who had been living in Saudi Arabia since the age of almost 17. During the hearing, it was accepted by counsel that there was no current justification for such an order. Holman J was therefore not obliged to express any opinion on the territorial reach of the Act to protect the young woman concerned. However, he drew the attention of the father to the criminal offence of forced marriage contained in s.121 of the Anti-Social Behaviour, Crime, and Policing Act 2014 which may be committed anywhere in the world if the victim is a UK

national. Holman J went on to invoke the inherent jurisdiction to protect vulnerable adults in this particular case by making mandatory orders against the father, requiring him to permit and facilitate the return of his daughter to this jurisdiction. He did so on the basis that this jurisdiction could be exercised - albeit with caution and circumspection - because the daughter was a British citizen who required protection even though that protection was not by way of an FMPO.

31. In *KBH and Others (Forced Marriage Protection Order: Non-resident British Citizen)* [2018] EWHC 2611 (Fam), Holman J refused to make FMPOs with respect to 3 applicant children, all of whom were living in Somalia at the time of the application. At least two of the children were British citizens and the third was probably entitled to British citizenship because her mother was a British citizen at the time of her birth. The basis for Holman J's refusal was because the court was not satisfied that there was a properly constituted set of proceedings since the solicitor making the application was without instructions from or on behalf of any of the children named as applicants for the FMPO. In refusing the application, Holman J commented that, if it was the view of Her Majesty's Government, through the Foreign and Commonwealth Office, that the British Government should itself proactively take steps to protect anyone who is a British citizen, wherever they may be, from forced marriage, even if their current and recent connection with United Kingdom was that of citizenship alone, it should apply for protective measures rather than require the people concerned to do so.

32. *Re K* stated unequivocally that "*forced marriage is a fundamental abuse of human rights, a form of domestic abuse and, since 2014, a criminal offence in England and Wales*" [para. 17]. It was not a problem confined to children or adults who lacked capacity and the statistics showed that one in every five victims was male. The Secretary of State for Justice submitted to the Court of Appeal that forced marriage remained a pressing social problem. The Court of Appeal described precisely the abusive nature of forced marriage in paragraph 24:

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

pregnancy and childbearing. The fate of some victims of forced marriage is even worse and may include murder, other “honour” crime or suicide.”

33. A forced marriage is likely to include behaviour sufficient to breach Article 3 of the European Convention on Human Rights (“ECHR”) which provides that “no one shall be subjected to torture or to inhuman or degrading treatment or punishment” (see paragraph 25 of *Re K*). The European Court of Human Rights has held that domestic abuse falls within the ambit of Article 3 (see *Volodina v Russia*, Application No 41261/17). In *Re K*, the Secretary of State submitted that the Act pursued the legitimate aims of seeking to prevent forced marriages being entered into and of providing assistance to those individuals who had been forced to marry. On his behalf, five specific aspects were highlighted as follows:
- a) preventing a breach of the right to marry under ECHR, Article 12;
 - b) discharging the UK’s positive obligation under ECHR Article 8, with regard to the right to respect for private life and the protection of the moral and physical integrity of individuals by enhancing or liberating the autonomy of a vulnerable adult;
 - c) discharging the UK’s positive obligations under ECHR, Article 3 in cases where forced marriage may give rise to a real risk of behaviour sufficient to engage Article 3. In cases in which the Article 3 threshold had been crossed, the UK had an obligation to take reasonable steps to prevent a real risk of inhuman or degrading treatment at the hands of non-State actors, which included treatment which may be imposed outside the jurisdiction;
 - d) discharging the UK’s positive obligation under ECHR Article 5 with respect to deprivation of liberty; and
 - e) in particularly serious cases, discharging the UK’s positive obligations under ECHR, Article 2.
34. The UK is a signatory to the 1962 Convention on Consents to Marriage, Minimum Age for Marriage and Registration of Marriages (“Convention on Consents to Marriage”). The Convention requires states to impose a number of practical requirements in order to eradicate forced marriage. Likewise, article 37(1) of the 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (“the Istanbul Convention”) requires signatories to take the necessary legislative or other means to ensure that forcing an adult or child intermarriage is criminalised. Article 37(2) requires that measures are taken to ensure that the luring of a child or adult to

another territory or state in order to force them to marry is criminalised. The UK is also a signatory to the Istanbul Convention.

Discussion

35. My analysis of the legal framework has led me inexorably to the conclusion that I should allow the appeal because the Judge was mistaken in concluding that she lacked the jurisdiction to make a FMPO with respect to P. I make it plain that I do not criticise the Judge in any way as the issues raised by this case were unusual and had not been expressly considered by a higher court to date.
36. First of all, the Act is drafted in the widest and most flexible terms. I accept Mr Gupta KC's submission that the only specific requirement for the court to consider when making a FMPO is to take account of "*all the circumstances*". There is nothing in the Act which requires the court to apply any given criteria beyond the matters identified in s. 63A(2). Further, had Parliament wished to limit the court's jurisdiction by reference to physical presence, habitual residence and/or citizenship, it would and could have done so.
37. Second, the Act plainly has extraterritorial application given the wording of s. 63B(2) which, inter alia, explicitly concerns conduct outside England and Wales. Section 63B(2)(b) and (c) cover not just respondents but other persons who were or might become involved in other respects in relation to a forced marriage or an attempt to force a person to enter into a marriage. Those persons necessarily include individuals (a) who are not present in this jurisdiction, (b) are not habitually resident in this jurisdiction and (c) are not British nationals. If respondents are not required to be habitually resident or British nationals, it is difficult to see why these criteria should apply to applicants for protection in circumstances where respondents are, in fact, both British nationals and habitually resident in this jurisdiction. That observation is given added weight because a FMPO is not listed in s.1 of Part One of the Family Law Act 1986 and thus the court is not constrained by presence, nationality or habitual residence or any other Convention if it determines it necessary to exercise the FMPO jurisdiction under the Act with respect to children. If this is the position with respect to someone under the age of 18, it must also be the position with respect to those who are adults.
38. Third, s.121 of the Anti-Social Behaviour, Crime and Policing Act 2014 concerns the criminal offence of forced marriage and makes it crystal clear that, as long as, at the time of the conduct or deception outside of England and Wales, at least one of either the victim or perpetrator is habitually resident in England and Wales or at least one of them is a UK national, the perpetrator will commit the offence of forced marriage. Though s.63CA of the Act - inserted by s.120 of the Anti-Social Behaviour, Crime and Policing Act 2014 - does not contain similar provisions, it strikes me as inconceivable that, in the same piece of

legislation passed at the same time, Parliament intended the offence of breaching an FMPO pursuant to s.63CA to be restricted to circumstances where the victim of such an offence (the applicant for the FMPO) was habitually resident here or a UK national. That would seem wholly incompatible with the wide-ranging nature of the jurisdiction set out in s.121(7) in respect of the criminal offence of forced marriage.

39. Fourth, it is beyond dispute that forced marriage is not only a very serious form of domestic abuse but is also a fundamental abuse of a victim's human rights as identified in *Re K*. I accept Mr Gupta KC's submission that the Act would fail to meet its objectives if an applicant had to be physically present in this jurisdiction or a British national in order to obtain protection against a respondent. The only protection available for such applicants would be via the criminal courts. Non-British victims living outside the UK who had been forced into marriage with respondents who lived here or were British nationals would be left **without** civil protection. That interpretation of the Act would not be compatible with the international treaty obligations entered into by the UK, for example, those contained in the Istanbul Convention which require a signatory to take measures to ensure that luring a person to another territory or state to force them to marry is criminalised. I observe that this interpretation of the Act would also not be compatible with the legitimate aims identified in *Re K* of preventing a breach or breaches of an individual's human rights by a British national or someone habitually resident here.
40. Fifth, my interpretation of the Act's jurisdiction is not at odds with either of the two decisions of Holman J which were decided on different grounds. Additionally, it is entirely on all fours with the spirit of *Re K* and *Chief Constable and AA v YK and Others*.
41. My interpretation is also permissible because, in accordance with s.3 of the Human Rights Act 1998, it gives effect to the Act in a way which is compatible with Convention Rights. It is not contrary to the express wording of the Act and is not, by implication, necessarily contradicted by the Act. My reading into the Act of the provisions of s.121(7) of the Anti-Social Behaviour, Crime and Policing Act 2014 go "*with the grain of the legislation*", as memorably expressed by Lord Rodger of Earlsferry in paragraph 121 of *Ghaidan v Godin-Mendoza* [2004] UKHL 30 when he stated:

"...If the court implies words which are consistent with the scheme of the legislation but necessary to make it compatible with Convention rights, it is simply performing the duty which Parliament has imposed on it and others. It is reading the legislation in a way that draws out the full implications of its terms and of the Convention rights. And, by its very nature, an implication will go with the grain of the legislation. By contrast, using a Convention right to read in words that are inconsistent

with the scheme of the legislation or with its essential principles, as disclosed by its provisions does not involve any form of interpretation, by implication or otherwise. It falls on the wrong side of the boundary between interpretation and amendment of the statute.”

42. Thus, and as set out above, the wording of the Act is broad and flexible in allowing courts to protect those who may be or have been forced into marriage. Consideration of all the circumstances, as set out in s.63A(2), will include, where relevant, the connection and/or nationality of both the applicant and any identified respondent and, accordingly, the court will accommodate these factors into its overall analysis when deciding whether or not to make a FMPO. Consistent with the analysis above, the court is likely to exercise its jurisdiction in circumstances where, for example, either the applicant or a respondent have a connection with this jurisdiction, being either physically present here or habitually resident here or a British national. This does not constitute a threshold filter since, as I have described, the court will undertake its consideration of all the circumstances which are relevant in any individual case.
43. I observe that this interpretation of the Act’s wide and protective jurisdiction sends two clear messages which are of real importance. First, victims abroad who are forced into marriage with a British national or someone habitually resident here may be able to avail themselves of protective orders in this jurisdiction to counter such abusive behaviour and mitigate its harms. Second, British nationals or those who are resident here should be aware that they cannot force a person into marriage and escape legal sanction for their behaviour in the family court merely because their victim is neither habitually resident nor a British national. Forced marriage is a global phenomenon with many forced marriages in the UK having an international dimension. In a world of global social media, it is possible for perpetrators to continue their abuse online with easy access to their victim, wherever their victim is based and whatever the nationality of their victim. This purposeful interpretation of the Act’s jurisdiction permits the courts to exercise their protective jurisdiction to safeguard victims, wherever they are based and whatever their nationality.
44. I thus allow the appeal against the decision of the Judge.

Remaking the Decision

45. Rule 30.11(2)(a) of the Family Procedure Rules 2010 allows an appellate court to affirm, set aside, or vary any judgment or order made or given by the lower court. Mr Gupta KC invited me to vary the Judge’s order by granting a FMPO to prevent Q from contacting P by phone, email, social media or any other means and to prevent him from harassing, intimidating, threatening or pestering her.

46. By way of an update to the factual background which was before the judge, Mr Gupta KC informed me that Q had sent a Facebook request to P in October 2022 and has also tried to telephone her in November 2022. His mother and sisters, at his instigation, have been calling P's mother to pressurise her to convince P to move to the UK with Y as it is "*dishonourable*" for her to live as a single parent with her son. The most recent contact was about two/three weeks prior to this hearing. P remains in therapy for her post-traumatic stress disorder and finds all these contacts exacerbate her condition. Finally, Q has also put pictures of Y on his WhatsApp profile and social media accounts and P does not know how he came by these pictures as she does not share such pictures with relatives who might pass them to Q. This has significantly increased her fear.
47. The evidence before the court established on the balance of probabilities that P had been forced into marriage with Q and that she was, in consequence, repeatedly raped by Q leading to her pregnancy and Y's eventual birth. Q's involvement in the acts of coercion and threat by which the marriage was forced was a little unclear but I was satisfied that, given the close physical proximity of P and Q initially in his family's home and then in the ancestral home of P's mother, Q was likely to have known that P was being compelled to marry him and was complicit in that course of conduct. Cohabitation after the marriage was extremely short-lived and this couple were physically separated within about six weeks of the marriage ceremony. P has suffered immense distress arising from the marriage and its aftermath and now has a mental health condition requiring treatment. Even though Q knows full well that P wants nothing more to do with him, he persists in trying to contact her and uses members of his family as a means of pressurising P and her mother. This behaviour causes fear and exacerbates P's mental health difficulties. P wants an order to protect her from Q's harassment.
48. Applying the route map identified in paragraphs 45-55 of *Re K*, I was thus satisfied that the facts established that P was forced into marriage by Q and other members of their extended families. This amounted to a breach of her Article 3 and 8 rights, as evidenced amongst other matters by repeated rape by Q during the brief marital cohabitation. I was also satisfied that there was a need to protect P from Q's ongoing harassing and intimidatory behaviour which appears to have, as its aim, P's return - with Y - to the UK to resume marital relations and cohabitation with him. In all the circumstances, I will make an order to prevent ongoing contact between P and Q save via their respective legal advisors and to prevent further harassment, pestering, intimidation and similar behaviour, whether directly or via Q's family, including via social media and other methods of communication.
49. I have thought carefully about the length of these orders and have come to the conclusion that finite orders do not meet the risks to P in this serious case. A

finite order would, on expiry, require P once more to seek a further order from overseas with all the expense and stress which this involves, including finding solicitors and/or counsel who would act for her pro bono. I can also assume on the basis of his past behaviour that, unless restrained by a court order, Q's persistent harassment is likely to continue with a serious impact to P's emotional and psychological well-being. I make the order sought by Mr Gupta KC which will remain in force unless and until it is varied or terminated by a subsequent court order.

50. That is my decision.