



Neutral Citation Number: [2024] EWHC 1939 (Fam)

Case No: FD23P00267

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 July 2024

Before :

MR JUSTICE CUSWORTH

Between :

MAS

Applicant

- and -

(1) ZK

(2) A A S

(3) LONDON BOROUGH OF BRENT

Respondents

JUDICIAL OBSERVATIONS

These observations were circulated to the parties or their representatives by e-mail on 29 July 2024 and by release to The National Archives.

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

Mr Justice Cusworth :

1. These proceedings came before me at their conclusion on 28 February 2024. The background was succinctly set out in a schedule attached to the order that I made then, as follows:

“1. This case concerned a young person who asserted she was at risk of harm and at risk of a forced marriage at the hands of her parents. Whilst on a trip abroad, to country X, the young person escaped from her parents. The young person had no connection to country X. She was reported missing by her parents and located by the local police of Country X. She was taken to a children’s home where she remained for 5 months until she was able to return to this jurisdiction. The authorities of Country X did not return the young person to her parents due to the allegations she had made. There was also a request made by the High Court of England and Wales to the relevant authorities of Country X not to return her to the care of her parents.

2. There were simultaneous proceedings in this jurisdiction and the courts of Country X. The relevant local authority was joined as a party to these proceedings at the first ex-parte hearing. The orders made by the High Court of England and Wales included a Forced Marriage Protection Order, Wardship and Tipstaff Orders. Several requests were made to various authorities to assist with the young person’s repatriation and orders were made pursuant to the 1996 Hague Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children.

3. It remains unclear to date what the nature of the proceedings were in country X. It is known that the young person’s parents had initiated proceedings in Country X to secure the young person’s return to their care. However, there was another set of proceedings during which permission of the court was required to secure the young person’s return to this country.

4. After some months, the parties were informed by the relevant authorities in country X that the young person had to be collected by a UK state official. The Forced Marriage Unit suggested to the parties to explore this with the local authority and/or the police and referred the parties to the Guidance from the President of the Family Division: liaison between the courts and British Embassies and High Commissions which states ‘The FCDO provides a facilitative role in relation to the return of the child but is not able to care for, take control of, or assist in procuring the return of the child.’

5. Fortunately, the young person was able to return because the local authority agreed to send social workers to Country X to collect them.”

2. Subsequently, as my order also records at paragraph 8:

‘The applicant’s representatives highlighted to the court that it was very difficult to secure M’s return to the UK, there was a lack of clarity as to M’s circumstances the situation on the ground in Country X and also a lack of clarity as to which public body should take the lead in securing M’s return to this jurisdiction in circumstances where the state in Country X would only agree to M’s return if UK officials collected her from that country. The court was invited to issue some guidance and directions were made for the parties and any interested party to file and serve written submissions’.
3. I have now received submission from the applicant, through counsel, Naima Asif, instructed by Dawson Cornwell; from the specialist charity, Karma Nirvana, which supports victims and survivors of honour-based abuse and forced marriage, who instructed Counsel Teertha Gupta KC, Mani Singh Basi and James Nottage, all acting pro bono; from Emily Wilsdon, counsel on behalf of the Foreign, Commonwealth and Development Office (FCDO), and from Alice Meredith, counsel on behalf of the National Police Chief’s Council (NPCC), endorsed by the Commissioner of Police of the Metropolis. Social Work England was invited to contribute but did not consider itself in a position to do so. The local authority involved in the case also declined an invitation to file a submission.
4. What has emerged from those submissions is that this is not an area where there is a lack of substantive guidance. Indeed, there are three significant recent documents to which I have been referred by all parties, which seek to set out and explain the parameters of the different agencies’ responsibilities, and the limited extent to which those agencies can function when the person to be protected is situated in a different country with its own systems and agencies. Those guidance documents have evidently been carefully prepared and considered, and I certainly do not intend in what follows to adjust or amend them in any way. Insofar as there has been any lack of clarity amongst practitioners as to the workings of the guidance, I hope that by drawing together the agencies’ responses to the questions asked below, and drawing certain conclusions, there can be greater understanding of what is possible, and what may not be, in any situation which arises.

5. The starting point for this consideration must be the guidance document “Liaison between Courts in England and Wales and British Embassies and High Commissions Abroad” dated 14 March 2022, and signed by Sir Andrew MacFarlane, the President of the Family Division. It is stated to be ‘*Guidance from the President’s Office*’ (‘The President’s Guidance’)¹. Insofar as it post-dates a number of decided cases in which judges of the Family Division have expressed the need for guidance about what can be done in situations such as these, I am clear that it does provide that guidance, at least in relation to the involvement of the FCDO. The document specifically details the assistance which may be provided by the FCDO in relation to obtaining information from the other jurisdiction where the person to be protected is located.
6. The President’s Guidance sets out that it “describes procedures which are to be followed when a court in England and Wales exercising family jurisdiction seeks to invoke consular assistance” and that the “procedures have been agreed between the President of the Family Division and the Foreign, Commonwealth and Development Office”. Ms Wilsdon in her document sets out the FCDO’s position thus:

‘The FCDO’s position is that the Presidential Guidance is sufficiently detailed and is the product of careful consideration and discussion with the President of the Family Division. Great care should be taken when considering whether any additional guidance should be issued by the Court, and to ensure that it does not conflict with the Presidential Guidance and is appropriate for all situations to which it might apply. In the FCDO’s experience, both the individual facts of cases where young people wish to be returned to the UK and the law and practice of other jurisdictions can vary considerably.’

I agree, as I have explained, with those sentiments, insofar as they relate to the FCDO’s position.

7. The President’s Guidance itself sets out in the following paragraphs the parameters of the FCDO’s possible involvement in cases such as M’s. It records:
 - (7) ...consideration will need to be given in each case as to what orders if any should be made to seek to secure the return of the child to England and Wales.

¹ [President’s Guidance: Liaison between Courts in England and Wales and British Embassies and High Commissions Abroad](#)

- (8) It may be possible in appropriate cases for representatives from the relevant British Embassy, High Commission or Consulate to follow-up with the competent safeguarding authority to check the child[ren]'s welfare, engage local police to ascertain what efforts have been made to locate the child[ren], to host consular appointments involving the child[ren], and to advise on travel arrangements for the return of the child[ren] to England and Wales. Such activities will however always be subject to the requirements of the domestic law of the country in question. The Foreign Secretary has discretion in deciding how to conduct international affairs, and the court cannot order the FCDO to exercise consular assistance. There is no general duty for the FCDO to provide consular assistance to British nationals. There may be limits to what the FCDO can do to help when a dual national child is in the country of their other nationality.
- (9) Before the court requests assistance from the FCDO, contact should be made with the Child Policy Unit in Consular Directorate..., or the Forced Marriage Unit ...if the case involves forced marriage or female genital mutilation. This is to provide the FCDO with an opportunity to clarify what level of assistance it may be in a position to offer in the country concerned. The FCDO will be able to identify the relevant Embassy, High Commission or Consulate to which any order or request for assistance should be directed, and to forward documents.
- (10) The FCDO provides a facilitative role in relation to the return of the child but is not able to care for, take control of, or assist in procuring the return of the child.
- (11) Consular staff are not trained to assess the welfare of a child as a professional Social Worker would be. Accordingly, the FCDO cannot conduct welfare visits or safe and well checks. The FCDO can provide information and contact details for the competent safeguarding authority/ies and Non-Governmental Organisations (NGOs) in the relevant country who may be able to undertake welfare checks on the child[ren].
- (12) The FCDO will take practical steps to co-operate in any way which is appropriate on UK passport handling...
- (c) The FCDO is not in a position to carry passports across international borders via the diplomatic bag or other means.
- (13) The FCDO can provide information and contact details for the competent safeguarding authority and NGOs in the relevant country to assist the court and other parties. Authorities and NGOs in the relevant country may be able to assist in locating the child[ren], and arranging to return the child[ren]. However, Social Services in England and Wales are not authorised to work outside the UK and as such the primary work of returning the child will require the cooperation of in-country authorities.
- (14) The FCDO can issue Emergency Travel Documents (ETDs) to British citizens or those with a claim to British nationality providing they meet the eligibility criteria.

- (15) The FCDO can provide advice on the repatriation of a child, including options for financing travel. Financial assistance (such as a loan) can be considered in exceptional circumstances, but will be considered on a case by case basis. The court or those with parental responsibility may contact the FCDO before an order is made to discuss these options.
- (16) Whilst the FCDO stands ready to assist the court in any way which is appropriate, the repatriation of foreign nationals from the UK to a third country is outside the scope of consular assistance. Likewise, the submission of visa applications to a third country is the responsibility of the applicant.
- (17) In a case where assistance can be given by the FCDO, the order should provide for disclosure of the specific documents required in order for the FCDO to provide the necessary assistance.

8. Ms Wilsdon concludes at [10] that:

‘The Presidential Guidance has been carefully considered and constructed, and is sufficient. The FCDO respectfully submits that there is no requirement for additional guidance or the formulation of a ‘protocol’ to govern approaches to facilitating the return of vulnerable individuals to the UK’.

9. In relation to the question of the introduction of a protocol, she continues:

‘11. Consular assistance involves relations with the authorities of foreign jurisdictions and the Foreign Secretary remains best placed to determine the most effective way to conduct those relations with sight and consideration of a wide range of factors.

12. In addition to risking treading on the Foreign Secretary’s discretion, there is a risk that a court-issued ‘protocol’ would be too restrictive to allow the Forced Marriage Unit and other relevant FCDO officials to focus on ensuring optimal assistance for the most vulnerable consular clients, with necessary sensitivity to local conditions.

13. Conversely, any ‘protocol’ accommodating the multifarious variables across different jurisdictions and the specifics of individual cases would likely be so complex as to lack utility and risk introducing confusion.’

10. Referring back to the Schedule to my order of 28 February 2024, which states at [7] that: “This case demonstrated there were no protocols in place to facilitate the return of a young person who was stuck in a country to which they had no connection and sought protection from their parents,” she made the following submission:

'50. ...where the Hague Convention does not apply, this will necessarily be the case. What actions are i) permitted, and ii) useful on the part of UK parties will depend on many factors including:

- a. The law, procedure and practice of that country. While the young person is in that country, they are subject to their jurisdiction.*
- b. The individual situation of the young person (e.g. whether they are in the care of social services in that country, the concerns of that country's relevant authorities/courts, any particular needs of that young person).*
- c. What the UK court envisages will happen to the young person on their return to the UK (e.g. placement with a local authority, or with another family member).*

11. I agree with and accept the FCDO's submissions in this regard.

12. The Multi-agency Statutory Guidance for Dealing with Forced Marriage (Updated 13 April 2023)², issued under s63Q(1) of the Family Law Act 1996 ('the Statutory Guidance'), provides an overview of the meaning of Forced Marriage and the purpose and function of Forced Marriage Protection Orders. It includes the following important and significant statement:

Experience has identified that it usually falls to more than one specific agency to meet all of the needs of an individual, or indeed a wide group of individuals, affected by forced marriage. As a result, the aim of this guidance document is to clearly set out why a multi-agency response is critical, but also to re-emphasise how important multi-agency co-operation and closer working are, as part of the overall approach to provide support to, and protect, victims of this practice.

13. 'Multi-agency Practice Guidelines: Handling cases of Forced Marriage'³, (the Practice Guidelines') were issued together with the Statutory Guidance. Under the section headed 'Aims' at 1.1, it is explained that:

The practice guidelines set out in this document seek to provide advice and support to front line practitioners who have responsibilities to safeguard children and protect adults from the abuses associated with forced marriage. Given that someone affected by forced marriage is likely to need the help and support of

² <https://www.gov.uk/government/publications/the-right-to-choose-government-guidance-on-forced-marriage/multi-agency-statutory-guidance-for-dealing-with-forced-marriage-and-multi-agency-practice-guidelines-handling-cases-of-forced-marriage-accessible>

³ <https://www.gov.uk/government/publications/the-right-to-choose-government-guidance-on-forced-marriage/multi-agency-statutory-guidance-for-dealing-with-forced-marriage-and-multi-agency-practice-guidelines-handling-cases-of-forced-marriage-accessible#page25>

several agencies, this document seeks to set out a multi-agency response and encourage agencies to cooperate and work together to protect victims.

14. At 2.14, the Practice Guidelines deal with the Forced Marriage Unit ('FMU'), described by an independent reviewer⁴ as '*a shared unit functioning across the Home Office and the Foreign, Commonwealth and Development Office*'. The guidelines explain that:

'Overseas, the FMU may be able to assist British nationals facing forced marriage abroad by working with the FCDO's network of Embassies, High Commissions and Consulates to help them reach a place of safety and return to the UK if they wish. The FMU can assist non-British nationals facing forced marriage abroad but only by referring them to local organisations that can help or by advising statutory agencies in the UK.'

15. A full account as relevant of the contents of the statutory guidance has been provided in the submission from Ms Meredith on behalf of the NPCC, where she explains as follows, in relation to the FMU's position, and the contrasting roles of Local Authorities and Chief officers:

vii. *The Statutory Guidance emphasises the importance of information sharing. It records that it is necessary to ensure that where a forced marriage case is received, "staff provide information to the Forced Marriage Unit (FMU)", and notes that the FMU is always happy to talk to frontline professionals handling cases of forced marriage at any stage in a case.*

viii. *By contrast to Local Authorities, Chief Officers have no special status as an applicant for a Forced Marriage Protection Order, and require the court's permission to issue an application⁵. The Practice Guidelines address the role and responsibilities of the police in relation to forced marriage at chapter 9. Chief Officers do have a specific role in respect of criminal allegations of forced marriage.'...*

xi. *The Forced Marriage Unit (FMU) and, where appropriate, Foreign, Commonwealth and Development Office (FCDO), including its Child Policy Unit (CPU) is best placed to advise where country-specific advice is required.*

xii. *The Practice Guidelines provide specific guidance in relation to individuals who are Forced to travel overseas (2.12), those with Dual Nationality (2.13) and the assistance which can be provided by the Forced Marriage Unit and FCDO (2.14). They summarise the limitations of the consular assistance which can be provided by British Embassies and High Commissions at chapter 3 under "Key principles" and reiterate this throughout the Practice Guidelines. However, the Practice Guidelines also note that the*

⁴ Colin Bloom

⁵ S63C(3) Family Law Act 1996.

FMU can provide “details of suitable NGOs overseas and the details of the Embassy of their own nationality” to non-British nationals...

16. Turning to the court’s role, and echoing the caution expressed by counsel for the FCDO, with which I agree, she adds:

ix. Where a child who is a Protected Person (PP) is outside the jurisdiction, the legal framework and situation on the ground is extremely variable depending on the country in which the PP is located. It is unlikely that this court will be able to provide general guidance in this case which would be applicable to any case involving a child PP who is outside the jurisdiction, as the approach is necessarily extremely case-specific.

17. The Practice Guidelines themselves address the question of repatriation at 5.14, and the role that the FCDO/FMU might have to play. They set out:

When a British national seeks assistance at a British Embassy or High Commission, the FCDO can try to help them return to the UK, or their country of habitual residence, as soon as possible if appropriate. Unfortunately, due to the urgency of the situation, the FCDO may not be able to give the police or social care much notice of the person’s arrival.

The FMU can facilitate a British national’s return to the UK by providing emergency travel documents, helping to arrange flights and, where possible, by arranging temporary accommodation whilst the victim is overseas. Any help provided must be in accordance with local laws, so there may be occasions when some forms of assistance are not available. The FCDO or social care may ask the police to meet the person on arrival, in case family members try to abduct them at the airport...

Where necessary, the FMU can help secure funding for repatriation costs for forced marriage victims. Where possible, the FMU will seek to ensure that, as part of a Forced Marriage Protection Order (FMPO), the costs of return fall on the perpetrators. Where this is not safe, or appropriate, the FMU will work with family, friends, or other public bodies such as social care to meet the costs. The cost of return should never delay a victim seeking, or receiving, assistance to do so.’

18. I have been referred also to the guidance: ‘Consular assistance: how the Foreign, Commonwealth & Development Office provides support’, dated 31 August 2022, which states that the FCDO ‘may be able to provide specialist support in specific situations, for example relating to forced marriage...’. However, I do not take this

statement to be intending to extend the support available beyond that identified and explained in the President's Guidance, the Statutory Guidance or the Practice Guidelines.

19. Overall, and insofar as the questions asked relate to the involvement of the FCDO and/or the FMU, I agree with Ms Wilsdon that it is neither appropriate nor necessary to seek to stray beyond the confines of the guidance already issued in relation to their involvement, which I consider when read together give a clear, consistent and rounded account of the services which they can and cannot provide in circumstances like those which befell M.
20. That is not to say that the FCDO/FMU cannot helpfully be involved throughout the process of securing a vulnerable person's return to the UK, and to that end the parameters of their possible involvement in any given situation should usually be explored at an early stage to ensure that all parties are aware of what help may be forthcoming, and what cannot be expected. The bounds of possibility need to be laid down at an early stage so that other routes or actors can be considered.
21. Turning to the role of the police and local authorities, Ms Meredith in her submission for the NPCC provides this overview of the Statutory Guidance, immediately before the passage quoted above:

'i. The Statutory Guidance provides guidance to all persons and bodies in England and Wales who exercise public functions in relation to safeguarding and promoting the welfare of children, including local authorities and Chief Officers of police. Any person exercising public functions to whom guidance is given under the section must have regard to it in the exercise of those functions.

ii. The Statutory Guidance requires that existing strategic bodies, including local authorities, ensure that their member agencies work effectively, using agreed policies and procedures to address the issue of forced marriage.

iii. A Local Authority has specific legal duties and responsibilities regarding children. The Statutory Guidance records that "Local authorities have a duty to safeguard and promote the welfare of children in need", and that it is necessary to ensure that "forced marriage of a child is automatically handled as a child protection issue" ...

v. The legal framework for Forced Marriage Protection Orders envisages applications being made (where they are not issued by the Protected Person) by the relevant Local Authority. This is evident from the fact that only Local Authorities have been designated

as a relevant third party, and do not require the court's permission to issue an application⁶.

vi. Where an application for a Forced Marriage Protection Order is required or made by a child, it is usually appropriate (as understood to have happened in this case) for the Local Authority to be made a party to the proceedings, and to take responsibility for any steps required to progress the case, seeking external assistance or advice as necessary.

22. She then continues to look at the situation expressly when the person to be protected is out of the jurisdiction:

'xiii. Chapter 12.5 of the Practice Guidance addresses the steps to be taken by children's social care where a child has been taken overseas and is at risk of forced marriage. This may include working with local organisations to facilitate support for and repatriation of the child.

xiv. Police forces do not generally have any or any detailed knowledge of the legal systems or social work systems of other countries, or any direct links with police forces or other state bodies in other countries.

xv. Police officers are not generally able to exercise their powers as police constables outside this jurisdiction.'

23. In relation to the police's involvement in situations of this type, I accept all that Ms Meredith has said. I am very aware that I have not had submissions on these matters from anyone representing the social services, but do not at the moment see any scope for reconsidering the submissions made on behalf of the other agencies as to where the boundaries of their authority lies.

24. I now turn to the specific questions raised in relation to which the guidance has been sought.

a. Which UK public body or authority should assist with the investigation of facts in the country in question;

25. Ms Wilsdon's submissions for the FCDO address this question as follows:

53. In a foreign country, just as the primary responsibility for safeguarding individuals lies with the relevant authorities in that jurisdiction, it is the authorities of the foreign country that are responsible for the investigation of facts... the FCDO may play a

⁶ S63C(2) Family Law Act 1996, Family Law Act 1996 (Forced Marriage) (Relevant Third Party) Order 2009

facilitative role in coordinating liaison between relevant UK and local authorities. It does not hold any investigative powers domestically or abroad. Where appropriate, the FCDO can assist by conveying queries to pertinent authorities in foreign jurisdictions. It cannot interfere in the investigative processes of foreign (or domestic) authorities. Neither can any other UK authorities.

54. Where there are court proceedings in the UK, it will be for an individual judge to determine on a case by case basis which (if any) UK public body or authority may possess relevant information or be best placed to liaise and cooperate with authorities in the other country to obtain if possible information about the young person. This can only be done with the permission of the relevant foreign authorities.

56. Often, the relevant authority in the other country will be the competent safeguarding authority (e.g. a social services) and the most obvious UK authority to liaise and cooperate with that authority will be a local authority social services department.

26. Ms Meredith for the NPCC first considers the primary role of the social services, and says this:

16. ...this question relates to circumstances where information is required during the course of proceedings about the PP's position in a country outside the jurisdiction, in order to understand the PP's position, support an application for a Forced Marriage Protection Order or other applications within the Family Court, and / or clarify how best to protect or return a PP to the jurisdiction.

17. In such circumstances, the NPCC considers that in the first instance enquiries or investigation would be undertaken, where possible, by the Applicant, or their representatives. This would usually be either the PP or the Local Authority.

18. If the Applicant PP is a child, and the PP is unable to undertake enquiries or investigation either because

i. the PP is acting in-person, and does not have legal representatives to assist with such investigations, or sufficient funds to request their legal representatives to do so; or

ii. the other jurisdiction declines to engage with the PP or their representatives because they are not a UK public body or authority,

the usual position would be for the Local Authority to make such enquiries. In any event, the Local Authority should always be notified of an application by a child PP, and it may be most appropriate for the Local Authority to conduct undertake enquiries or investigation.

19. If, as is understood to have been the case in these proceedings, the PP is in the care of the equivalent social services in the other jurisdiction, it is likely that the Local Authority will be most appropriately placed to liaise with their counterparts in the other jurisdiction.

27. She then turns to the important role of the FCDO, in circumstances where it is best placed to assist:

20. In cases involving a PP who has been taken overseas, country specific advice and guidance should always be sought from the FMU / FCDO / CPU. This may assist where the PP or the Local Authority has difficulty engaging with the relevant jurisdiction for any reason, including, for example, not knowing how to identify an appropriate contact in the relevant jurisdiction, or not understanding the relevant legal framework providing the context for their liaison with authorities from that jurisdiction. It is also important to seek such advice since, as highlighted at 5.10 of the Practice Guidelines (also echoed at 12.5):

5.10 If someone is being held overseas, there are risks that may arise if organisations overseas are contacted directly:

- o Collusion between overseas organisations, including respected bodies - such as the police or authorities in the country where the person has been taken - and the person's family*
- o Violence towards the person who is being held and the forced marriage being brought forward in time*
- o Removal of the person to an unknown destination*
- o Attempts to assist by overseas agencies/authorities which only further jeopardise the person's safety*

In handling these cases, agencies need to liaise closely with the FMU and then gather information about the family discreetly...

28. She then finally turns to the possible role of the police:

22. Unless, unusually, a police force is the Applicant within FMPO proceedings, the NPCC would not expect investigations involving a child PP who is overseas, and which are required for the purposes of Family Court proceedings, to involve a UK police force. The Practice Guidelines, which address at 9.4 the role of police forces if a third party reports that someone has been taken overseas for the purpose of a forced marriage, include a requirement that police should:

- o Refer to the responsible UK local authority, either if the person is under 18 years of age or if they are over 18 and have a disability which means they are eligible for support.*

23. *If, unusually, there is involvement by the police force of the other jurisdiction, and there is an indication that they will only liaise with a UK police force, then the police force would of course seek to provide any general assistance necessary. However, where a Local Authority is a party to the Family Court proceedings and a police force is not, the expectation would be that any enquiries would be directed by the Local Authority under the guidance of the FMU, and the police force would act only as a conduit for these...*

26. *In cases where a police force is investigating potential criminal offences where a PP is overseas, any necessary overseas enquiries would, where appropriate, be made under the guidance of the FMU, and having regard to the warning given within the Practice Guidelines at 9.4 (also echoed at 12.5 more generally):*

As with all cases of forced marriage, confidentiality and discretion are of vital importance. It is not advisable to contact an overseas police service or organisation to make enquiries. Risks may arise if police or organisations overseas are contacted directly. If, through overseas police actions, the family becomes aware that enquiries are being made, they may move the victim to another location, seek to expedite the forced marriage and/or harm the victim.

27. *The NPCC would expect a Local Authority to notify the local police force of ongoing Forced Marriage Protection Order proceedings, and to serve the local police force with a copy of any Forced Marriage Protection Order made.*

29. So, the clear answer from the NPCC is that usually, it should be for the local authority to be the primary investigating body. However, the FCDO does acknowledge that whilst it will ‘often’ be the local authority that will take on the role, it should be for the court to determine which agency in any given case is ‘*best placed to liaise and cooperate with authorities in the other country*’.

30. Here, Ms Asif for M argues for a more prominent role for the FCDO/FMU in the first instance, which would probably require an amendment to the President’s Guidance. She suggests:

1. The information which can be accessed by the FCDO/FMU is not easily accessible to other organisations. This is unsurprising given the FCDO/FMUs position or standing overseas (and also of the British Embassy, High Commission, or the Consulate). For this reason, it is submitted that the FCDO/FMU is best placed to lead the investigation of facts in circumstances where a child/young person is abroad. M’s case has unequivocally demonstrated that these authorities are much better

placed to obtain accurate information quickly which is of the utmost importance in these difficult and time-sensitive cases.

2. Such an approach, particularly when involving a child/young person who requires protection from their parents, is extremely vulnerable and is stuck in a country to which they have no connection would be consistent with the President's Guidance (see paragraph 8 [above]). It would, therefore, be entirely appropriate and necessary in the circumstances to invite representatives from the FCDO/FMU and from the British Embassy, High Commission or Consulate to make the necessary enquiries with the relevant authorities in the country in question/carry out consular checks to ensure the child/young person's safety...

1. It may of course be the case that a multidisciplinary approach will be required and there may be circumstances when communication between the relevant authorities and/or public bodies has already been established. In such cases, it might be easier for social workers to liaise with their counterparts overseas. However, the applicant maintains that the FCDO/FMU is best placed to take the lead in respect of this for the reasons set out and it would be appropriate for the responsibility to be placed upon them in the first instance.

2. It is as equally important for the FCDO/FMU to ensure information is provided in a timely manner to other public bodies and/or organisations, referrers (such as Karma Nirvana), legal representatives and the courts, who are all involved in safeguarding the child/young person. Without such information, the court will not be properly equipped to make the appropriate directions and orders to secure/expediate a return.

31. She continues, however, when considering the practical steps to be taken, by saying this:

1. '...if a child/young person is stuck overseas and requires protection and safeguarding, a strategy meeting involving all the relevant stakeholders is a necessary and sensible first step. This is especially necessary when overseas authorities are also involved... If the meeting does not happen ahead of the matter reaching court, the court should make directions for it to take place urgently so the next steps can be clear...

1. ...the FCDO should be invited to attend hearings as early as possible in the proceedings to provide the court with information and to advise on steps to be taken particularly in the country in question.

32. In his submission for Karma Nirvana, Mr Gupta KC adopts a slightly different approach. He suggests anticipating a situation where there has been no opportunity for any pre-

hearing meeting:

1. *...where a forced marriage case enters the High Court and there is a concern about ensuring the victims are returned to England and Wales as soon as possible, it is submitted at the first hearing the following directions should be sought:*
 - A. *An order against the police force to which the subject child resides in, to ascertain what if anything they are seeking to do to assist, or to at least flag up the issue with the police if they are not currently aware of the circumstances resulting in a court application;*
 - B. *The local authority to also be informed of any application to also file evidence as to what they are able to do to assist and confirmation as to whether they are working with any agencies such as the police and FMU; and*
 - C. *The FMU to be invited to provide evidence in writing as to what it is they seek to do to assist.*
 - D. *This would enable the Court at the first available opportunity to be made aware of what the relevant organisations can or cannot do. It will also ensure consistency by enabling such bodies to be aware that they are likely to be called to court to assist.*

33. Once again, each case will arrive before the court at a different point, and there can be no clear 'one size fits all' approach. If there has been the opportunity for a meeting of all of the potentially involved agencies prior to the first hearing, and their roles have been agreed, then the application is likely to proceed efficiently. If there has been no such meeting, or there has but without agreement, then it will be for the court to give directions in the circumstances which are before it, with all of the considerations identified by the parties above in the forefront of its mind.
34. There may be many cases in which, as the FCDO appears to tacitly acknowledge through Ms Wilsdon, it will be best placed to make the appropriate enquiries. I consider that whether this is so in any given case must inevitably be the subject of consideration at the very outset of proceedings, and ideally before the issuing of any application, as soon as the situation creating the concern has arisen. If decisions have not already been taken before the matter comes before a court, then the different roles to be taken by the involved agencies should be considered at the first hearing when directions are being sought.

35. To that end, clearly, the FCDO should be notified in advance of any application in which their involvement may be sought, so that their ongoing input can be discussed, and if not agreed, considered by the court. But there should not, I consider, in every case be an assumption in the first instance that they should take the lead role, unless and until the circumstances clearly warrant it and they have agreed or been directed to take it on. Each case must continue to turn on its own facts.

b. Which UK authority or public body should take responsibility to repatriate a child/young person in circumstances where the country in question will only release the child/young person to a State official?

36. As set out above at paragraph 17, the Practice Guidelines address the question of repatriation at [5.14]. Ms Wilsdon for the FCDO deals with the issue of responsibility for repatriation thus in her submissions:

57. *...responsibility for repatriation, in the first instance that is always a matter for the other country's legal system and authorities. Whether they require assistance from any UK person to assist with repatriation will depend on the law, procedures and practice of that jurisdiction and their decision in the individual case.*
59. *The statement [in para.13 of the Presidential Guidance (above)] "Social Services in England and Wales are not authorised to work outside the UK" means that social services in England and Wales cannot travel to another country and use their (England and Wales limited) powers as social workers. It does not mean that they cannot travel to another country to assist the relevant authority in that country at their invitation and with their consent.*
60. *Social workers will often be the most appropriate people to meet and travel with a young person when this is required because they have the appropriate training and checks (but this must be a matter for the Family Division on a case by case basis having regard to the child's best interests – in some cases the best placed and most appropriate person could be another family member or an NGO)...*
64. *In truly exceptional circumstances in which it is not possible for a family member, suitably qualified individual, or any appropriate person other than a member of FCDO staff to accompany a repatriation, the Foreign Secretary might consider this under his discretion (and a range of factors would need to be considered including the safety and needs of the child and the FCDO staff).*

37. Again, Ms Meredith for the NPCC places the principal burden at the doors of local authorities, when she says:

- ‘28. This may be dependent on the particular circumstances of the case. However, the NPCC considers that it would usually be appropriate for the Local Authority to take responsibility since:
- i. It is assumed that this situation would only or usually arise where the PP is a child.
 - ii. Appropriate staff within the Local Authority have specific training relating to care / protection of children. This is particularly important where dealing with a PP who has been forced into or is at risk of being forced into marriage, and is likely to be particularly vulnerable.
 - iii. The child would, where appropriate, fall within the care of the Local Authority on return to this jurisdiction.
 - iv. The child is likely to be under the care of the equivalent social services team in the other jurisdiction. It is likely that that body would consider it appropriate to handover to a counterpart in a similar role from this jurisdiction.
29. Police officers do not have powers outside this jurisdiction, and are not trained to care for children. The right person to care for and safeguard a vulnerable child is a social worker, not a police officer. The NPCC does not consider that it would be appropriate, or in the best interests of a vulnerable child, for a police officer to undertake this role.
3. As with any investigation, guidance on liaising with the authorities in the other jurisdiction, and arrangements for repatriation, should be sought from the FMU / FCDO / CPU by the relevant Local Authority...
34. As indicated within the Practice Guidelines, it may be appropriate for the police to play a more limited role, such as being asked to meet the PP on arrival in the UK, in case family members try to abduct them at the airport. However, this assistance would be provided within the UK, and would involve police officers being requested for the potential exercise of police powers. It would not involve police having responsibility to provide care for a vulnerable child.’

38. Ms Asif sets out M’s position as follows:

2. ...the relevant public authority that will lead, assist and conduct the repatriation should be identified at an early stage so that the steps required for the successful repatriation can be identified and agreed at the earliest opportunity. This information should be provided to the relevant authorities overseas through the FCDO...the relevant authority should be either the child/young person’s local police force or local authority. These authorities may need to continue to provide the child/young person some immediate assistance on their return to this jurisdiction.

3. *In cases where no relevant body or authority can assist with repatriation, the FCDO/FMU should be invited to provide specialist support and where possible assist with repatriation in accordance with the Government's guidance.*

39. Insofar as Ms Asif here is speaking only of the 'truly exceptional circumstances' referenced by Ms Wilsdon in her submissions at [64] set out at paragraph 36 above, then such an invitation might of course be issued, but whether it is accepted will inevitably remain at the discretion of the Secretary of State. Generally, it will be the case that the social services will remain the most likely authority to be the most suitable to carry out the operation.

40. Mr Gupta KC, on behalf of Karma Nirvana, does express serious misgivings about the reliability of social services engagement. He says:

a. *...it is the experience of Karma Nirvana that local authorities can be hesitant, given the prevalence of incorrect assumptions and misunderstandings about the issue, to grasp the nettle. In 2023, Karma Nirvana struggled to repatriate a thirteen-year-old girl from Pakistan, following concerns raised by her mother about her being forced to marry her 19-year-old cousin. Despite notification to the local authority social care team, concerns were not taken seriously. Guidance from the court must be clear and uncompromising that forced marriage of a child is a significant safeguarding issue which warrants involvement of the authorities.*

b. He also cites the Practice Guidelines at 12.2 when they make clear:

"Forced marriage is a form of child abuse that places children and young people at risk of neglect, physical, emotional (including psychological) and sexual abuse. Children's social care have a duty to identify children who are likely to suffer significant harm, and to invoke the necessary procedures to safeguard children. The personal safety of the child or young person must be paramount...

Existing statutory safeguarding options can be used to protect a child at risk of forced marriage, such as Child in Need Plans, Child Protection Plans, the Public Law Outline or care proceedings. Local safeguarding partners should always consider the additional protection afforded by a Forced Marriage Protection Order (FMPO), which can be sought for the protection of children who have travelled overseas as well as those in the UK.

c. And from the same Guidelines at 12.3:

A child or young person can be assisted by children's social care to receive protection under the Family Law Act 1996 and the Protection from Harassment Act 1997. Under these Acts the following orders may be sought:

- FMPO
- Non-molestation order
- Injunction against harassment

Once a child or young person has left the country, the legal options open to children's social care, other agencies or another person to recover the child or young person and bring them back to the UK are more limited. Applying for a FMPO is often the best course of action.

- d. He also points to the fact that a local authority is the only specified relevant third party for the purposes of Art.3 of the Family Law Act 1006 (Forced Marriage) (Relevant Third Party) Order 2009, demonstrating what he describes as local authorities' *'particular role to play as envisaged by Parliament'*.

41. Clearly, it evident that in the majority of cases involving these serious issues, the local authority will have a crucial part to play in leading and managing the process by which children and young people can be kept or rendered safe. They should not hesitate to involve themselves from the earliest moments when problems are first notified or manifest themselves. If in any doubt they should refer to the Practice Guidelines.
42. Local authorities should certainly engage, as appropriate and as identified in the guidance documents referred to above, with the FCDO and the FMU, and identify as quickly as possible what information is required and which agency is best placed to liaise and engage with the overseas country involved. If there is an opportunity to do that in advance of the matter coming before a court, then that should be taken. If not then the FCDO should be invited from the first stages to be involved in the court process, at least until it is established that they cannot be of further assistance.
43. Consideration should also be given to the involvement of the police from the first, but the limitations to their powers once the person to be protected has left the country should be borne in mind.

44. Mr Gupta KC has also referred me to Karma Nirvana's recent report "*Child Marriage Law in England and Wales: One Year On*", in which amongst their recommendations is the establishment of a "*clear procedural framework for repatriating children taken out of England and Wales for marriage purposes*". Such a framework would need to be one of extraordinary flexibility if it were to be capable of application in every case, in each part of the world where these problems have arisen and will continue to arise. At present, it would also need to be entirely consistent with the guidance documents referred to above, and the product of input and consensus from all parties concerned.
45. What must remain important for each case and each young person at risk is that the approach to their particular problem is one which has been tailored to ensure that it is swiftly acted on, and as effective as possible in their particular circumstances. For this bespoke approach to be successful, however, all of the agencies which may become involved do need to be fully aware of their responsibilities and powers, and willing to engage without reluctance once the circumstances requiring intervention have been established.
46. Finally, Ms Asif makes the point, and I agree, that Wardship in cases where the child/young person is under 18 may well be the best mechanism to safeguard children alongside other orders such as forced marriage protection orders, female genital mutilation orders and Tipstaff orders (as appropriate). It is also clear (with Mr Gupta KC) that cases invoking the inherent jurisdiction of the court relating to children, or where an application for a Tipstaff Order is applied for, must be commenced in the Family Division of the High Court, as the Family Court has no jurisdiction. Thereafter, it may become appropriate for cases to be transferred to the Family Court if residual issues no longer require them to remain in the High Court.