

Case No. LS23F50027

Neutral Citation Number: [2024] EWFC 130

IN THE FAMILY COURT SITTING AT LEEDS

Leeds Family Court
1 Westgate
Leeds LS1 3BY

7 May 2024

Before:

HIS HONOUR JUDGE HAYES KC
SITTING AS A SECTION 9 DEPUTY HIGH COURT JUDGE

Between:

THE CHIEF CONSTABLE OF WEST YORKSHIRE POLICE

The Applicant

-v-

FP

1st Respondent

-and-

MP

2nd Respondent

-and-

PP

Protected Person

BECKY JANE, Counsel, for West Yorkshire Police.

HANNAH WHITEHOUSE, Counsel, for FP.

MP was excused attendance at the costs hearing.

PP acted in person.

Hearing Date: 2 May 2024

Judgment Hand Down Date: 7 May 2024

JUDGMENT



HIS HONOUR JUDGE HAYES KC:

1. This Judgment addresses an application for costs in Forced Marriage Protection Order ('FMPO') proceedings. The application is made by the 1st Respondent, FP. He seeks an order that the Applicant, West Yorkshire Police ('the police') should pay him costs in the sum of £8,580. He has produced invoices for legal fees dated 1 December 2023 (£1,920), 16 January 2024 (£2,700) and 7 March 2024 (£3,600). The total of those three invoices is £8,220. The higher total of £8,580 is reached by adding a one time Solicitors consultation fee of £360 dated 14 December 2023.
2. FP is the father of the protected person, PP, who is an adult female in her twenties. Her mother is MP who is the 2nd Respondent. Both support FP in pursuing his costs application. The police oppose the application.
3. The hearing to address costs was listed on 2 May 2024. In advance of the hearing, I received written submissions on behalf of FP, PP and the police. At the hearing, I was addressed orally by Counsel for FP (Hannah Whitehouse), PP (acting in person) and Counsel for the police (Becky Jane). I was greatly assisted by the submissions that were made. At the conclusion of submissions, I informed the parties that I would prepare a written Judgment determining the costs issue. This is that Judgment.

The Factual Background

4. Police involvement with PP was triggered by a referral from Ms AB, a colleague of PP's at her workplace in Leeds. Ms AB has a safeguarding role at the workplace. Within the written evidence filed on behalf of the police is a statement dated 17 July 2023 from Ms AB. I note now that much of that statement explains the actions of the police in bringing and pursuing these proceedings.
5. Ms AB recounts that PP had been working in a department at the workplace. She had alleged difficulties at home and arrangements were made to enable PP to have a private conversation with Ms AB about any safeguarding or personal issues she wished to discuss. Ms AB states:

“Within the meeting I have spoken with [PP], who disclosed that she had experienced domestic abuse for the past 10 years, this related to physical, emotional and mental abuse from her family. [PP] stated that she was scared of being physically assaulted by her mother as she assaulted her in the past and that she was feeling isolated generally... She disclosed previous physical abuse whereby her mum ... had assaulted her with belts, plastic spoons and other items in the past. [PP] also disclosed that in 2018 her mother choked her on the bed, the incident was severe to the point where her siblings have had to intervene to pull

the mother off [PP]. When the family stayed in Libya, [PP] was abused abroad in front of other family members who mentally and psychologically abused her as well.

Whilst I was speaking with [PP] she disclosed that she is often called fat and body shamed by her parents and that she is "nearly expired" which means she is close to the age of marriage, she was also told what to wear. During this conversation [PP] stated that she has never felt in danger, but her parents have mentioned comments such as if she brings shame on the family, they would rather that she was dead".

6. Ms AB states that in, November 2022, PP informed her that she would be moving out of the family home. PP then brought her personal belongings to work over the course of a week. However, when she told her parents that she was going to move out, her mother collapsed in shock, and she did not do so.
7. Ms AB contacted the Forced Marriage Unit, and they helped to establish a safety plan. One feature of that plan was to set up a safe word. The purpose was to enable PP to send Ms AB or another staff member a message containing the safe word to communicate that she was in danger. This, I observe now, is a key part of the factual history in light of what happened in mid-July 2023.
8. On 18 November 2022 PP emailed Mr CD, another staff member at the workplace, her proposal for the safe word (or code word as she refers to it in that email):

“Hi [Mr CD]

I just thought of a password.

When I call in I'll say “I've been sick for the past 3 day” and “3 days” specifically will be the main code word. I think that would make sense to include and sounds natural too”.

9. In February 2023, PP told Ms AB that she was being forced to go to Libya as her grandmother was ill. She then stated that her grandmother's health had improved, and she did not need to go. PP said that she had had an open conversation with her parents in March 2023 about concerns about going abroad and forced marriage. In the same month, PP stated that her uncle was getting married and was insistent on all family members attending the wedding.
10. PP booked time off work for her uncle's wedding, and she travelled to Libya on 3rd July 2023. She was due back on 16th July 2023. On 12th July 2023 she sent an email to Ms EF (another staff member at the workplace) stating that she would not be able to get a coach from London to Leeds in time for her shift on 17th July. PP added, “I shall hopefully see you on Tuesday the 18th [July]”. Ms EF replied that she had added a day of annual leave for PP on Monday 17th July.

11. However, on 17th July 2023 at 2.16am (UK time), PP sent an email to Mr CD, copying in Ms AB which was headed “Notice of Resignation”. It read:

“Hi [Mr CD]

I hope this finds you well.

As you are aware, I have booked annual leave from the 3rd to 17th July for my holiday.

[Mr CD], I have been sick the past 3 days and decided to stay abroad as the treatment I require is provided here for cheaper costs than in the UK. I am unaware of the duration I’ll be staying here but it will most likely be long term.

I apologise for the short notice and any inconvenience. Please feel free to contact me by email, as I will aim to check when I am able to do so.

[Ms AB], as you gave me a list of documents required to send to you for registration verification exam and final paperwork, I do apologise for not getting back to you sooner. [Mr CD] has all the necessary documentation required by [the professional body] including photocopies of my passport, driving license and degree certificate.

After conversations with both of you regarding my good progression of my portfolio and my worries regarding the verification exam, I do hope you are able to extend my time to complete the registration so I feel reassured that I can come back and complete it.

Thank you both for your combined efforts towards my portfolio and my general wellbeing at work”.

12. In that email, PP used the phrase that she had proposed to communicate that she was in danger. Mr CD and Ms AB both realised the safeguarding implications of this, and the police became involved and took the statement from Ms AB.
13. There is also a later statement dated 7th October 2023 by DC QR, a Detective Constable whose role includes safeguarding adult investigations. DC QR explains that the police were applying for leave to make the FMPO application as the local authority (Leeds City Council) had refused to make an application “but provided no rationale for this”. On behalf of FP, Ms Whitehouse seeks to put some significance on this which I address later in this Judgment.

14. DC QR sets out the evidence that led to the police pursuing the FMPO application. This includes the evidence within Ms AB's statement and the emails relating to the setting up of, and then PP's use of, the safe word in her email dated 17th July 2023 that I have already referred to.
15. DC QR states that the police had spoken to PP's friends who raised concerns that PP was being physically and emotionally abused. PP had raised concerns with them about being forced by her parents to marry a man from Libya.
16. The Foreign Commonwealth and Development Office and Interpol had been contacted to see if they could assist or arrange a visit to PP in Libya, but this could not be arranged.
17. Police Officers had attended at the home address of all parties. It was established that FP was due to come back to the UK on 7th August 2023 and return to work. On 13th September 2023, police officers spoke to FP at his home address. He confirmed to officers that PP was still in Libya with her mother (MP) and the youngest sibling, and they were planning on staying in Libya. Officers provided brief details about why they were there. This led to a video call with PP being set up through other family members. PP stated that she was safe and well and wasn't being forced to stay there. However, DC QR points out that the video call took place in the presence of FP and there was another unknown person present on screen in Libya with PP. DC QR states:

“This has raised further concerns about her welfare and whether she is safe and well in Libya. No conversation has been had with [PP] when she has been on her own and a full conversation has been had with her”.

DC QR also highlights that on 14th September 2023, PP sent an email to a friend stating that she was “still alive”.

18. Further information was provided to the police by friends of PP. They explained that PP had been hoping to attend post-graduate study and was meant to be sitting an examination on 23rd August 2023. DC QR observes that this suggests she had been intending to return from Libya to continue her studies in the UK. DC QR adds:

“[PP] had not been told that she was staying longer in Libya than the initial flight details as she had not been able to inform friends of when she would be back and her conversations with friends dwindled to the point contact rarely happened. There has been no further information as to when she would be returning to the UK or if she is allowed to do this at all. It is believed through friends that [the parents] have either taken or restricted [PP's] use of her mobile phone and this is the reason her contact has become less and less”.

19. Proceedings were issued by the police on 7 October 2023, when they sought leave to apply for a FMPO and the making of such an order.
20. The application first came before the court as an *ex parte* hearing before District Judge Dawson on 7th October 2023. The police were granted permission to make the FMPO application and an FMPO was made against FP and MP in the following terms:

“[1] The Respondents, [FP] and [MP] are forbidden from:

- [a] Forcing, attempting to force or otherwise instructing or encouraging any other person to force the person to be protected [PP] to undergo any ceremony (or purported ceremony) of marriage, civil partnership, betrothal or engagement;
- [b] Instructing or otherwise encouraging [PP] to undergo any ceremony (or purported ceremony) of marriage, civil partnership, betrothal or engagement;
- [c] Facilitating, allowing or otherwise permitting [PP] to undergo any ceremony (or purported ceremony) of marriage, civil partnership, betrothal or engagement;
- [d] Using or threatening violence against [PP] or otherwise instructing or encouraging any other person to do so;
- [e] Intimidating, harassing or pestering [PP] or otherwise instructing or encouraging any other person to do so.

[2] The First Respondent [FP] is forbidden from travelling to Libya.

[3] The First Respondent [FP] must surrender his passport to West Yorkshire Police forthwith”.

21. The Court directed that it would reconsider the application and whether the order should continue at a further hearing on 16th October 2023. That hearing was listed before District Judge Prest KC. He ordered that the FMPO should continue in the terms set out above until the conclusion of the proceedings, with the following further prohibitions being added. The Respondents [FP and MP] were prohibited from:

“[a] Removing, seeking to remove, or instructing or encouraging any other person to remove [PP] from the jurisdiction of England and Wales.

[b] Leaving the jurisdiction of England and Wales”.

22. The following orders were also made (at paragraphs 5, 6 and 8 of that order):

“[5] Every person within the jurisdiction of this Court, who is in a position to do so, namely the Respondents, shall co-operate in assisting and securing the immediate return to England and Wales of [PP] by 23 October 2023.

[6] The Respondents must facilitate a means of communication by which [PP] can speak with West Yorkshire Police daily between now and her return to the United Kingdom.

...

[8] The passport of the First Respondent [FP] is to remain in the care of West Yorkshire Police until further order”.

23. Directions were made for the matter to be listed for a Pre-Trial Review on 6th December 2023 before District Judge Bell. The order contemplated that a final hearing would be timetabled at that hearing.
24. Notwithstanding the direction made by the Court on 16th October 2023 aimed at securing PP’s return to the UK by 23 October 2023, this did not take place. This meant that any communication between the police and PP could only take place through means such as email or video calls.
25. On 24th November 2024, PP issued an application to discharge the FMPO. In her application form, she states:

“After coming to Libya for a holiday, I decided to stay with my family and start a new life here. Although spontaneous, this decision was made to my own accord and free will. Before coming to Libya, I spoke about fears of forced marriage as I heard stories from people from similar cultural backgrounds however, I never felt afraid enough not to travel with my parents as I always trusted their mindset. I’ve had several marriage proposals and was given the free will to reject them which I did. I went to Libya several times throughout my life including last year and I am very happy here. My father and mother did not force me into a marriage and I understand suspicious were raised due to me speaking about the topic and my spontaneous decision to stay here. My father and mother have been supporting my business I started here and I am happy here as I don’t pay income tax, electricity or any bills at all. I don’t want the police to intervene with my life as I am old enough and I am not a vulnerable person. I have the right to choose the way I live. It’s unfair that my father and mother have been alleged with something they haven’t done. I sincerely request this FMPO to be discharged immediately so that me and my family can continue with our lives and move forward. I am also happy to submit evidence to support this FMPO discharge”.

26. In her statement in support of her application, PP acknowledges that, before she travelled to Libya in July 2023 to attend her uncle’s wedding, she had previously spoken to colleagues and friends about the planned wedding. She states that they had

expressed concerns about forced marriage from “false stereotypes they had heard before”. PP states that, although she knew her parents would never force her to do anything against her will, “they had instilled some fears into me which led me to discuss it with [Ms AB], the safeguarding nurse”. Ms AB had suggested safety measures including giving her passport to the police to be flagged up with the airport (which PP declined to do) and providing her with the address of the British embassy in Libya.

27. PP states that she was happy going to the wedding in July 2023, and refers to her parents in positive terms, describing them as well-respected members of the Muslim community and they would always respect Islamic teachings. She refers to meeting a man named Mr GH 2 years ago and that he had made her believe that any discussions or disagreements with her parents amounted to oppression and abuse “and he pressured me to do something about it despite there being actually nothing to be worried about”. She states that when her parents suggested potential partners to her, Mr GH would pressure her to think they wished to force her into marriage. She had moved out of her parents’ home in November 2022, but had immediately felt guilty “for believing false things about my parents’ intentions” and went back home.
28. Referring to the trip to Libya in July 2023, PP states that she was due to fly back on 16th July 2023, but her uncle’s wedding was postponed out of respect because his fiancée’s uncle died. She and her family chose to stay in Libya to support her uncle and attend the postponed wedding.
29. PP states that she then took the opportunity to visit a workplace in Libya and she looked into setting up her own business in Libya. She discussed this with her parents and her father offered her financial support.
30. Addressing the email dated 17 July 2023, PP states:

“As I wrote my resignation email, I was still slightly fearful of staying in Libya because of the previous pressure of fears from my colleagues, friends and [Mr GH]. I wrote the safe word agreed upon with [Ms AB] and [Mr CD] in case anything was to happen. However, nothing happened during my stay, and I realised my fears were just fears pushed onto me by others and that they were not true. It’s many months down the line and I am safe, healthy and was not forced into a marriage”.
31. PP also refers to online meetings with a Solicitor, MN (whom she had been in contact with since FMPO proceedings were issued) and the police. During those meetings, she mentioned things in the MS Teams chat impulsively and which were “completely untrue”. PP again attributes this to her being “wrapped around false stereotypes”.

32. Addressing the arrangements that were made for her to return to the UK in October 2023, PP states:

“As the time approached for me to travel to the UK on the 26th of October, I did not want to travel anymore and wanted to continue staying in Libya as I ultimately felt happier here than in the UK. When communicating with the Police and [MN] on the reason why I did not take the flight, I also had fears they would make me pay back the cost of tickets from Tunisia to Paris and Paris to the UK, if I simply mentioned I wanted to stay in Libya and continue working on my business idea. Instead, I mentioned that I would be in danger as I thought it would be the only way I wouldn’t have to pay back the costs”.

33. PP describes working on her business and being happy staying in Libya. She states:

“My father and mother are my biggest supporters, and I would be extremely upset if they were to be affected by this court case built on false allegations. Without their support, I would have not got this far with my career and education”.

34. PP reiterates that what she had said previously was a result of conversations that she had had with her colleagues and friends and that she “felt pressured to play into their narratives of being a domestic violence victim”. She adds that she had “asked the police not to submit any evidence without my permission first” and that “I did not consent for this case to be reported to begin with”.

35. On 27 November 2023, FP also submitted a statement in which he set out his response to the FMPO application. He provides details of his professional and family circumstances. He gives an account of the trip to Libya which matches that of PP and says that she had remained there to set up her own business. He states that he was shocked when the police visited his home in September 2023 and questioned him why PP had not returned to the UK. He had been preparing to travel back to Libya on 7 October 2023 to attend the wedding of his brother-in-law (postponed from July) when four police officers attended his home, served him with the FMPO and confiscated his passport. He was hurt and offended by this and missing the wedding which the family were all looking forward to. He states that when he and MP were ordered to facilitate PP’s return to the UK, he arranged her tickets and booked her flight from Libya to Tunisia and encouraged her to return, but she chose to remain in Libya. He was deeply offended by the suggestion that he would force PP into marriage which was contrary to the teachings of Islam. He describes the order made against him as “totally baseless and false”.

36. Alongside that statement, FP produced copies of various documents including from the Civil Registrar in Tripoli stating that PP is single/unmarried.

37. The hearing on 6th December 2023 came before District Judge Bell. As her order of that date recites, when the hearing was called on it was made clear that not all parties had access to all of the papers that had been disclosed into the proceedings. Further, PP had not received any of the paperwork relevant to the application. District Judge Bell directed that a full bundle would need to be provided, including the relevant papers before a substantive case management could take place. She therefore listed the matter for a further case management hearing. The recital added that District Judge Bell would be liaising with the Designated Family Judge whether the case should be reallocated to a Judge of Circuit Judge level.

38. This latter recital is explained not just by the international element of the case (PP being in Libya) but also the recital that follows in District Judge Bell's order:

“The Applicant seeks to withhold disclosure, to all parties save for the court, of some evidence that it relies upon within these proceedings. The applicability and/or disclosure of that evidence shall be determined at the next hearing of this matter. This evidence should be sent to the Court alone in a ‘closed’ bundle, which must be treated fully securely in order to maintain its integrity”.

39. The Court made directions providing for the above, and other directions preparatory for the next hearing. The hearing was reallocated to Circuit Judge level and that hearing came before me on 8th January 2024.

40. At that hearing, I dealt with a wide range of matters. These included the following:

- a. I read the material in the ‘closed’ bundle that had been lodged with the court by the police and I conducted a ‘closed hearing’ attended only by counsel for the police. I granted the application to withhold disclosure of that material to the other parties, being satisfied that it was properly withheld pursuant to rule 11.7(2)(a) of the Family Procedure Rules 2010.
- b. The remainder of the hearing was conducted with all parties present.
- c. PP's application to discharge the FMPO at that hearing was refused.
- d. FP's application to discharge elements of the FMPO (relating to removal of PP from the jurisdiction and for retention of his passport) at that hearing was also refused.
- e. Directions were made for service of further evidence and the preparation of an ‘open’ and a ‘closed’ bundle prior to a final hearing. I listed that final hearing with a time estimate of two days before Mr Justice Cobb sitting at Leeds on 13th

and 14th March 2024. I provided for judicial reading time on the afternoon of 12th March 2024.

- f. I recorded the witnesses who were required to give evidence at the hearing, namely DC KL, Ms AB, FP, MP and PP. The order provided that MP and PP would give their evidence remotely and that there would be a court interpreter (Arabic) for MP. The order also noted that statements by two of PP's sisters may also be filed and served and, if so, they may also be required to give evidence.
 - g. I directed that the FMPO, as ordered on 16th October 2023, remained in force until further order.
41. On 26th February 2024, PP submitted a second written application for the FMPO to be discharged. This repeated her account that she was living happily in Libya and had previously lied about her parents due to "negative stereotypes" that she had about her culture.
42. On the first day of the final hearing before Cobb J, a proposed way forward was agreed between all parties. How this came about is recorded in detail at recitals [c] to [o] of the order dated 13th March 2024:
- "[c] [The police] confirmed that if [PP] were to travel to the United Kingdom to meet with the police in circumstances where they could be satisfied of her safety and that she was able to speak freely and openly, this would enable full consideration as to whether the Forced Marriage Protection Order ('FMPO') was still required.
- [d] [FP] was in support of [the police's] proposal.
- [e] [PP] was not in support of [the police's] proposal.
- [f] [FP] thereafter proposed as an alternative that [PP] attend the British Embassy in Libya or Tunisia to enable the necessary meeting to take place.
- [g] [The police] confirmed that [they] would be agreeable to [PP] attending the British Embassy in Tunisia, which had British consulate staff and that a meeting could take place between the police and [PP] via Microsoft Teams.
- [h] [The police] further confirmed that [they] would pay for the cost of [PP's] flights from Libya to Tunisia and from Tunisia back to Libya, albeit this would have to be booked by [FP] for which he would be reimbursed after the meeting has taken place.
- [i] [PP] was agreeable to this proposed way forward and expressed a wish that the necessary meeting takes place as soon as possible.

[j] [MP] was also agreeable to the proposed way forward.

[k] [FP] undertakes to arrange [PP's] flights from Libya to Tunisia to enable her meeting with the police to take place at the British Embassy at a date and time to be confirmed.

[l] [The police] request that [PP] takes her passport with her to the British Embassy for identification purposes.

[m] [The police] confirmed that [PP] will not face any consequences by way of criminal prosecution as a result of these proceedings.

[n] [The police] spoke with the Forced Marriage Unit, who confirmed that the meeting with [PP] can take place at the earliest on the week commencing Monday 18th March 2024 between 9:00am and 5:00pm (Tunisia local time).

[o] [The police] confirmed that the Forced Marriage Unit will liaise between the Applicant, the British Embassy and [PP] as to the time and date of the meeting”.

43. The Order went on to recite that the FMPO first made on 7th October 2023 and later revised on 16th October 2023 remains in force until further order.
44. A short review hearing was listed back before Cobb J on 22nd March 2024 for the police to inform the court as to whether:
- a. The FMPO should continue, in which case a final hearing will need to be listed;
 - or
 - b. The FMPO can be withdrawn/the application discharged.

Further directions preparatory to that review hearing were made.

45. Unfortunately, on attempting to fly out of Libya, PP relayed that she was unable to fly without being accompanied by her father, who was in the UK. DC KL filed a statement dated 19th March 2024, in which she explained the efforts made in seeking to facilitate PP's trip to the Tunisian British Embassy, including liaising with the Forced Marriage Unit to establish how matters could progress; enquiring whether another male relative could accompany PP's travel; asking the Forced Marriage Unit to contact the Embassy to enquire whether they could contact Immigration Services at the airport and establishing that the Embassy were willing to write a letter that PP could be provided with if she were to re-attempt the travel. PP wished to progress by way of a final hearing being held.

46. On 20th March 2024, FP filed and served a position statement and accompanying Form H seeking costs of £8,580.
47. At the review hearing before Cobb J on 22nd March 2024, the court was updated as to these developments. Given the agreed arrangements to speak with PP in a safe and secure location had failed, the police confirmed that they pursued the application for a FMPO. The Respondent parents and PP continued to oppose the FMPO. A contested final hearing was therefore listed before me for two days on 2nd and 3rd May 2024.
48. However, the Police then reviewed its position. On 17th April 2024, the police filed and served an application to discharge the FMPO, supplemented by a statement in support from DC KL. The draft order accompanying the police's application proposed:
1. The Forced Marriage Protection Order dated 22nd March 2024 is discharged in its entirety.
 2. The hearing on 2nd May 2024 is vacated.
 3. There shall be no order as to costs in this case.
49. Also on 17th April 2024, FP, MP and PP each responded via email to the solicitor acting on behalf of the police agreeing to paragraphs 1 and 2 of the proposed order. However, they did not agree to paragraph 3 as FP had an outstanding application for his costs which required court determination. It is in those circumstances that that application came before me on 2nd May 2024 (with a reduced time estimate).

Costs in FMPO Proceedings - The Legal Position

50. It is agreed by Counsel that the relevant legislative framework is found set out in:
- a. Section 51(1) and (3) of the Senior Courts Act 1981;
 - b. Rule 28.1 of the Family Procedure Rules 2010 ('FPR'); and
 - c. The Civil Procedure Rules 1998 ('CPR') Parts 43 and 44 (where applicable).
51. Section 51(1)(ba) of the Senior Courts Act 1981 provides that, subject to the provisions of that or any other enactment and to rules of court, the costs of and incidental to all proceedings in the Family Court shall be 'in the discretion of the court'. Section 51(3) provides that, 'The court shall have full power to determine by whom and to what extent the costs are to be paid'.

52. Rule 28.1 of the FPR provides: ‘the court may at any time make such order as to costs as the court thinks just.’
53. Rule 28.2 of the FPR applies certain rules within the CPR, Parts 43 and 44 to family proceedings. Rule 44.2(1) of the CPR provides that the court has a discretion as to whether costs are payable by one party to another; the amount of those costs; and when they are to be paid.
54. If the court decides to make an order about costs, the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, but the court may make a different order (Rule 44.2(2)).
55. In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including (Rule 44.2(4)):
- (a) the conduct of all the parties;
 - (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and
 - (c) any admissible offer to settle made by a party which is drawn to the court’s attention, and which is not an offer to which costs consequences under Part 36 apply.
56. The conduct of the parties includes (Rule 44.2(5)) –
- (a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction – Pre-Action Conduct or any relevant pre-action protocol;
 - (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
 - (c) the manner in which a party has pursued or defended its case or a particular allegation or issue; and
 - (d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.
57. Rule 44.2(6) of the CPR provides for the court’s power in ordering that a party must pay a proportion of another party’s costs; a stated amount of another party’s costs; costs from certain timeframes and relating to distinct parts of proceedings.

58. There is not, to my knowledge, any case law specifically addressing costs in FMPO proceedings and neither Counsel has cited any such case in written or oral submissions. However, Ms Jane on behalf of the police has referred to a line of authorities including *City of Bradford Metropolitan DC v Booth* (*'Booth'*) [2000] 164 JP 485; *R (on the application of Perinpanathan) v City of Westminster Magistrates Court* [2010] EWCA Civ 40, [2010] 4 All ER 680 (*'Perinpanathan'*) and *CMA v Flynn* [2022] UKSC 14 (*'Flynn'*)

59. In the last of this line of cases, the Supreme Court ruling in *Flynn*, Lady Rose (with whom all other Supreme Court Justices agreed) stated at paragraph 97:

“[97] In my judgment, there is no generally applicable principle that all public bodies should enjoy a protected status as parties to litigation where they lose a case which they have brought or defended in the exercise of their public functions in the public interest. The principle supported by the *Booth* line of cases is, rather, that where a public body is unsuccessful in proceedings, an important factor that a court or tribunal exercising an apparently unfettered discretion should take into account is the risk that there will be a chilling effect on the conduct of the public body, if costs orders are routinely made against it in those kinds of proceedings, even where the body has acted reasonably in bringing or defending the application. This does not mean that a court has to consider the point afresh each time it exercises its discretion in, for example, a case where a local authority loses a licensing appeal or every time the magistrates dismiss an application brought by the police. The assessment that, in the kinds of proceedings dealt with directly in *Booth*, *Baxendale-Walker* and *Perinpanathan*, there is a general risk of a chilling effect clearly applies to the kinds of proceedings in which those cases were decided and to analogous proceedings”.

60. In her submissions on behalf of FP, Ms Whitehouse cited a series of cases on costs including the Supreme Court ruling in *T (Children)* [2012] UKSC 36 (which she submitted should be distinguished from the present case). In *T (Children)*, the issue was whether the local authority should be liable to pay the costs of grandparents who had been joined as interveners in care proceedings. The grandparents were not legally aided and had spent £52,000 on legal fees. At first instance, they had been exonerated of allegations of sexual abuse at a fact-finding hearing, but His Honour Judge Dowse declined to order that the local authority should pay their costs. That decision was overturned by the Court of Appeal. However, the Supreme Court then overturned the Court of Appeal’s ruling, and upheld Judge Dowse’s order.

61. Delivering the Judgment of the Court, Lord Phillips stated (at paragraphs [42] to [44]:

“[42] In the context of care proceedings it is not right to treat a local authority as in the same position as a civil litigant who raises an issue that is ultimately determined against him. The Children Act 1989 imposes duties on the local authority in respect of the care of children. If the local authority receives information that a child has been subjected to or is likely to be subjected to serious harm it has a duty to investigate the report and, where there are reasonable grounds for believing that it may be well founded, to instigate care proceedings. In this respect the role of a local authority has much in common with the role of a prosecuting authority in criminal proceedings. It is for the court, and not the local authority, to decide whether the allegations are well founded. It is a serious misfortune to be the subject of unjustified allegations in relation to misconduct to a child, but where it is reasonable that these should be investigated by a court, justice does not demand that the local authority responsible for placing the allegations before the court should ultimately be responsible for the legal costs of the person against whom the allegations are made.

[43] Since the Children Act came into force, care proceedings have proceeded on the basis that costs will not be awarded against local authorities where no criticism can be made of the manner in which they have performed their duties under the Act. Wilson LJ in *In re J* at para 19 disclaimed any suggestion that it was appropriate “in the vast run of these cases to make an order for costs in whole or in part by reference to the court’s determination of issues of historical fact”. But, as I have indicated, there is no valid basis for restricting his approach in that case to findings in a split hearing. The principle that he applied would open the door to successful costs applications against local authorities in respect of many determinations of issues of historical fact. The effect on the resources of local authorities, and the uses to which those resources are put would be significant.

[44] For these reasons we have concluded that the general practice of not awarding costs against a party, including a local authority, in the absence of reprehensible behaviour or an unreasonable stance, is one that accords with the ends of justice and which should not be subject to an exception in the case of split hearings. Judge Dowse’s costs order was founded on this practice. It was sound in principle and should not have been reversed by the Court of Appeal”.

62. The common thread that runs through the Supreme Court rulings in both *Flynn* and *T (Children)* is that when a court is faced with a costs application against a public body, the court must bring into account that they have acted in accordance with their public functions when bringing and pursuing (or defending) proceedings. The warning in *Flynn* of the chilling effect of a costs order where a public body has acted reasonably

in bringing proceedings must, by analogy, be factored in by this court when I consider how the police acted in this case in bringing and pursuing the FMPO proceedings. Similarly, *T (Children)* determined that a local authority bringing and pursuing care proceedings should not be liable for the costs of another party, even when allegations have not been proved against that party, in the absence of reprehensible behaviour or an unreasonable stance on the part of the local authority. I consider that a like approach should apply to the police bringing and pursuing FMPO proceedings in respect of an adult whom they believe needs protection. If the police acted reasonably in their performance of that public function, then that must be relevant to my discretionary decision whether they should be liable to pay costs.

Analysis and Conclusions

Did the police act unreasonably in issuing these proceedings?

63. In the course of written and oral submissions on behalf of FP, Ms Whitehouse referred to the passage within DC QR's statement (see paragraph 13 above) stating that Leeds City Council had not made any application for an FMPO, adding that they had given "no rationale" for that stance. She notes (correctly) that a local authority can apply as of right for an FMPO whereas the police require leave. She submits that it can be inferred that Leeds City Council decided that an application did not meet the evidential threshold. Therefore, she submits, the police ought never to have issued this application and were unreasonable in doing so.
64. I do not accept that submission. Firstly, I do not know the reasons why Leeds City Council chose not to issue proceedings. The suggestion that they concluded the case could not meet the evidential threshold is speculative. There may have been other considerations at play. For example, Leeds City Council may have taken the view that the police should take responsibility for issuing these proceedings rather than them. Secondly, and more pertinently, I am clear in my conclusion that there can be no criticism levelled at the police for issuing these proceedings and putting the matter before the court. I have set out in some detail above the evidence that the police had gathered because it helps to explain why I have reached this clear view.
65. At the time these proceedings were issued, the police were acting on a wide range of information which created very substantial safeguarding concerns for PP, including that she was at risk of forced marriage. In particular:
 - a. PP had made very serious allegations to Ms AB of physical and emotional abuse by her parents over a prolonged period. Her description, if true, was profoundly

worrying. Ms AB was certainly very worried about PP in light of what PP recounted to her.

- b. In November 2022, PP had sought to move out of the family home, taking personal items to work over the period of one week but had then returned.
- c. A plan to protect PP was then formulated including the creation of the safe word. PP was actively involved in that plan and chose the phrase that she would use. PP was to deploy this if ever she needed to communicate secretly that she was in danger.
- d. PP had expressed worries that she was being forced to go to Libya in February 2023 (although she did not go then). She also said that she had spoken to her parents about going abroad and forced marriage in March 2023.
- e. The trip to Libya in July 2023 was only meant to be a two-week trip and PP was due to return to the UK on 16th July 2023. The email sent by PP on 12th July 2023 was still contemplating that she would return to the UK, although she was saying she would not get back to work until 18th July 2023.
- f. The email sent by PP in the early hours of 17th July 2023 (at 2.13am UK time, 4.13am Libya time) was, on any view, extremely concerning. Within that email PP used the agreed safe word secretly to convey that she was in danger. In fact, she used the full phrase set out in her email dated 18 November 2022 when that plan was devised (“I’ve been sick for the past 3 days”). She sent that email to Mr CD, whom she had emailed on 18th November 2022. She copied in Ms AB, the person who had been actively involved in supporting her and devising the safety plan and whom she knew had a safeguarding role at her work. The contents of her email dated 17th July 2023 stood in stark contrast to her email 5 days earlier which anticipated her return (a day late) to work. She purported to be resigning from her work. She said that her stay in Libya would most likely be “long term”. But she also referred to documents including her passport and spoke about her hope to “come back” and complete an exam. She thanked Mr CD and Ms AB for their combined efforts towards her portfolio and her “general wellbeing”. These other aspects of her letter, read in conjunction with her use of the safe word denoting that she was in danger, are notable. They could be read as further clues that PP was seeking outside help to get her back to the UK.
- g. When the police made enquiries, they conducted a video call with PP on 13th September 2023, but this was in the presence of FP and there was an unknown person present with PP in Libya. The police were rightly concerned that they were unable to speak to PP when she was on her own.
- h. PP’s email to a friend the following day that she was “still alive” only added to the concern. Friends explained that PP had been intending to be back in the UK before 23rd August 2023 to sit the examination paper then. The police rightly asked themselves why this intelligent young woman went from that situation to one where she was in Libya and sending a coded message denoting that she was in danger.

66. I find that the police were entitled to conclude that PP was at risk of forced marriage. They were also justifiably worried that PP was communicating (in her email dated 17th July 2023) that she was in danger and unable to speak freely about this. The police were rightly cautious that, at other times, PP might give an account of why she was remaining in Libya which differed from the reality of her situation.

Did the police act unreasonably in pursuing these proceedings?

67. I find that the seriousness of what PP had alleged and her use of the safe word (signalling that she was in danger in Libya) mean that the police also cannot be criticised for pursuing these proceedings in the manner that they have.

68. On behalf of FP, Ms Whitehouse advances (as an alternative to her primary position that proceedings ought never to have been issued) a secondary position that the police ought not to have been pursued these proceedings further once PP issued her own application to discharge the FMPO on 24 November 2023. I reject that submission. It ignores the dilemma that the police still had to grapple with. What weighed heavily with the police was that PP remained in Libya and it had not been possible for the police to satisfy themselves that her changed position was what she truly wanted to happen. On any view, there was a stark contrast between the matters listed at paragraph 65 (a) to (h) above and PP's application to the court seeking to discharge the FMPO. For that reason, the police took the position that the FMPO proceedings should continue. I find that it was reasonable for the police to take that stance.

69. The hearing before District Judge Bell on 6th December 2023 took place shortly after receipt of PP's application and the written evidence that she and FP had filed with the court. Although the order of that date recites issues relating to the bundle, this went both ways. Just as there was a need for the police to ensure the respondents were in receipt of material evidence, so too the police had not received written evidence that the respondents had filed directly with the court. Furthermore, the matter needed to be transferred to a higher tier of court to address case management including the material that the police sought to withhold. I do not find that the police acted unreasonably at that time so as to justify a costs order against them on that basis. The issues that the court was faced with on 6th December 2023, including the issue concerning material that police sought to withhold, meant that a further hearing before a Circuit Judge to address case management was an inevitability, and this led to the hearing before me on 8th January 2024.

70. At that hearing, the police invited the court to list a final hearing, with oral evidence to be called and tested, and I acceded to that application. I did so knowing that PP had issued her application to discharge the FMPO (which I refused to grant at that hearing). I had read PP's statement and that of FP. I made clear to the parties that the respondents' evidence needed to be included in the bundle going forwards, but that in

no way inhibited the court making progress on case management at that hearing. Indeed, I listed a final hearing then and set out the witness requirements. I took that step, notwithstanding the position that PP herself was advancing, because I had also read the very worrying accounts that PP had given earlier, and I had read about her use of the safe word in the email sent in the early hours of 17th July 2023 to convey covertly to the recipients of that email that she was in danger. As my order dated 8 January 2024 records, I had also seen and read evidence in a closed bundle of material. I was satisfied that that written evidence was properly being withheld pursuant to rule 11.7(2)(a) of the Family Procedure Rules 2010. It remains the position that that material is properly withheld. I am conscious for the purposes of this costs issue that FP (and his legal representative) do not know what is within it. It suffices to say that the concern of the police that PP may not be conveying her true feelings was also supported by that material.

71. This does not place FP at any disadvantage in addressing this costs issue because he has been made aware (as have all parties) that this has been a driving force behind the steps taken (or sought to be taken) by the police whilst these proceedings have been ongoing. PP's use of the safe word, and the context in which she did so, has been set out within the written evidence in the 'open' bundle and FP has always been aware of the significance that the police have given to that evidence. PP's statement dated 24 November 2024, whilst advancing a case to discharge the FMPO, also referred to other times when she had told professionals things that she now denies were true, including that she would be in danger if she took a flight back to the UK (see paragraphs 31 to 32 above). When the proceedings came before Cobb J at the final hearing listed on 13 and 14 March 2024, the carefully crafted plan agreed at that hearing was designed to create a means by which the police could speak to PP and be satisfied that she was able to speak freely.
72. It was through no fault of the police that what was planned did not take place. I find that, in trying to achieve that objective, they have been motivated throughout by the overriding imperative of trying to secure PP's safety and well-being on a properly informed basis.
73. The police have been faced with a choice what to do in such circumstances. They have concluded that they have done all they can in that regard. It is in this context that they have now come to the decision to take these proceedings no further. Again, I find that there can be no criticism of the police, and this cannot be used to suggest that they acted unreasonably before they reached this conclusion.
74. I have weighed the points made on FP's behalf. He has incurred significant sums in legal costs. There has been no finding made by the court that he acted in the way that PP previously alleged. He says that his life has been blighted by these proceedings and he has been the subject of constraints in terms of foreign travel and missed out on family and religious events. However, I have explained in detail in this Judgment why

I make no finding that the police have acted unreasonably at any stage of this legal process. In such circumstances, and in the exercise of the discretion vested in me under the legislation, I refuse FP's application for costs.

HHJ Hayes KC

7 May 2024