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Case No: FD04C00805

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
(In Private)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 December 2005

Before :

MR JUSTICE MUNBY

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In the matter of section 31 of the Children Act 1989
And in the matter of K (dob 24.2.1989)

Between :

A LOCAL AUTHORITY	**Applicant**
- and -	
(1) N	
(2) Y	
(3) K (by her children's guardian)	**Respondents**

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Ms Joanna Youll (instructed by local authority Legal Services) for the applicant (local authority)
Ms Ruth Kirby (instructed by Hornsby & Levy) for the first respondent (mother)
Ms Alison Russell (instructed by Boothroyds) for the second respondent (father)
Ms Rokeya Dangor (of Dundons) for the third respondent (children's guardian)
Ms Frances Clare (of Duncan Lewis) for K (the child)

Hearing dates: 10-11 November 2005

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Approved Judgment

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

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MR JUSTICE MUNBY

This judgment was handed down in private but the judge hereby gives leave for it to be reported.

The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name or location and that in particular the anonymity of the children and the adult members of their family must be strictly preserved.

Mr Justice Munby :

1. These are care proceedings in relation to K, a young woman who was born on 24 February 1989 and who is therefore now 16 years and 9 months old. The proceedings started on 6 September 2004 when she was 15 years and 6 months old.

2. I take the history in large part from the very helpful summary prepared by Ms Youll who appeared before me on behalf of the local authority.

The background

3. K is the daughter of N (the mother) and Y (the father). The parents are married. K is one of seven siblings. K and her family are from Iraq. The family is Kurdish. They are practising Muslims. The whole family is living in this country as a result of the father having been granted asylum. He fled Iraq after years of persecution, imprisonment and torture. There is undisputed expert medical evidence that he suffers Post Traumatic Stress Disorder as a result of the torture and imprisonment.

4. On 19 June 2004, when she was only 15, K was unlawfully married by her family to Mr A (aka Dr K) a man aged 27. Mr A, as I shall refer to him, is a medical doctor who, as I understand it, was at the time employed in that capacity by the National Health Service. The marriage ceremony was a religious ceremony which took place before an Imam in a mosque in a British city. I have been shown the formal document drawn up and signed by the Imam and have also been supplied with a translation. The 'marriage', whatever validity it may have in the law of Islam, is, of course, void as a matter of English law: see section 2 of the Marriage Act 1949. There is forensic evidence showing that the marriage was consummated (see below). According to the police, Mr A admitted in the course of an interview on 7 January 2005 that he knew K was under age. On the face of it, Mr A has on his own admission committed an offence under sections 9(1) and 9(2) of the Sexual Offences Act 2003 carrying a maximum sentence of 14 years' imprisonment. That assumes that the sexual intercourse was consensual. If not, he will have committed the offence of rape contrary to section 1 of the Act, an offence carrying a maximum sentence of life imprisonment.

5. On 16 July 2004 K disclosed to her GP that she had been 'married'. She alleged that she had been raped by Mr A and physically assaulted by her father until she consented to sexual intercourse with Mr A. The GP made a referral to social services. K was put under police protection and placed at an undisclosed address the same day. On 22 and 24 July 2004 Achieving Best Evidence interviews were conducted. K alleged that between 19 June 2004 and 10 July 2004 she had been physically assaulted, beaten, tied up and threatened by her father, including threats to kill her. This continued until she had agreed to engage in sexual intercourse with Mr A. She repeated her allegations of rape by Mr A. A medical examination on 23 July 2004 revealed no forensic evidence, nor any injuries.

6. On 2 August 2004 K visited a friend's home and failed to return to the foster carers. On 4 August 2004 she alleged that she had been kidnapped and needed £300 to secure her release. She was found by the police at a family friend's house and was returned to foster carers that day. On 10 August 2004, following a conversation with her mother, K refused to return to the foster carers and, with the local authority's

agreement, moved to the home of family friends. She returned to the family home by her own volition. On 21 August 2004 she was 'divorced' from her husband, the 'divorce', according to the formal document I have seen, taking place at the family home in the presence of Mr A.

7. On 8 September 2004 K indicated that she intended to return to Iraq the following week. She stated that she could no longer remain at home as her father was refusing to speak to her, and her mother and one of her brothers had said that she had brought shame upon the family. On 14 September 2004 K advised the social worker that she was returning to Iraq on 21 September 2004, and that she was fearful of being made to marry one of her cousins, and/or that Mr A's family would kill her. K stated that she had heard that Mr A's ex-wife had been killed on their wedding day.

The proceedings

8. On 16 September 2004 the local authority applied for and obtained an emergency protection order at the Inner London Family Proceedings Court. K was placed with foster carers at an undisclosed address. An application for a care order was issued on 17 September 2004. On 21 September 2004 K was placed with family friends following her refusal to remain in the foster placement. The local authority's application for an interim care order came before the court on 23 September 2004. At that hearing the mother entered into a detailed written agreement with the local authority and the matter proceeded by way of the 'no order' principle. K remained with family friends. The matter was listed for further directions on 15 October 2004. K attended the hearing and stated that she wished to return home to her parents. Again the local authority entered into a written agreement with the parents to ensure K's safety at home. A further directions hearing was listed on 11 November 2004.

9. On 11 November 2004 K came to court, made a number of allegations against her father and stated that she was very unhappy at home. There was an unpleasant scene after the hearing between K and her mother. K refused to go home. As it was very late and the local authority was unable to find K a placement the guardian identified a hotel for K to spend the night. The case returned to court the next day (12 November 2004) when an interim care order was made for seven days. The local authority's care plan was for K to stay in foster care. The foster carer became so concerned about K's behaviour that K spent two nights in hospital where she was seen by a consultant child and adolescent psychiatrist who concluded that she had an adjustment disorder and mild depression. K was then placed in a unit for young Muslim girls but left the following day and refused to return. She went missing from 5.45pm on 16 November 2004 until midnight on 17 November 2004 when she arrived at a family friend's home. She claimed that she had spent three nights sleeping in a public park. The family friend alerted the police and K was placed in a girls unit on 18 November 2004.

10. The matter returned to court on 19 November 2004. K attended. She spoke to the judge (District Judge Crichton) and stated that she wished to return home. She had previously talked of suicide and presented as fragile and volatile in her mood. The local authority sought a secure accommodation order with a view to carrying out a full psychiatric assessment. The application for a secure accommodation order was fully supported by the guardian but opposed by K and her parents. The District Judge made a secure accommodation order and an interim care order, both for four weeks and

therefore expiring on 17 December 2004. He transferred the matter to the PRFD for hearing on 25 November 2004. K was placed in a secure unit. Arrangements were made for her to see a child and adolescent psychiatrist, Dr T, on 26 November 2004. Dr T provided a report dated 2 December 2004.

11. On 25 November 2004 the matter was heard by District Judge Green at the PRFD. He considered the matter complex and transferred it to the High Court. On 29 November 2004 the local authority was advised by the police that if K were to return home she might be killed. There was an ongoing police investigation by the specialist community liaison group at Scotland Yard. A secure accommodation review panel met on 14 December 2004 at the secure unit.

12. The next day (15 December 2004) the matter came before me for the first time. I made an order authorizing the local authority to keep K in secure accommodation until 12 January 2005 and an interim care order for the same period. Dr T provided a further report dated 27 December 2004, stating that K would like to die, but was more likely to self harm, and that she was at risk. A medical report dated 5 January 2005 expressed the opinion that it was not possible to state definitively whether K remains a virgin.

13. The matter returned to court before me on 17 January 2005. It was agreed that K could return home, the father having sworn an oath on the Koran that no harm would come to K when she came home. Arrangements were made for K to receive psychotherapy once a week and for an assessment at the Marlborough Family Centre. This assessment was to be undertaken on behalf of the parents; the local authority was not to be involved in any way with it due to the mistrust the parents had of the local authority. I made an order for securing K's passport and granted injunctions prohibiting the parents from obtaining travel documents and/or a passport for K (whether from the Iraqi Embassy, the British Foreign and Commonwealth Office or the Passport Office) and prohibiting them from removing K for the jurisdiction of England and Wales without the express written approval of the court.

14. After various further directions hearings the case came on for final hearing before me on 10 November 2005. By then the estimated length of the hearing, which had earlier been reduced to five days, had been further reduced from five days to two. Serious delay had been caused by the family's failure to provide the Marlborough Family Centre with a proper letter of instruction. It was then proposed that, instead of the Marlborough Family Centre, the work could be done by the local CAMHS. That was agreeable to the local authority, though it seems not to have been taken up by the family. The father attended a meeting in October 2005 but K has not attended any appointments.

15. At an earlier stage the police provided a statement (dated 3 May 2005) explaining that they did not intend to proceed with any charges against either the father or Mr A, seemingly because there was no forensic evidence supporting K's allegations. More recently, however, the police have contacted social services to inform them that the mother had told them that she has K's 'marriage sheet' – indeed, apparently she has had this all the time. The latest information I have been given is that forensic testing of the marriage sheet has produced results which have led the police to re-open their investigation of Mr A. Their intention, apparently, is to charge him with criminal

offences, for the forensic tests seem to show that the 'marriage' was indeed consummated.

16. There are two further matters I should mention at this stage.

17. The first is to point out that K has been living at home now for some months – to be precise, since March 2005 – apparently without major incidents and, it is to be noted, without there being any interim care order or supervision order in place. Indeed, save in relation to passports and travel there has been no coercive order of any sort in place since 17 January 2005.

18. Finally, at this stage, I should refer to a letter dated 16 June 2005 written to the police officer in charge of the investigation by The Muslim Law (Sharia) Council UK. It reads as follows:

> "In the light of our discussion and in view of what has happened to [K] before and after her failed Islamic Marriage (Nikah), the Muslim Law (Shariah) Council (UK) expresses its serious concern regarding the safety of [K] if she goes back to her country Iraq.
>
> We think that under present circumstances, her safety requires her to stay in the UK for a considerable period of time."

As Ms Russell on behalf of the father and Ms Kirby on behalf of the mother observed, the view expressed in that letter is critically dependent upon what precisely the writer was told in the course of his discussion with the police, upon what precisely he understood to have happened and upon precisely what he understood the present circumstances to be. The letter throws no light on any of those matters and I have been given no further information.

The local authority's position

19. K's emotional well-being continues to be of concern to the local authority. K has not been attending school and until recently has refused to see the psychologist, Dr N, arranged for her. The local authority has agreed to fund a further twelve sessions with Dr N and is prepared to accept K as a child requiring accommodation under section 20 of the Children Act 1989 if that is what she wishes. The local authority considers that the local CAMHS could provide the family with some valuable support if they made themselves available and engaged with the resource staff.

20. The local authority seeks a supervision order for 12 months and orders pursuant to the court's inherent jurisdiction that will, as Ms Youll puts it, ensure K's safety for the entirety of her minority. To that end the local authority proposes that either the parents undertake or the court orders that K is prohibited from leaving the jurisdiction (in particular, going to Iraq) without the consent of the court until she is 18 years of age and that K is prohibited from marrying without the consent of the court until she is 18 years of age.

Threshold

21. Ms Youll on behalf of the local authority submits that threshold is established in accordance with section 31 of the Children Act 1989. She asserts that at the relevant date, namely 16 July 2004 (when the local authority first provided accommodation for K), K had suffered and was likely to suffer significant harm, such harm being attributable to the parenting she had received or was likely to receive not being what it is reasonable for a parent to give. The facts that the local authority invites me to find fall under three headings. First, sexual harm:

> "1.1 K was unlawfully married to a Mr A (aka Dr K) on 26 June 2004. The father states that neither parent was aware that it was illegal to marry under the age of sixteen years of age in England.
>
> 1.2 The marriage was arranged by her parents against her wishes.
>
> 1.3 The parents expected the marriage to be consummated. The father would not expect the marriage to be consummated against K's wishes.
>
> 1.4 The marriage was consummated.
>
> 1.5 K has made allegations that she had sexual intercourse against her will on number of occasions with Mr A and that she suffered sexual abuse.
>
> 1.6 K was exposed to sexual abuse because her parents arranged the marriage and as a consequence her parents failed to protect her from such sexual abuse although from their cultural perspective they had done nothing untoward."

22. Secondly, physical abuse:

> "2.1 K has alleged that Mr A raped and beat her.
>
> 2.2 K suffered physical abuse from Mr A. Her parents failed to protect her from the physical abuse of Mr A although they assert that they were not aware such abuse was perpetrated against their daughter."

23. Thirdly, emotional and psychological harm:

> "3.1 The parents both individually and together have been unable to consistently put K's needs before their own and as a consequence she has suffered emotional abuse.
>
> 3.2 K has suffered from emotional harm as a consequence of her arranged marriage and the sexual abuse she experienced from Mr A.

> 3.3 K has suffered emotional harm as a consequence of her mother's failure to protect her from the arranged marriage, the sexual abuse she experienced from Mr A and the physical abuse she experienced.
>
> 3.4 K has made allegations of sexual and physical abuse from Mr A. K has made extensive allegations that she was physically abused by her father.
>
> 3.5 Whilst there is no medical evidence to date to corroborate K's allegations of sexual and physical abuse the fact that she has persisted in these allegations is reflective of her emotional instability and unhappiness whilst in her parents care at that particular time.
>
> 3.6 K alleges that her parents view her as bringing shame on the family and as a consequence her father refuses to speak to her. The mother does not accept that the parents consider that K has brought shame on the family. The father says that he has refused to speak to K because she has made false allegations about him and he feared further allegations being made and the possible interference by the authorities affecting the rest of the family.
>
> 3.7 K's parents have not supported her placements in foster care and/or with family friends and as a consequence she has not found it possible to settle away from the family home."

24. I should say at once that much, indeed most, of this is accepted by both the father and the mother – rather more by the mother than by the father. The father and mother take issue with paragraph 1.6. The father also takes issue, to a greater or lesser extent, with some of what is said in paragraphs 2.2, 3.1, 3.3, 3.4, 3.5, 3.6 and 3.7.

25. Although I have little doubt that most of what the local authority says is correct, so far as it goes, the rather bald summary of its case set out in its threshold statement gives a seriously inadequate picture of the reality of what was happening here. I say this not to criticise the local authority for the way it puts its case but to emphasise that in the circumstances of this particular case it is more than usually important to bear in mind and understand the context – a context which, as Ms Russell correctly submitted, cannot be evaluated from a purely Euro-centric perspective.

26. The task of the court considering threshold for the purposes of section 31 may be to evaluate parental performance by reference to the objective standard of the hypothetical "reasonable" parent, but this does not mean that the court can simply ignore the underlying cultural, social or religious realities. On the contrary, the court must always be sensitive to the cultural, social and religious circumstances of the particular child and family. And the court should, I think, be slow to find that parents only recently or comparatively recently arrived from a foreign country – particularly a country where standards and expectations may be more or less different, sometimes very different indeed, from those with which are familiar – have fallen short of an

acceptable standard of parenting if in truth they have done nothing wrong by the standards of their own community.

27. Ms Russell, for whose sensitive and illuminating submissions I am particularly grateful, submits on behalf of the father that I must assess the facts in the context of the cultural and religious beliefs and practice of this family, including K, and in the context of the father's beliefs and cultural mores. I agree.

28. Ms Russell summarises the relevant background as follows. She points out that the whole family, as I have said, is living in this country as a result of the father being granted asylum. They are Kurds and practising Muslims. The father fled Iraq after years of persecution, imprisonment and torture. There is, as I have already noted, undisputed expert medical evidence that he suffers Post Traumatic Stress Disorder as a result of the torture and imprisonment. Those treating him have explained that he finds the court proceedings very difficult to deal with and, moreover, that the proceedings have led to deterioration in his condition. Ms Russell tells me that the father finds the court proceedings very stressful; he finds it difficult to concentrate and to give instructions and becomes increasingly physically uncomfortable. All this I accept without hesitation.

29. Ms Russell tells me that the whole family was distressed and to varying degrees traumatised by the police raid which took place following the allegations made by K. That I can readily believe. Those of us who have had the good fortune always to live in a liberal democracy governed by the rule of law may have a benign view of the police very different from the view of those whose experience of the police is of the Gestapo, the KGB or the equivalent under Saddam Hussein's regime. I can well understand when the father says that he found the incident reminiscent of the actions taken by the Iraqi security services in the past. Viewed objectively, the comparison may seem absurd, even offensive; viewed subjectively through the eyes of someone who has suffered what the father has gone through it is much more understandable.

30. Ms Russell also points out – and this, I believe, is vital to a proper understanding of what has happened here – that the father and the mother were married during the mother's fourteenth year, in keeping with the law, religious practice and custom of their country and people. It is consequently, offensive and hurtful to them to declare that a marriage before the age of sixteen is abusive and indecent, as it would seem to declare their marriage offensive and unacceptable. That I entirely accept.

31. A marriage performed in this country is not lawful unless both spouses have reached the age of 16. But it is important to remember that for centuries in this country the canonical and common law age of consent to marriage for a woman was 12, that it was as recently as 1929 that the age was raised to 16 (by the Age of Marriage Act 1929), and that, subject to the rule that capacity to marry is treated in English law as being dependent upon the antenuptial domicile of *both* parties, our law recognises as valid marriages valid by the *lex loci celebrationis* even if the parties would have been too young to marry under our law: see Dicey & Morris, The Conflict of Laws (ed 13), Vol 2, para 17-078. As *Alhaji Mohamed v Knott* [1969] 1 QB 1 shows, our law is prepared to recognise as valid a potentially polygamous marriage entered into by a girl who in our eyes would be underage. That was a case of a 26-year-old Nigerian Muslim man who entered into a potentially polygamous marriage in Nigeria with a

Nigerian girl aged 13; both were domiciled in Nigeria and the marriage was valid according to Nigerian law. The marriage was recognised in this country.

32. There is, I should like to emphasise, no question of this court holding or declaring that the marriage of the father and the mother in this case is illegal or unlawful. It is not. It was, I have no doubt, a marriage valid both by the *lex loci celebrationis* and by the laws of the country of the father's and mother's domicile. It is therefore, in the eyes of English law, a valid marriage, entitled, as I wish to emphasise, to both recognition and respect. It is for that very reason that the father and the mother, as I accept, find it difficult to understand why the mere fact that K was 'married' at the age of 15 years and 4 months should be treated as a matter of such gravity by the authorities.

33. The father's case, as summarised by Ms Russell, is that K asked her parents to arrange a marriage for her. Nothing was arranged without her express knowledge and consent; indeed she was enthusiastic for the wedding to take place. The arrangements that were made were in keeping with the family's religious and cultural practice. K was aware of each step being taken. Her father would have expected the marriage to be consummated, but would not have expected or in anyway condoned the use of force – he would, says Ms Russell, view such behaviour as entirely wrong and inexcusable. But it is not considered acceptable for male family members to discuss with female family members intimate physical or sexual matters, so he did not discuss such matters with K at any time. He does not dispute her description of her treatment at Mr A's hands, however he has not discussed it with her nor would he consider it appropriate to do so.

34. After the 'marriage' took place the father did not force K to return to Mr A. He did not, he says, use or threaten force at any time. He has been concerned by those allegations, which are without foundation, not only because K made them but because of their effect, not only on him but on the family as a whole. The father, says Ms Russell, remains concerned that K may make further allegations. It was because of that fear, and because of his concern for her, and the effect on K and the rest of the family, that he was reluctant for her to return home at the inception of the proceedings. Although K has been at home for some months now, she has refused to attend school and has not kept appointments with her therapist, despite both parents encouraging her to do so. Indeed, says Ms Russell, her refusal is against their wishes as they believe it would be in her best interests to go for therapy and to continue her education. However they cannot force her to go; she is sixteen and a half years old. K is apparently expressing a wish to be married again and has told her solicitor she wants to marry and have a baby so as to parade before Mr A's work-place carrying her baby. But her parents have not planned and are not planning a further wedding for her, either in this country or abroad.

35. So much for the general background, as viewed from the father's (and also, I suspect, the mother's) perspective. He has a number of additional points to make about certain paragraphs in the threshold document:

    i) Paragraph 1.6: While the father accepts that what K said took place has happened to her as she reported, he does not accept that he knew or intended that K would be sexually abused: firstly, as he believed her to be of an age for marriage, as prescribed by religious belief and custom; secondly, as he was not aware at the time that K was assaulted and forced. Had he been aware that K

was being forced to have sexual intercourse against her will, he would, he says, have taken urgent and appropriate steps to secure her safety and physical well-being. He does not accept that he failed to protect her from sexual abuse, for at all times he acted in good faith, in what he perceived to be her interests and in accordance both with her expressed wishes and within the proper practice and custom of their religion and custom. However he accepts that the marriage was not lawful and that K was under the age of consent.

ii) Paragraph 2.2: The father does not deny that K suffered physical abuse from Mr A, but he says that neither parent was aware of what was happening. Had they been, they would have taken action to secure K's physical safety. Ms Russell tells me that the father feels particularly strongly about this as he has taken considerable trouble to secure his family's safety. He would not, she says, knowingly allow any of his children to come to harm.

iii) Paragraph 3.1: The father mounts a particularly robust attack on this allegation. Ms Russell submits that what she calls this formulaic description of emotional and psychological harm is entirely inaccurate and that it fails to describe the realities of this situation. There is, she complains, no definition or outline of the way or ways that the father put his needs before K's. There is no recognition of the needs of the rest of the family, of K's siblings for whom the father is also responsible and who were frightened and distressed by the behaviour of the police. There is no acknowledgment of the fact that K, according to the father, expressly asked her parents to arrange a marriage for her. Neither parent believed that Mr A was anything other than an honourable person who would treat K properly and with respect. Moreover there was considerable concern on the father's part that if K made further allegations about him the police would again become involved and again cause distress and fear to his other children. It is not clear, she says, what he was supposed to do to show he was "putting K's needs before" his own, a nebulous concept at best, she says, and without meaning here.

iv) Paragraph 3.3: It is not accepted that K suffered emotional harm as a result of her father's failure to protect her from "the arranged marriage". Nor does he consider that her mother failed to protect her. Both parents love and care for K and have at all times attempted to secure what they saw as being best for her, within the context of their beliefs, culture and background, if not within the context of Western European urban norms. They have also acted on K's express wishes, which were insistently put by her, to get married.

v) Paragraph 3.4 and 3.5: These paragraphs fail to reflect the fact that, although K has never withdrawn the allegations against her father, she has not repeated them (in contrast to the allegations against Mr A which she has recently reiterated). She had previously made allegations concerning a teacher, which were investigated and (according to the available documents) found to be without foundation. Her father is extremely concerned about this. He wants her to receive therapy and urges her to do so. He does not accept that her evident unhappiness and instability is as a result of the care of her parents; but he accepts it has been while in their care. As Ms Russell also points out, it must be borne in mind that K was separated from her father from some years due to

his political imprisonment and before the family were able to join him in this country. And this, says Ms Russell, is a family that has been traumatised.

vi) Paragraph 3.6: The father does not refuse to speak to K. He was extremely concerned about her telling what he perceived to be very serious untruths about his behaviour towards her, and the difficulties that caused to the family as a whole. He did not talk to her for a time as he feared she might make further allegations that would be detrimental to the family and to K herself.

vii) Paragraph 3.7: Ms Russell submits that this description does not fully reflect the situation at the time and entirely fails to set out the facts relied on to support the statement that the parents did not support foster-care or other placements. According to the father, K did not settle away from home, because she wanted to be at home – particularly with her mother; she missed her mother's cooking – not because placements were undermined.

36. No-one suggested that I should hear any oral evidence. I have, therefore, had no opportunity to resolve disputed questions of fact. In the circumstances I do not think it appropriate, nor is it necessary, to go further into the question of threshold. I do not propose, therefore, to add to what I have said, save to emphasise two points:

i) First, the local authority invites me to find, and I do, that K has made various allegations against her father (paragraph 3.4); the local authority does not invite me to find, and I do not, that those allegations have substance. I proceed, therefore, on the basis that there are no findings of physical abuse by the father.

ii) Secondly, I am not prepared to hold that K's marriage was arranged, as the local authority asserts (paragraph 1.2), against K's wishes. The local authority has not established that this is a case of forced marriage. It is a case of an arranged marriage, solemnised and consummated at a time when K was under age according to our law but arranged in circumstances and in a manner acceptable in the context of the family's beliefs and cultural mores. The marriage may have turned out disastrously, but the parents are not solely to blame. Much blame lies at the door of Mr A.

The issues

37. Everyone agrees that K should remain at home with her parents and her siblings, where she has now been living on a reasonably secure and stable basis for the last eight months.

38. There are two questions that I have to decide:

i) The first is whether, as the local authority would have it, I should make a supervision order or whether, as everyone else (including the guardian) argues, there should in principle be no order at all.

ii) The other is whether, whatever other order I do or do not make, I should in any event make orders preventing K, until her eighteenth birthday, from either marrying or leaving the jurisdiction without the permission of the court –

whether by way of prohibited steps orders or by orders under the inherent jurisdiction or by making K a ward of court.

I shall deal with these in turn.

39. At the outset I merely comment that despite an initial reluctance on their part to accept that a supervision order can be combined with wardship, counsel eventually agreed that I would have jurisdiction to make K a ward of court at the same time as making a supervision order. That concession was plainly correct: see *Re M and J (Wardship: Supervision and Residence Orders)* [2003] EWHC 1585 (Fam), [2003] 2 FLR 541.

The first issue – should there be a supervision order?

40. Ms Youll accepts the local authority would be unable to manage a care order in the absence of cooperation by the parents and by K. K will be 17 years old in February and despite the local authority's concerns regarding her well-being it does not consider that the sharing of parental responsibility will enhance K's life in any way. Ms Youll further accepts that to impose a care order would not be a proportionate intervention into K's or her family's life. Put shortly, Ms Youll says that the local authority does not consider that it is appropriate to share parental responsibility for K given her age and family circumstances.

41. As against that, the local authority considers a supervision order to be not only proportionate but necessary to ensure K's well-being over the next 12 months. It considers that the issues raised in this case are very concerning. K was 'married' when she was 15 years of age. She has made extremely serious allegations of sexual abuse against her 'husband', Mr A. She has had periods of time when she has been estranged from her family and has made serious allegations of physical abuse against her father. She has said that the divorce brought shame on the family. At one point whilst K was in secure accommodation (on 29 November 2004) the local authority was told by the police that if K were to return home she would be killed. The local authority has also received advice from The Muslim Law (Sharia) Council UK that K would be at risk if she left this country in the foreseeable future, particularly if she returned to Iraq.

42. The local authority does not consider that K's parents have supported her placements in foster care and/or with family friends, which made it difficult for K to settle. It has had difficulties working with the parents to support K. The parents have mistrusted the local authority. The present social worker has managed to maintain a working and civil relationship with K and the parents although more recently K appears to have withdrawn her cooperation. (In the six weeks prior to the hearing K did not engage with the social worker and missed a number of appointments.) The local authority fears that in the absence of an order and on-going court proceedings the family's cooperation, which has been limited to date, may be further withdrawn. Ms Youll submits that, although K presently says that she will not cooperate with social services, that is not, of itself, reason enough for the court to refuse to make a supervision order.

43. Ms Youll says that if a supervision order was made the following input would result:

i) It is likely that the present social worker would remain involved as the allocated worker.

ii) There would be continued liaison between social services and educational and medical facilities for K.

iii) There would be continued support and assistance from the social worker for K. K would be encouraged to maintain her counselling.

iv) There would be regular meetings, K willing, between K and the social worker.

44. Ms Youll contrasts that with what, she says, would be the result of my making no order:

i) In the absence of a supervision order the parents and K would have to request specific support from the local authority. That, she says, is highly unlikely.

ii) The social worker's involvement would probably cease. Although it may be said that K has not recently cooperated with the social worker, it must be remembered, says Ms Youll, that she is one of the very few professionals who has been able to work with this family.

iii) As K's contact with the local authority has been unwelcome to her family it is the view of the social worker that K would be subjected to emotional pressure not to approach social services in the future.

45. Ms Youll points out that there have been a number of crisis points in K's life during the last twelve months, and whilst it is clear that she appears to be happier at home and more settled the supervision order would assist to reduce the risk of crisis, by gently monitoring K's emotional well-being and offering timely intervention. It must be borne in mind, as Ms Youll says, that K remains emotionally scarred by her experience with Mr A and feels an enormous sense of injustice that he has not (yet) been punished. K is a vulnerable and isolated young woman who, Ms Youll suggests, requires the benevolent support of the local authority even if she does not recognise her own needs.

46. Everyone else, as I have said, submits that I should make no order.

47. The father does not accept that a supervision order is either necessary or appropriate. Ms Russell on his behalf accepts that K has been and is distressed and disturbed by what happened to her as a result of the unlawful marriage. She tells me that her father very much regrets what has happened to K. She is in need of therapy and support and her father is grateful to the local authority for funding it. Unfortunately she will not attend all her appointments. She has also refused to go to school or college. There is, says Ms Russell, no suggestion that her parents do anything other than encourage her to go. Moreover, K has not been willing to speak to her social worker and has, according to the father, been upset by her intervention.

48. Ms Russell submits that, as K does not co-operate, and given her age, there seems little point in making a supervision order. As she says, if K is not willing to co-operate with a supervision order, there seems little point in having one. And there is no

suggestion, she says, that the parents do not or will not co-operate with social services outside the framework of a court order. The reality, and Ms Russell makes no bones about it, is that the father finds the formal involvement of the local authority in his family to be unacceptably intrusive. He believes that K's interests would be better served without the compulsory intervention of the local authority and the court, better served by the local authority leaving the family to carry on with their lives without further interference.

49. Mr Russell referred me to what Hale LJ said in *Re O (a child) (supervision order: future harm)* [2001] EWCA Civ 16, [2001] 1 FCR 289, at paras [23] and [28], in support of submissions that "proportionality is the key" and that if (as here) a care order is not appropriate, because a disproportionate response to the risk presented, a supervision order should not be made unless there is a "need for compulsion" and the order "can be made to work". Neither condition, she says, is met here.

50. Ms Kirby on behalf of the mother submits that the only place where K has settled and remained relatively contained has been in her family home and in the primary care of her mother. Her mother, she says, has been able to exercise some calming influences over K since her return in March 2005. She has been more contained there than she had been for some time previously. Ms Kirby says that each time the local authority or the court have tried to control K (albeit always in her own interests) she has rebelled. The only exception was during the period when K was in secure accommodation, but then she missed her family terribly and all parties eventually considered it wrong for there to be any further orders of that nature.

51. Ms Kirby points out that K has recently stated her intention not to cooperate with any supervision order and comments that the court is aware that K's parents have in the past had only limited success in seeking to persuade her to cooperate with professionals. The mother is not confident that she could persuade K to keep appointments with the social worker if there was a supervision order. She has only recently been able to persuade her to return to seeing the counsellor on a regular basis. K has refused to accompany either of her parents to CAMHS and has indicated that she will not be attending.

52. Ms Kirby submits that the family can seek the assistance of the local authority (if needed), and the social worker can give it, without there being a supervision order in place. She observes that a supervision order in respect of which the subject is refusing to cooperate will not assist either in monitoring or in preventing further crisis. She notes that K has recently indicated an intention to return to college but suggests that the reality is that she will return to education if she wants to and will not if she does not want to.

53. K herself says that she has been living safely at home with her parents and siblings since March 2005 – over seven months – and, as she sees it, with little intervention by social services; that she enjoys being with her family; that she is happier now with her family; that she has a good relationship with her mother and siblings; that her relationship with her father has improved; and that she feels she has matured in the last few months. She feels that it is this increased maturity which has helped her to a better relationship with her family. She accepts that she has not cooperated with seeing the social worker recently and that she has refused to see the guardian for most of this year. She intends to continue with the psychotherapy sessions arranged by the

local authority, which she says she has found helpful, but will not cooperate either with social services or with the court if any orders are made. Being almost seventeen years old, K feels that there should not be any further involvement by either the local authority or the court. If she wants the help of the local authority she will ask for it. It should not be imposed on her.

54. At K's request I saw her in private, though in the presence of her solicitor. She reiterated her views, very much as I have already set them out. She told me that she intends to go to college – the same college her older sister is already attending. She struck me as more grown up – more mature – than when she had spoken to me in similar circumstances a little under a year earlier. And I also gained the distinct impression – not merely from our conversation, but also from what went on in court during the hearing – that her understanding of and ability to speak English has improved significantly over the last year.

55. The guardian agrees that the threshold criteria are met but, on the basis of the 'no order' principle, opposes the making of a supervision order. She considers that for the following reasons it would be better for there to be no order than a supervision order:

    i) K has indicated a clear opposition to the making of an order. The guardian does not consider that it will assist the local authority in supporting K if an order is made against her expressed wishes. The guardian believes that if such an order were to be made it would undermine the limited but positive support the social worker has been able to provide to K over the last nine months.

    ii) On the assumption that the parents are also in opposition to the orders sought by the local authority, the guardian is concerned that the making of a supervision order will be counter productive to the family working with social services in the future. While the family has not welcomed the involvement of social services the family has, over the last nine months when there has been no order, cooperated to enable the social worker to meet with K at the family home. They have also attended, to a limited extent, the CAMHS services offered, and facilitated K's attendance for counselling. The guardian is concerned that the making of an order against the parents' wishes will make them less likely to seek and utilise the support of social services in the future.

    iii) Without some co-operation from K and her parents the local authority will be in difficulties fulfilling its responsibilities to K under the supervision order. The guardian is mindful that the local authority has worked with the family without an order since 17 January 2005.

    iv) The guardian has detailed in her report the future support she recommends the social worker provides to K and her family. The guardian considers that these limited services could be provided by the local authority under Part III of the 1989 Act rather than under Part IV. The guardian notes in this context that the local authority will continue to try to have K's case allocated to the existing social worker and that there is in any event no guarantee that the social worker will continue to be allocated even if there is a supervision order.

56. I agree with the guardian, and essentially for the reasons she gives, that there should not be a supervision order.

57. I have to face the realities. They are that I have a girl aged almost 17, and her parents, who are unwilling to cooperate with public authorities if required by order to do so. Compulsion was recognised as long ago as January 2005 to be no longer appropriate. K has been living at home for some time now, without the local authority having the benefit of any kind of public law order at all. It is clear that, whatever may remain to be done, things are much better for K now than they have been for quite some time. Relations between K and her parents seem much improved. There has been no recent repetition of the florid episodes of a year ago. To an extent, K and her family have been able to cooperate with the local authority despite the absence of any formal order. That cooperation is much less than might be thought desirable, but I do not think that a supervision order is going to improve matters, or increase the chances of cooperation; if anything the reverse.

58. The local authority has rightly disavowed compulsion by means of secure accommodation; it has rightly concluded that it is not appropriate for it to share parental responsibility. I do not in any way criticise it for seeking a supervision order, but on balance I agree with the guardian that a supervision order is unlikely to achieve anything and that it may even be counter-productive.

The second issue – should there be protective orders?

59. I turn to consider the question of whether I should nonetheless make orders preventing K marrying or leaving the jurisdiction without the prior permission of the court.

60. I make clear at the outset that if persuaded that such protection is appropriate I would propose to achieve it by making K a ward of court. As the guardian points out, specific issue orders would not be appropriate. A prohibited steps order is against a parent or any other person. It does not prohibit the child from taking the steps for herself, and the concerns here relate as much to what K may do as to what her parents may do.

61. The father does not agree with any such order. He says that neither he nor the mother has any plans to arrange for K to be married but that if she wishes to do so she should be permitted to do without the intervention of the court. Likewise he says that it is unacceptably limiting of K's life for the court to control her foreign travel. The family wants to be able, for example, to visit friends and relatives in Sweden and Finland. There are no plans for K to visit Iraq. If she did she would not, he says, be at risk of a crime of 'honour' in Iraq. She has, he says, an enormous extended family there who would ensure that she did not come to harm.

62. The mother agrees with the father. Ms Kirby urges me on behalf of the mother to resist the application for an order and to allow this family to heal itself away from the spotlight of any legal proceedings. She submits that it would be wrong to make the orders sought. To do so would constitute a disproportionate interference with the family's rights and K's rights under Article 8 of the Convention.

63. Ms Kirby says that, in general terms, the mother has found the involvement of the local authority in her family's life embarrassing and difficult. An additional worry for her has been the potential destabilising effect on her other children of having the local authority involved with K, and the children's possible interpretation of events, to the

effect that they too will be able to disobey their parents in the future and be assisted by the local authority in having time away from home. The mother says she has had to try to balance K's interests with those of her other children and this will remain a concern for her for the foreseeable future. K's interests within the family, therefore, cannot be seen in isolation from those of her siblings. It is not for lack of a willingness to cooperate that the parents did not want the other children involved in social work visits during the course of these proceedings or in family therapy or in other ways, but rather due to a concern that they may become involved in K's particular difficulty. But the mother is content for K to continue to see and to speak to the social worker, outside the home, after the conclusion of the proceedings.

64. The mother says that K is 16 years of age and has very clear ideas about what she wants and does not want to do; who she will and will not see or cooperate with; and what she will do in the future. K has stated very clearly that she will not cooperate with any supervision order which the court might make at the conclusion of the final hearing. Furthermore, she has stated more than once her wish to be married and put her 'marriage' to Mr A behind her. Although this might be a course of action of which the court, her parents and the social worker do not approve, it appears to be something that K wants very much. The mother thinks that K may be correct in her belief that it may be the only way for her to recover from her current very unhappy emotional state. The mother has tried to discourage K from the idea of remarriage but she remains resolute.

65. The mother is concerned that if K is not allowed to remarry or to marry legitimately, she may do something much worse. She does not know what but gives some examples: she might self harm; she might abscond; or she might enter into a sexual relationship in any event. The mother does not want any of these things to happen to K. Furthermore, the mother believes that it would be preferable for K to be in a marriage than in a sexual relationship outside marriage. This would be better and safer from an emotional and also from a cultural point of view. The mother would refer to the very serious consequences culturally, not only for K but also for her siblings, in the event that she was to have a sexual relationship outside marriage. If she were to do this, the chances of ever securing a legitimate Islamic marriage in the future would be very poor – definitely for K and more than likely for K's sisters. These are, says Ms Kirby, very real concerns that the mother has and which she wishes to draw to the court's attention. Furthermore, the mother wishes the court to recognise that it must take the responsibility for any of these things happening in the event that I make an order forbidding a marriage before K's eighteenth birthday.

66. In relation to the question of travel outside the jurisdiction, the mother, Ms Kirby tells me, feels very strongly that she and the father should hold K's passport. (She adds that because they have not had access to the passport in recent months, the application of the entire family for citizenship has been delayed. The parents would like this to be progressed as soon as possible.) They have no plans to travel to Iraq within the next few years. They do not intend to send K there either. There is a plan for a family holiday to visit a relative in Finland. The mother is adamant that K would not be, is not and has never been, at any risk of becoming the victim of an 'honour killing'. She rejects the advice given by The Muslim Law (Sharia) Council UK regarding the risk which they say she would face. She questions the basis upon which this advice was given and would have welcomed the opportunity of speaking with the people offering

this advice so that they knew the type of family K is from and, with that knowledge, could have provided a better informed opinion. Ms Kirby invites me to treat this particular piece of evidence with the utmost caution given what she says are the mother's legitimate concerns.

67. According to Ms Kirby, the mother is aware that K has developed significant emotional problems. The mother has accepted responsibility for what has happened as a result of the marriage, of which she approved at the time. She knows that she will continue to have to work hard within the family to heal the differences which exists between K and her father and K's difficulties generally. But she wants to be able to do this without the intrusion, however well intentioned, of either the court or the local authority.

68. K emphasises that she was never forced into the marriage with Mr A. She was happy to get married. Her complaint is that he raped her and that she never consented to having sexual relations with him. It is fair to say – indeed Ms Clare says it on her behalf – that K remains preoccupied with some justice being meted out to Mr A. K tells me that she would like to marry again, and if that is before she is 18 years old then, provided it is with the blessing of her family, she does not see the need for any intervention by either the local authority or the court.

69. So far as concerns travel, K wants to be able to travel in Europe for holidays with her family. She wants her passport returned to her. She will not go to Iraq unless it is safe for her to travel there. She believes that her family will not put her life in danger and that she would not be the victim of an 'honour killing'. She says that her parents will not put her life in danger.

70. On this point the guardian agrees with the local authority. She supports the making of orders under the court's inherent jurisdiction prohibiting K from marrying or travelling abroad without the consent of the court. The guardian is concerned that K is expressing a wish to marry again before the age of 18. She believes such action would be contrary to K's welfare needs. She also believes that the likelihood of K precipitously entering into a further marriage is increased should she travel to Iraq or Kurdistan. In addition the guardian is concerned that K's safety and welfare would be jeopardised were she to travel to these areas, due to the political instability and uncertainty as to arrangements for her care. She believes the court should retain control of K's passport to ensure any travel abroad is monitored by the court. She therefore supports the court taking control of K's passport and making orders under the inherent jurisdiction to prohibit K marrying or travelling abroad without leave of the court. This is necessary, she believes, to maximise the prospects of achieving the best long term emotional outcome for K.

71. The guardian appreciates that this will amount to an ongoing involvement of the court in K's life but considers that such orders are necessary and proportionate for the following reasons:

    i) If the objective is to maintain, protect and promote K's emotional health, a precipitate marriage may not be in her best interests.

    ii) This is not a total prohibition on K marrying but requires any plans for a further marriage to be considered by the court to ensure they are appropriate

and in accordance with both K's wishes and her welfare needs. In view of the history of these proceedings the guardian considers it would be appropriate and desirable for the High Court to take responsibility in determining K's best interests in respect of any proposed further marriage while she remains a minor, rather than her parents.

iii) Further, in view of K's emotional needs and vulnerability, the guardian does not consider her capable of making life decisions which are beneficial to her. It is therefore necessary that the orders prohibiting marriage without consent of the court apply to K as well as to her parents or any other person who may seek to arrange a further marriage for her while she remains a minor.

iv) As these proposed orders will only be in force for the next 15 months, until K attains the age of 18, the guardian considers them to be proportionate to safeguard the interests of an emotionally fragile and vulnerable young person.

72. So much for the opposing arguments. I think it may be helpful to put the application in context.

73. I take the historical background, with gratitude, from Professor Stephen Cretney's magnum opus, *Family Law in the Twentieth Century: A History* (Oxford University Press, 2004), pages 57-68. As Cretney points out, one of the effects of Lord Hardwicke's Act (the Clandestine Marriages Act 1753) was to require parental consent to the marriage of an infant (or, as would now say, a child). The current requirement is to be found in section 3 of the Marriage Act 1949. Thus ever since Lord Hardwicke's Act there has been a gap between the minimum age for marriage, which always has been and still is an age below the age of majority, and the age for free marriage, that is the age at which a person, having attained his majority, can marry without the need for parental consent.

74. Between 1753 and 1929 that gap, in the case of a woman, covered the period between her twelfth and twenty-first birthdays. From 1929, when the Age of Marriage Act 1929 came into force, until 1969, when the relevant provisions of the Family Law Reform Act 1969 came into force, the gap covered the period between her sixteenth and twenty-first birthdays. Since 1969, when the age of majority was reduced from 21 to 18, the gap has narrowed and now covers only the period between the sixteenth and eighteenth birthdays.

75. The court may be concerned in a number of ways with the question of whether a young person who has reached the age of 16 but who has not yet reached the age of 18 should or should not marry. Where parental consent is refused the court has jurisdiction under section 3(1)(b) of the Marriage Act 1949 to give consent. That jurisdiction can be exercised by the Magistrates' Court, the County Court and the High Court: see section 3(5). Almost invariably, it would seem, applications have been made in the Magistrates' Court.

76. The other context in which judicial control can be exercised over the marriage of those under 18 is, of course, in the exercise of the inherent or wardship jurisdictions. A comparable jurisdiction can in appropriate circumstances now be exercised by the making of prohibited steps orders or specific issue orders under section 8 of the Children Act 1989. As is well known, wardship confers a particular status on a child

who is a ward of court. One of the attributes or incidents of that status, preserved by section 3(6) of the Marriage Act 1949, is that no ward can marry without the consent of the court. Another is that no ward can leave the jurisdiction without the consent of the court. In addition, the wardship court can make specific orders, breach of which can be punished by imprisonment, forbidding contact between the ward and a named person.

77. As late as the early 1960s the wardship jurisdiction was being invoked by parents seeking to prevent their daughters entering into marriages with unsuitable suitors. Over the last thirty years or so the picture has changed dramatically.

78. As Cretney points out, applications under section 3(1)(b) of the Marriage Act 1949 are increasingly rare. One of the reasons for this, no doubt, is that not merely do the figures demonstrate what Cretney refers to at page 33 as "a striking decline in marriage", mirrored by "a substantial increase in the incidence of cohabitation outside marriage"; at the same time there has been a substantial increase in the mean age of marriage and a striking decrease in the number of teenage brides. As Cretney puts it (page 62):

> "The reality is that the 'problem' of youthful marriage had solved itself: whereas as recently as 1966 nearly a third of all brides married when they were still teenagers, by 1991 the proportion had fallen to less than one in twelve and at the turn of the century only 3% of brides were under 21. The problem which became one of increasing concern was not so much that young people were marrying but rather that they were (notwithstanding the provisions of the criminal law) having sex and conceiving and bearing children … Confident statements made by official bodies in the late 1960s – for example, that the trend then observed to earlier marriage would continue, and that because boys and girls become sexually mature at an earlier age than their parents it followed, not only that they would feel 'sexual desire and be sexually at risk at an earlier age' but also that because of this 'more of them are likely to decide to get married' – have been completely falsified by events."

Cretney's reference is to the views recorded in the report of the Latey Committee, *Report of the Committee on the Age of Majority*, Cmnd 3342, at paras 139 and 145.

79. At the same time recourse to wardship as a mechanism for controlling teenage marriage would seem to have undergone a similarly dramatic decline. The most recent cases which are referred to either by Cretney or in any of the standard textbooks are *Re Elwes* (1958) Times, 30 July, *Re Dowsett* (1959) Times, 3 October, *Re Crump* (1963) 107 SJ 682 and *In re B(JA) (An Infant)* [1965] Ch 1112. As Cretney observes (page 65):

> "No doubt in the period of rapid social change which followed World War II the whole idea of a young person having to apply to the court – whether the magistrates' or the wardship court –

> for permission to marry increasingly seemed rather outdated, even by some of those administering the law."

That last comment is a reference to the evidence the Latey Committee received (summarised in paras 77-79 of its Report) from the judges of the Chancery Division and the Probate, Divorce and Admiralty Division and, in particular, from Sir Jocelyn Simon P. In the event the Latey Committee recommended the reduction in the age of majority from 21 to 18, subsequently enacted in the Family Law Reform Act 1969, but disagreed with those who thought that the requirement of parental consent should be wholly removed. Hence the survival – at least in theory – of the court's jurisdiction in relation to teenage marriage, both under section 3(1)(b) of the Marriage Act 1949 and in wardship and the other related jurisdictions.

80. In practice, I suspect, both jurisdictions have now in large measure become little more than dead letters. I should be surprised if many judges in recent years have actually had to consider whether or not a ward of court should be allowed to enter into some proposed marriage or had occasion to consider the same question under any other statutory or non-statutory jurisdiction. And a judge if faced with such a case might find the task of deciding whether or not to give consent a matter of no little delicacy and difficulty. Cretney tells us that, once upon a time, when considering the suitability of a particular marriage, the court would be concerned that there should be a "fair equality of rank and fortune" between the couple and that a proper settlement of the girl's property was made. Such an approach is hardly suited to current conditions.

81. No doubt the determinative principle is the best interests of the child, and as the current editors of Rayden & Jackson on Divorce and Family Matters (ed 18) say at Vol 1(2), para 42.50, "No doubt the court would continue to afford such reasonable protection as it can." But how is a judge in today's society really supposed to decide, and by reference to what criteria, whether or not it is in a 16- or 17-year old ward's best interests to marry some particular suitor. And supposing the judge says no. Is that really likely to serve the child's best interests? The only effect of what may be perceived by a defiant teenager as paternalism of the most patronising kind is likely to be either a continuation of the relationship, openly or clandestinely, without the benefit of matrimony or a hardening of attitude with the child merely counting off the days until she or he can escape from the court's fetters.

82. And what, after all, is the best approach of parents asked to give their consent and blessing to what they fear is the inappropriate, or potentially even foolish or disastrous, marriage on which their 16- or 17-year old daughter has seemingly set her heart? I do not know, though I suspect that in modern conditions many wise parents faced with such a dilemma would, at the end of the day, claim no more than the three rights that Bagehot famously ascribed to the monarch: the right to be consulted, the right to encourage, the right to warn. Many concerned and loving parents, in the final analysis, might well feel it unwise to stand on their strict legal right to refuse consent.

83. I am therefore sceptical as to whether the inherent and wardship jurisdictions really have any very useful purpose to play in the kind of situation in which they were traditionally deployed.

84. In recent years, however, these jurisdictions have seen a remarkable revival, though in a very different context. Traditionally, wardship was a remedy invoked by parents

seeking the court's assistance in reinforcing the parental right to object to an unsuitable marriage of which the parents disapproved. Today, the inherent and wardship jurisdictions are more likely to be invoked by a local authority, or even the child, seeking the court's assistance in overriding parental pressures to enter into a marriage which the parents desire but which the local authority or child wants to prevent. Traditionally the court's powers were invoked in support of parents and parental rights. Now they tend to be invoked in opposition to parents and in order to prevent the abuse of parental power. The paradigm case, and the situation where the appropriate exercise of the court's powers is most urgently and imperatively required, is, of course, the forced marriage. In this context the court continues to play an absolutely vital role.

85. I do not wish there to be any misunderstanding. I agree, emphatically and without reservation, with everything Singer J said in *Re SK (Proposed Plaintiff) (An Adult by way of her Litigation Friend)* [2004] EWHC 3202 (Fam), [2005] 2 FLR 230. Forced marriage is a gross abuse of human rights. It is a form of domestic violence that dehumanises people by denying them their right to choose how to live their lives. It is an appalling practice. As I said in *Singh v Entry Clearance Officer, New Delhi* [2004] EWCA Civ 1075, [2005] 1 FLR 308, at para [68]:

> "forced marriages, whatever the social or cultural imperatives that may be said to justify what remains a distressingly widespread practice, are rightly considered to be as much beyond the pale as such barbarous practices as female genital mutilation and so-called 'honour killings'."

No social or cultural imperative can extenuate and no pretended recourse to religious belief can possibly justify forced marriage.

86. Indeed, it is to be noted, as Singer J did in *Re SK (Proposed Plaintiff) (An Adult by way of her Litigation Friend)* [2004] EWHC 3202 (Fam), [2005] 2 FLR 230, at para [6], that:

> "responsible Muslim bodies within England and Wales recognise and broadcast that forced marriage is un-Islamic, that it finds not the slightest vindication in the Koran, and is as unacceptable in Islam as to all other true religions."

In saying that, Singer J was careful not to single out Islam. Nor would I do so. As Singer J recognised:

> "The communities within which forced marriage can take place are numerous and they are by no means restricted to communities of one faith, or to communities in or from any one part of the world."

In *Young people & vulnerable adults facing forced marriage: Practice Guidance for Social Workers* published in March 2004 by The Foreign & Commonwealth Office (in conjunction with the Association of Directors of Social Services, the Home Office, the Department for Education and Skills and the Department of Health) the point is put very clearly at page 2:

> "**Forced marriage cannot be justified on religious grounds**; every major faith condemns it and freely given consent is a prerequisite of Christian, Jewish, Hindu, Muslim and Sikh marriages."

87. Cases such as *Re KR (Abduction: Forcible Removal by Parents)* [1999] 2 FLR 542, *Re SK (Proposed Plaintiff) (An Adult by way of her Litigation Friend)* [2004] EWHC 3202 (Fam), [2005] 2 FLR 230, and *M v B, A and S (By the Official Solicitor)* [2005] EWHC 1681 (Fam), [2006] 1 FLR 117, show that the court will not hesitate to use every weapon in its arsenal if faced with what is, or appears to be, a case of forced marriage. The court will have recourse to the full breadth of the wardship jurisdiction, or, if the victim is an adult, to the closely comparable adult inherent jurisdiction. It will protect the victim from what is or appears to be a forced marriage and prevent any marriage taking place, at least until the court has had what Singer J in *Re SK (Proposed Plaintiff) (An Adult by way of her Litigation Friend)* [2004] EWHC 3202 (Fam), [2005] 2 FLR 230, at para [9] called a proper opportunity "to ascertain whether or not she has been able to exercise her free will in decisions concerning her civil status and her country of residence." Where, as Singer J put it, "the causes for anxiety are such and sufficiently cogent [as] to justify this court's interference" the court will act "at least to the extent and for the purpose of evaluating her circumstances."

88. There is, however, another aspect of the matter which Singer J was careful to highlight at para [7]:

> "I emphasise, as needs always to be emphasised, that there is a spectrum of forced marriage from physical force or fear of injury or death in their most literal form, through to the undue imposition of emotional pressure which is at the other end of the forced marriage range, and that a grey area then separates unacceptable forced marriage from marriages arranged traditionally which are in no way to be condemned, but rather supported as a conventional concept in many societies. Social expectations can of themselves impose emotional pressure and the grey area to which I have referred is where one may slip into the other: arranged may become forced but forced is always different from arranged."

I respectfully agree with every word of that. Forced marriage is intolerable, and the court must bend all its powers to preventing it happening. Arranged marriages, in contrast, are to be respected as a conventional concept in many societies and are for that very reason, I emphasise, to be supported.

89. We strive to live in a tolerant society. Within limits, our family law will tolerate things which society as a whole may find undesirable. And as Baroness Hale of Richmond has recently pointed out, we have to adopt a flexible approach to the question of what is in a particular child's best interests. As she said in *Re J (Child Returned Abroad: Convention Rights)* [2005] UKHL 40, [2005] 2 FLR 802, at paras [37]-[38]:

> "[37] … It would be wrong to say that the future of every child who is within the jurisdiction of our courts should be decided according to a conception of child welfare which exactly corresponds to that which is current here. In a world which values difference, one culture is not inevitably to be preferred to another. Indeed, we do not have any fixed concept of what will be in the best interests of the individual child … Once upon a time it may have been assumed that there was only one way of bringing up children. Nowadays we know that there are many routes to a healthy and well-adjusted adulthood. We are not so arrogant as to think that we know best.
>
> [38] Hence our law does not start from any a priori assumptions about what is best for any individual child. It looks at the child and weighs a number of factors in the balance, now set out in the well-known 'check-list' in s 1(3) of the Children Act 1989; these include his own wishes and feelings, his physical, emotional and educational needs and the relative capacities of the adults around him to met those needs, the effect of change, his own characteristics and background, including his ethnicity, culture and religion, and any harm he has suffered or risks suffering in the future. There is nothing in those principles which prevents a court from giving great weight to the culture in which a child has been brought up when deciding how and where he will fare best in the future. Our own society is a multi-cultural one. But looking at it from the child's point of view, as we all try to do, it may sometimes be necessary to resolve or diffuse a clash between the differing cultures within his own family."

90. In modern conditions it seems to me that the only justification for invoking the wardship jurisdiction in this kind of situation is if that is required in order to *protect* a child. In cases of this kind it is the *protective* rather than the *custodial* jurisdiction which is in play. Orders of the kind that are here sought are to be made if they are needed to protect the child, in particular, if they are needed to protect the child from parental default or worse. After all, section 3 of the Marriage Act 1949 vests in the parents the primary responsibility of giving or withholding consent to their minor child's marriage. The starting point might therefore plausibly be said to be that the court should not normally invade the sphere of parental obligation and parental responsibility unless there is real reason to fear that the child will not be adequately protected by the parents or indeed, as in cases of forced marriages, that the child requires to be protected from the parents. In short, in cases such as this the protective jurisdiction will normally be appropriately invoked only where there is a failure or abuse of parental power.

91. I should like to add three points. In the first place, as Sumner J has recently recognised (see *M v B, A and S (By the Official Solicitor)* [2005] EWHC 1681 (Fam), [2006] 1 FLR 117, at para [108]) this is a context in which the well known words of Lord Eldon LC in *Wellesley v Duke of Beaufort* (1827) 2 Russ 1 at page 18 are as apposite today as they were almost 180 years ago:

> "it has always been the principle of this court, not to risk the incurring of damage to children which it cannot repair, but rather to prevent the damage being done."

Lord Eldon continued at page 20 with the observation that the jurisdiction:

> "is founded on the obvious necessity that the law should place somewhere the care of individuals who cannot take care of themselves, particularly in cases where it is clear that some care should be thrown around them."

92. Secondly, and again in common with Sumner J (see at paras [101]-[102]), I think that the court is justified in intervening in this kind of case where there is a real possibility of harm, in the sense in which the words were used in *In re H and others (Minor) (Sexual Abuse: Standard of Proof)* [1996] AC 563. That, after all, accords with Lord Eldon's approach. And, particularly in this context, we need to bear in mind that prevention is better than cure. As Singer J pointed out in *Re SK (Proposed Plaintiff) (An Adult by way of her Litigation Friend)* [2004] EWHC 3202 (Fam), [2005] 2 FLR 230, at para [4], a forced marriage is voidable, but that alone is plainly not an adequate remedy because, as he went on to observe, such a "marriage" is "nevertheless one which might engender irreparable and severe physical and emotional consequences for its victim." So the protective jurisdiction is particularly important where the need is to take preventive steps in advance.

93. This leads me on to the third point. We must guard against the risk of stereotyping. We must be careful to ensure that our understandable concern to protect vulnerable children (or, indeed, vulnerable young adults) does not lead us to interfere inappropriately – and if inappropriately then unjustly – with families merely because they cleave, as this family does, to mores, to cultural beliefs, more or less different from what is familiar to those who view life from a purely Euro-centric perspective. It would be a tragic irony if the full weight of the wardship jurisdiction was to be deployed against those sections of our community who, paying particular regard to the importance of marriage and to the unacceptability of pre-marital sexual relations, tend for that very reason to marry young, whilst leaving untouched those sections of our community who, treating pre-marital sexual relations and co-habitation without the benefit of matrimony as almost the norm, tend for that reason not to marry until they are well into their twenties.

94. I return to the facts of the present case.

95. It would be idle to dispute that K is at risk and that she is, although almost 17, a child who in certain respects is still rather vulnerable. But it is important to identify and so far as possible to evaluate the degree of that risk.

96. Despite what has happened I do not think that K's parents pose a very significant degree of risk to her. I repeat: there are no findings of physical abuse by the father; the local authority has not established that this is a case of forced marriage; it was an arranged marriage, and arranged, as I have said, in circumstances and in a manner acceptable in the context of the family's beliefs and cultural mores. Moreover, K has been living at home, it would seem reasonably happily, for some months, without the protection of either a care order or any order preventing her marriage and in

circumstances where there is no suggestion that she has come to any further harm. Furthermore, the local authority has accepted – in my judgment properly and responsibly accepted – that this is not a case where it needs to share parental responsibility for K with her parents. Indeed, I have decided, with the support of K's guardian, that it is not appropriate for me to make even a supervision order.

97. My impression is that K's parents are decent, honest people, primarily motivated by concern for the welfare of K and, indeed, the welfare of all their children. Through the proceedings and the police investigation they have learned what I am sure has for them been a very painful lesson. Much, though not of course all, the explanation for what has gone wrong is to be found in what it is fashionable to call a clash of civilisations, working itself out against the background of the father's horrific experiences at the hands of Saddam Hussein. K's parents are, I believe, law-abiding people who seek to make their home in this country; indeed, as I understand it, they are currently seeking naturalisation. I may be wrong, but I see them as people who, having once fallen foul of the system, will now want to strive to avoid any repetition.

98. The greater risk, I suspect, is not so much that K's parents will seek to do anything inappropriate but rather that K herself may wish to marry, perhaps in circumstances disapproved of by her parents. That, of course, is a risk that needs to be guarded against. Indeed, as I understand it, that is the risk that the guardian has particularly in mind. But a number of other factors have also to be borne in mind.

99. The first is that the law – section 3 of the Marriage Act 1949 – reposes in parents the primary responsibility of protecting their minor children against inappropriate marriages. The court should be slow to intervene unless there is real reason to fear that parental responsibility alone will not suffice to give adequate protection. Secondly, there is the fact that if I make K a ward of court it is almost certain that she, and indeed her family, will simply decline, on principle, to make any application to the court for permission for K to marry. I say it is a fact. I make that finding on the basis of what I have been told by or on behalf of both K and her parents. In other words, if I make K a ward of court I will probably in reality be deciding, here and now, that she is not to marry until she is 18. That may be as a result of her choice, her family's choice, rather than because of the strict terms of any order I might make, but it is nonetheless the practical reality. And it is at this point that I have, as it seems to me, to have regard to what I accept are the very real concerns raised by Ms Kirby on the mother's behalf (see in particular paragraph [65] above). There are, in my judgment, and very much for the reasons identified by Ms Kirby, serious potential disadvantages for K if I seek to control her marriage. Those disadvantages, those risks, have to be evaluated and put in the scale against the disadvantages, the risks, if I do not make the order.

100. I appreciate that on this aspect of the case I am departing from the considered recommendations of the guardian. But at the end of the day I have to form my own view and come to my own judgment. Evaluating on the one hand the risks to K if I do not make the order, against what I am satisfied are the risks to her if I do make the order, I think the balance comes down in favour of there being no order in relation to her marriage. I make it clear that a significant part of the calculus reflects my evaluation that, on the one hand, the risk presented to K by her parents is small, whereas the risks identified by her mother if I make the order sought are significant. In this particular case, K's interests are appropriately met, indeed in my judgment best

met, by my making no order rather than by making an order whose unintended but nonetheless foreseeable consequences might be serious.

101. Thus far I have been focussing primarily on the issue of marriage. For very much the same reasons I have concluded that I should not make any order restricting K's ability to travel. I was attracted at one stage by the idea of permitting her to travel to (say) western Europe and Scandinavia but not any further afield. But at the end of the day I agree that this would be an unnecessary and disproportionate intrusion in K's life. She is, after all, almost 17. She is not, to repeat, at significant risk of any harm from her parents. I accept that her parents are motivated, as I have said, by concern for her welfare. I do not believe they are going to take her abroad, let alone to Iraq, for any inappropriate or potentially damaging reason.

102. There is, I conclude, no adequate case for invoking the court's protective jurisdiction.