



Neutral Citation Number: [2025] EWHC 728 (Fam)

Case No: FD23P00583

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4 March 2025

Before :

THE HONOURABLE MR JUSTICE TROWELL

Between :

M

Applicant

- and -

F

1ST Respondent

-and-

X & T

(through their Guardian)

2 & 3rd
Respondents

Anita Guha KC (instructed by **Brethertons**) for the **Applicant**
Sarah Dines (instructed by **Anthony Louca**) for the **1st Respondent**
Pamela Warner (instructed by **Cafcass Legal**) for the **2nd & 3rd Respondents**

Hearing dates: 25,27 28 February and 4 March 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MR JUSTICE TROWELL

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

Mr Justice Trowell :

1. This matter is listed before me for a fact-finding hearing. Ultimately in issue are the appropriate child arrangement orders in relation to two children X (aged 13) and T (aged 9).
2. The children's mother, M, is the applicant. She has been represented by Ms Guha KC. The children's father, F, is the respondent. He has been represented by Ms Dines. The children are parties to the proceedings through their Guardian, Ms Demery. She is represented by Ms Warner.
3. The children live in this country with F. The mother lives in Afghanistan. She gave her evidence by video link (having not been able to obtain a visa to come to this country). In fact, the mother was in Pakistan when she gave her evidence. She had travelled there in an attempt to come to court here and stayed there when that failed.
4. There are Scott Schedules which I will need to go through in due course setting out the findings sought by both sides, but in general terms I record at this stage that it is the mother's case that the children have been abducted to this country from Afghanistan, that she has been abandoned in Afghanistan, that she is a victim of domestic abuse and that the father has alienated the children from her. None of that is accepted by the father. It is his case that the mother agreed that he would bring the children here. Further it is his case that the mother was violent to him, her wider family, and the children.
5. The children refuse to have contact with the mother over the 'phone or by video link and they make serious allegations against her. Whether that is a consequence of alienation or a result of the mother's behaviour I will need to consider.
6. This matter has a complicated litigation history. I will only give an outline of it in this judgment.
7. The removal of the children to this country from Afghanistan occurred in July 2023. The mother made an application for them to be returned summarily in November 2023. That progressed, after a series of direction hearings, to a hearing before HHJ Middleton Roy sitting as a Deputy High Court Judge in April 2024, and he gave judgment in May 2024. He declined a summary return, not least because he had found that the removal was consensual. He set the matter down for consideration of the appropriate child arrangement orders.
8. His decision however was appealed and pending the hearing of the appeal the mother received from the Home Office information which made clear that the father had not been truthful in his evidence before HHJ Middleton Roy. In particular, that evidence he gave as to making visa applications for the mother to come to England was wrong.
9. The Court of Appeal on the 24 October 2024 allowed the appeal in so far as the findings of the judge were concerned. The mother did not seek to set aside the refusal to grant a summary return, and the court did not do so, praising that decision as child focussed.

10. Following that the matter was listed before me in November 2024, when I held that there needed to be this fact-finding hearing, and for a PTR in February 2025. I shall not note the directions further than to remark that:
 - a. At the PTR M, asked for an intermediary assessment. That led to a recommendation that she should have an intermediary and an application on paper followed. I declined that application, not least because she would be giving her evidence remotely and via a translator, but I held a ground-rules hearing at the beginning of the fact-finding hearing. An agreed set of ground rules were produced following the suggestions in the assessment. There has been a resolute but not infallible attempt to adhere to those rules, but I must remind myself that when considering her evidence that M is a vulnerable witness. Her comprehension of language, and her grasp of time, is weaker than would be considered normal.
 - b. At the PTR F made an oral application for the elder child, X, to give evidence to the court directly. He then renewed the application in writing. I declined that application. I made clear then that I do consider that it is important the children's voices are heard but I would hear them from their Guardian.
 - c. At the beginning of the fact-finding hearing, I received an application from M to admit evidence that is referred to as exhibited to a statement, but had been mistakenly left out. I admitted that on the basis that its late production might affect the weight I put on it.
 - d. At the beginning of the fact-finding hearing, I received an application from F to admit as evidence a recording said to be made in 2022. I again admitted it with the same observation.
11. I heard the mother on the first day of the hearing. I will deal with the detail of the evidence when considering the matters of fact that I am to determine. I will however note that it was far from ideal having her give evidence remotely, via a translator, and with only a large pile of papers for a bundle. It had been agreed that she should have a friend with her to help her find her way through the bundle as part of the ground rules. That was ineffective. The pages should have been in a file. As a consequence, pictures of pages had to be sent to her by WhatsApp to enable cross examination to take place. I have already noted that she was a vulnerable witness. I note further that the conditions in which she gave her evidence would not have assisted her. I note yet further that she was cross-examined for longer than timetabled.
12. I heard the father on the second and third day of the hearing. He also had the benefit of a translator though he only occasionally relied on him. Again, I will deal with the detail of his evidence as I consider the matters of fact I am to determine. I do however record that it was clear to me that he was caught in a straightforward lie: either he let the court believe wrongly at the first hearing that he was still married to the mother, or he deceived the Home Office when applying for a visa to this country that he was divorced from her. That inevitably means that I will have to remind myself that a lie on one issue does not mean that he has lied on other issues and that there are all sorts of reasons for lying, some of which might lend weight to other aspects of his case. It is appropriate that I note that his cross-examination took longer than timetabled. Further, the cross examination was forceful and took place for longer than was timetabled. Given the

length and the tenor of the cross-examination it is necessary for me to consider that the father would have been tired and stressed when giving his answers.

13. I heard from Ms Demery on the second day. From her evidence emerges the positive in this case. The children are, she tells me, delightful. T is thriving; she is a 'live wire'. X is more introverted and thoughtful. She has been referred to CAMHS, I am told by F, and Ms Demery agrees, she is troubled. Nonetheless given what I am to relate and the relationship between their parents, the children's resilience is to be celebrated.
14. I heard from MT, who is the father's second wife (a term that I do not intend to be over read for reasons set out below) on the third day of the hearing. She also had the benefit of an interpreter, whom she used only on occasions. The translator properly called to my attention the fact that MT was a Farsi speaker, and he was certified only as a Pashto interpreter. Given however he related that his Farsi was good, and her Pashto and English were good, we did not adjourn to await a new translator.
15. I shall further relate that an issue arose as to a letter which the father had relied upon in one of his visa applications. This came to light in the information which had come from the Home Office, albeit a copy of the letter itself was oddly not produced (it was thought) by the Home Office. It had been directed to be produced by the father some time ago, but he said he did not have it. He agreed to approach his immigration solicitors to produce it. They refused relying on a lien from unpaid fees of £300. A without notice order was made by me for its production, giving an opportunity to the immigration solicitors to object with reasons, given that the application was without notice to them. They objected to producing it given the lien, and no party asked me to take matters further. In fact, before I received the written closing submissions, the father paid the lien and the letter was produced. In a moment of bathos, it turned out to be the same as the letter of the 31 March 2019 which had already been received, and is referred to further below.
16. The case ran over its timetable, so on the third day the evidence closed in the afternoon without there being time for oral closing submissions. That meant the closing submission had to be made in writing (including some in reply from Ms Guha) and the fourth day could not be used for handing down judgment as had been planned. So, this judgment is being sent out in draft in writing and a further hearing has been fixed for matters arising and the next stage of the case.
17. It is appropriate for me to note that the father was for much of the course of this litigation, following the hearing in the Court of Appeal, acting without solicitors. Indeed, a QLR had been arranged for this hearing (and I am grateful to her for having made herself available) and it was only late in the day that Anthony Louca were re-instructed on his behalf. (I note that I am told by mother's solicitors that Anthony Louca were re-instructed for some of the intervening time.)
18. Before turning briefly to the law and then to the allegations, I record that although the allegations and my findings will inevitably appear in this judgment set out one after another, they are inter-related. As a simple example the finding I make as to whether or not the mother has been violent to the children will bear on my finding as to whether the father and MT have alienated the children from the mother. I record here that I have considered my findings in the round and one will, where appropriate, reflect on another.

19. Ms Dines in her closing submissions asks me to make additional findings. I shall not engage with the list that she presents in those submissions directly. I shall make finding on the matters in the schedules. Inevitably that will lead me to make subsidiary findings but I am not launching down new avenues which have not been clearly argued before the court.
20. Finally, I should note that it is impossible for me in the time that I have to prepare this judgment to detail and respond to all the careful arguments of counsel. It is my hope that in what follows I nevertheless set out what my findings are with my reasons for so finding.

Law

21. Turning then to the law I must apply on a fact-finding hearing; I have heard no argument on it and so propose to briefly summarise the principles advanced by Ms Guha in her note as:
 - a. The burden of proof is on the person making the allegation
 - b. The standard of proof is the balance of probabilities
 - c. The inherent probability or improbability of an event is a matter to be taken into account when weighing probabilities.

Allegations and findings

The mother's allegations against the father

22. Turning to the mother's allegations against the father, the first is that the children were wrongfully removed from the care of the mother in Afghanistan on two occasions: (i) in August 2022 when he takes them to Pakistan without her and returns them when he cannot remove them to this country; (ii) in July 2023 when he brings them directly to this country. The father says in reply that: (i) he wanted to travel to Pakistan with the mother and children in order to apply for visas to travel to this country. He did so because the Taliban having taken over the country put him in real risk and made life very difficult for the girls. The mother was to come on that trip too, but she refused. She knew and agreed with the purpose of the trip. As to (ii) the mother had agreed verbally to him and the children coming to this country, again because Afghanistan was not safe, and that the plan was that he would subsequently apply for a visa for her.
23. The father's personal evidence on this issue (oral and in writing) was unreliable. He had not at the first hearing before HHJ Middleton Roy, or in the written evidence prepared for it, revealed that it was his case that he and the mother were divorced. It was his case and agreed with by the mother – for whom it was a matter of complaint – that he had taken a second wife, MT. He had, I am now told, not only an Islamic marriage but an English civil marriage to her in March 2019. He had not however told the court in his presentation of the case in April 2024 that he had divorced the mother in 2017.
24. A divorce certificate emerged in the information received from the Home Office. This is, on the mother's case, the first she had heard of it.

25. Indeed, during cross examination in April 2024, I have been shown, he was asked whether he intended to divorce the mother, and he answered that he did not because that would sabotage an application for a visa to bring her to this country. Further he told the court that he could take up to four wives.
26. When taxed as to why he did not answer the question as to an intention to divorce by explaining that they were already divorced his answer was that he was not asked whether or not they were divorced. His answer in April 2024 is on any view incompatible with telling the whole truth. It also reveals very clearly that he knew the significance that having a divorce would have on the chances of the mother coming to this country. So, on his own case, he was leaving the mother with a false hope that she would be able to follow.
27. I turn to his case following the documents received from the Home Office as to an explanation of the 2017 divorce. He told me in his statement of the 11 December 2024 that the parties separated in 2017 and signed the divorce certificate, which was bought from a stationery market not an official authority. He did not pronounce the word 'divorce' three times but that the signing of the certificate, is, in his understanding, sufficient for a divorce. He tells me, in an oddly worded sentence in that statement, 'We did not reconcile and decided to continue living together, primarily for the sake of the children and their well-being.' He confirmed that he meant they did not reconcile.
28. I had no expert evidence before me as to whether what the father relates would be considered a divorce, or of the impact of the parents subsequently living together. Further, I had before me an English translation of the certificate only. I was told by F that he would be able to find the Pashto original. I consider that it is remarkable that he had not already produced it bearing in mind he had been directed by me on the 22 November 2024 to explain the provenance of the divorce certificate. And further, Ms Guha rightly draws to my attention that oddly the translation has fingerprints on it, by way of signatures. Signing, or making a mark of any sort, is not what I would expect of a translation, but it might be that different practices exist in Afghanistan.
29. It is clear to me from the documents I have been shown from the Home Office that the production of the divorce certificate on the visa application was necessary (a) because his application was predicated on his marriage to MT, and (b) the children's application was predicated on asserting he had sole responsibility for the children, for which it helped him to point to a divorce.
30. I note further that there are misrepresentations on the visa application. One is the assertion that he had sole responsibility for the children, who on any view were often in the care of the mother. Another is that he referred to the mother by surnames other than Z, which is the name by which she is known, and is the name recorded in her passport. The father said this was because the forms were filled in by MT or immigration solicitors. That answer does not assist. They must have been acting on information provided by him.
31. Given that it is not one of the issues on which I am asked to make a free standing finding by the schedule, and given as a consequence I do not have the evidence that I would expect were I being invited to make such a finding, and given the significance of making a finding on personal status I do not here make a finding that there was no divorce

between the mother and the father. I do however make two points flowing from the divorce certificate:

- a. That the revelation that the father had presented his case to the Home Office on the basis of a divorce between him and the mother destroys the father's case that the agreement was that he and the children were to get out and the mother was to follow. She would not realistically be following if there were a divorce.
 - b. On the basis of the evidence before me, including in particular (i) the fact that neither party had made any reference to signing a divorce certificate before one was produced by the Home Office, (ii) the obvious need for the production of one for the father to get the visas he wanted, and (iii) the other misrepresentations on the visa application, I conclude on the balance of probability that the divorce certificate is a fake document.
32. It is appropriate that I make clear that I accept the mother's evidence that she did not consider herself divorced. If she had it is inevitable that she would have relied on that in her initial application for a summary return of the children. It would have been part of her case that the father was acting without her consent in bringing the children to this country.
33. I do need to go further than determining that the father's case as put to me is undermined by the divorce, not least because there are many reasons for lying. I accept that there is a sound argument brought by the father that conditions in Afghanistan were terrible, particularly for him and the girls. Might then it be that the mother consented to him and the children going without any realistic prospect of her following. There are a number of points that I need to consider. (I shall not here run through every point and argument put but those which I consider have weight.)
34. First, in relation to the trip to Pakistan in 2022 the mother has produced an email from her cousin dated the 3 July 2022 which is written to the Foreign Office in England relating to 'Islamabad-general enquiries', in which he tells them that the father is attempting to bring the children to the UK without her consent and urging them to intervene. The father does not accept the veracity of that document, but there is no detailed response to it.
35. Second preceding the removal in 2023, I am told by the mother that there was a 'Jirga', which is a formal family meeting to resolve disputes, held on the 16 June 2023. That followed, she says, an incident of domestic violence between the parents. The mother says she was not present at the meeting (because she was a woman) but other than the domestic abuse there was discussed the plan for him and the children to relocate to this country. She tells us that was rejected.
36. I have a translated letter from a TG (mother's paternal uncle) and INP (her aunt's husband), which relate that the parents had a fight over the second marriage (which had been concealed – and I record that it is a second marriage, not a fresh marriage after a divorce) and the plan to take the children to the UK. The elders, I am told, wanted to stop the violence and confirmed that they rejected the plan to bring the children to this country.

37. The father tells me that there was no Jirga. Most of his points are focussed on the formalities of what constitutes a Jirga. He asks me to reject the evidence of the two relatives as untrue. I will need to weigh this in the round.
38. Third, after the abduction to this country the mother has produced an email written by her cousin, JJ, of the 23 August 2023 written to a host of English authorities, principally the Police, complaining that the children have been abducted. The most forceful objection to this is that it is written over a month after the removal.
39. Fourth, the mother issued this application in November 2023 for the children's return. Again, the father points out that this is some months after the removal and is more indicative of a change of mind. The mother responds to that point by pointing out the difficulty she had in sorting out lawyers here, and raising funding for proceedings, when she is in Afghanistan.
40. Fifth, and pointing the other way, the father is able to rely on a letter which has also emerged from the Home Office bundle, which is dated the 31 March 2019, and says 'as per his demand and request he can get his daughters [sic] in order to facilitate them with good education and life style'. This is written in English and purportedly signed by the mother. The mother says that this letter is nothing to do with her. She cannot read English and it is not translated. She says she had not seen it before the Home Office bundle had been produced. It is notable that the father did not rely on it in any of his statements in advance of the hearing before HHJ Middleton-Roy. He asks me to accept it as a valid statement of the mother's position. I find it inconceivable that if this letter were genuine, it would have not been relied upon by the father before the production of the Home Office bundle. It would have been a very strong piece of evidence. And, it could have been obtained by the father, either by approaching the Home Office himself or by approaching the solicitors who acted in the visa application. For these reasons I do not consider this letter to be genuine and I do not attach weight to it.
41. Sixth, I have the evidence of the children given to Ms Demery. X told her, and it is recorded in her report of April 2024, that her mother knew that they were coming to the United Kingdom. Albeit in the context of the allegations as to the mother's behaviour to the children I was told by Ms Demery that the children's allegations had the ring of truth about them, at least in part. I must, I find, consider this seriously. I do note that the children are conscious of these proceedings and very anxious not to return to Afghanistan. That may affect what X has said. Further, I bear in mind, as pointed out to me by Ms Warner that the children are 'loyal' to the father and MT and will want to support their presentation of the case. I do note that a discussion or argument between their parents is something that they would not play a central part in, as they would with their mother's behaviour to them.
42. Seventh, I have a series of What's App messages sent by the mother when in August 2023 she was sent by a relative a picture of the children at a party in London. It reads,
- And Allah will never keep such people happy in their entire life.*
- By God I will neither think of such a child (ren) nor will I ever remember them.*
- Keep them with yourself.*

Even if you bring them here I will spit on their faces.

May Allah never give such a rude child to anyone.

43. This is said by the father to indicate the mother did not want the children back and that she did not care about them. It is said by the mother to be an outburst by her, overwhelmed by emotion, having seen a picture of one of the children at a party in London, and then the children running away from the phone rather than talking to her.
44. It does strike me as informative as to the mother's lack of control of her emotions and a remarkably easy descent into rage with the children. It does not strike me as of any real help in understanding whether or not she had 2 months earlier consented to the children moving to this country.
45. Eighth, the father relies on the fact that in May 2022 the mother was included with him and the children in an application for a visa to live in Pakistan prepared by agents on the father's behalf. This does strike me as evidence that the father did intend that she would come with them to Pakistan. It is not evidence in any way that the mother was agreeable to going or consented to the children going.
46. Ninth, I have the oral evidence of the parties before me. That, I am sorry to say, struck me as of little help. Both parties are wedded to their account to the extent that what they said was of little assistance. I had no sense that either was honest with me.
47. So, I am left with weighing and evaluating the documents and the inherent likelihoods of what has happened and balancing in all the other matters which I refer to in this judgment.
48. The conclusion I come to is that the father and mother did discuss and argue about the father and the children coming to this country. I accept the father's evidence that he felt unsafe and thought it would be much better for the children to come to this country. The mother opposed that. She knew MT, his second wife, was here and this move would be without her, and the children would then effectively become MT's children. The account given by the relatives at the family meeting (which may or may not be described as a Jirga) seems likely to me to be truthful. The various emails to authorities are evidence that the mother did not consent to the children's removal.
49. The father worried for himself and the girls, and not wanting to leave the girls, decided to come here notwithstanding there was no consent. The document produced by the Home Office in which the mother appears to agree that he can do what he wants with the children is a document created by him to allow him to do what he wants to do. The evidence of X to Ms Demery is something she has latched on to either from discussions between her father and MT, or from occasions when her mother has lost her temper with her. It is perhaps an emotional support that she has constructed to allow her to come to terms with her mother falling out of her life, and to enable her to cope with her feelings about her mother – which I will detail further below. The outburst from the mother on What's App is just that – an emotional outburst. It is not indicative of a settled agreement that the children can leave Afghanistan and come to this country without the mother.
50. I conclude then that the father did wrongfully remove the children from the care of the mother, on two occasions. (I see the journey to Pakistan in 2022 as fuelled by the same dynamic and working in much the same way as the removal here in 2023.) In the sense

that he removed them without the mother's consent. I do note that he did so because of fear for his own security in Afghanistan, fear for the children, as girls, in Afghanistan, and fear of leaving the girls behind. I highlight here, and will explore this more fully below, his fear was not merely a selfish fear that he would lose them, but fear for their care with their mother.

51. The next allegation is that the mother is a victim of 'transnational abandonment'. I can deal with this allegation from the evidential matters considered above.
52. I do not want to become involved in definitions, or a linguistic analysis of 'transnational abandonment'. The mother, I have already found, was left in Afghanistan while the father without her consent brought the children to this country. It has been his case at times during these proceedings (as it was before me) that the plan would be that the children would come here with him and then he would help the mother to come. There is no evidence that he has taken steps to help the mother come, save for the 2022 visa to Pakistan. He knew full well that his evidence of a divorce would make it more difficult for her to come as her best chance would have been as his wife. Insofar then as he might have said her following was a possibility he would have misled her. However, I disbelieve his case as currently put on this. It was not an account that he gave in his first statement. The mother did not complain in the early stage of these proceedings that he had told her she would be coming, and he has failed to fulfil that promise. The account from the family meeting or Jirga was not for removal on that basis. The mother's response to the picture of her child at a party in London was not 'where is my visa?'. I find that the father did not hold out a promise to bring the mother here. It may have been something he would say from time to time as an outside hope, it may just be an invention on his part made during the progress of the litigation to try and explain why the mother might have agreed to her children leaving without her. It was not a plan that either parent thought would be likely to be achieved, and no deal was done on the basis of it.
53. The next allegation in the schedule is an allegation of alienating behaviour in respect of the children's relationship with the mother. I shall return to this allegation after considering the father's allegations that the mother has abused the children.
54. The final allegation in the schedule is an allegation that the mother is a victim of domestic abuse perpetrated by the father. Although this is expressed generally there is one specific incident to which I have been referred. That is an occasion on the 4 June 2023, when she says there was a sustained assault on her leaving her very badly bruised and hurt. The following points need to be considered.
55. First, the mother has produced a photograph which bears a date the 4 June (but no year) and shows a significant reddening round an eye and a darkened eye. This she says is a picture she took of herself and where it is red and darkened it shows what the father did to her. The father says it is difficult to tell that it is her (not a point he had taken before being in box in front of me including in the hearing before HHJ Middleton-Roy) and that, if it is her, it might be a result of a fight that she had with her family – of which there will be more below. I caution myself about over reading a photograph, but I will precede on the basis that the photograph is of the mother given that this point was taken so late and the photo' looks like her.
56. Second, she has produced a letter from a relative, a doctor, who has confirmed that on the 5 June 2023 she presented with injuries caused by domestic abuse the day before. It

was accepted by the mother (as she had to given locations) that the presentation was by video link. The father tells me that I should not rely on this because it arises from the mother's family.

57. Third, there is the evidence already referred to from the Jirga or family meeting.
58. Fourth there is the oral evidence of the parties. Again, I did not find this assisted me.
59. The account that the mother gives in her statements is of a sustained attack. She says that she had to go to her GP – not revealing until her third statement that trip was by video link, and that the GP was a family member. She draws attention to the different culture in relation to domestic abuse in Afghanistan, and to the fact that it was the visible nature of the injuries to her face which led to the Jirga or family meeting.
60. I remind myself that the test the evidence must meet is the balance of probabilities. The combination of the photograph, the letter from the family member doctor, the jirga or family meeting, and the fact that the incident was at the very time when the parents were arguing about the father's intention to leave the country with the girls, his second marriage, and the fear arising from the Taliban's return to power leads me to conclude that the father did strike or slap the mother (as she says in her second statement) giving rise to the injuries to her face which appear in the photograph.
61. The third statement gives a longer account of the assault saying that there was about 20 minutes of beating. I remind myself that the intermediary assessment tells me that the mother has a poor grasp of time. I am not on the balance of probability going to find that there was a beating lasting that long. The third statement tells me that the assault started in the presence of the girls, but they ran away and did not witness the worst of it. I can make no specific finding on this point, save for the general one that it seems highly likely they were aware that something had gone on, from the noise at the time and the obvious injuries to the mother.

The father's allegations against the mother

62. The father says that the mother was emotionally abusive towards him and threatened to stab him. He relies on a threat of which I have an audio recording, the translated transcript of which sets out:

just wait, I will not let you go without [hitting you with] a knife [repeated twice]. A knife befits you [people of your sort]. I will hit you with a knife seven times when you are asleep. When I get [not clear] out of you, I will then tell you to do anything you can in the hereafter.

63. The mother accepts that this was her and says that it was from a time when she had been locked in the parties' bedroom, that the father had been abusing her and was telling her he would be taking the children away from her to live with MT. She says that her 'heightened emotions' caused her to say things that are regrettable.
64. The mother points to the fact that is a selective, short, covert, recording. It tells us nothing of what the father had said. Ms Guha cautions me against relying on covert recordings generally, saying that they may be edited and selective and that they are a form of harassment and are likely to be harming to the children.

65. The mother is right in her observations, and I hold Ms Guha's caution in mind. None the less the recording does show that when the mother loses her temper, she loses it dramatically. Regardless of context, the threat that it contains is so violent that it is not possible to consider this as anything other than abusive. I have already found that the father was violent to the mother. I conclude that the parties were mutually abusive, albeit there is a difference between a physical beating and a verbal threat.
66. Abuse of the children: physical and emotional. In this section of my findings I consider it more appropriate to follow the allegations made by the children to Ms Demery rather than following the order of allegation as they appear in the father's schedule. In this way I am covering broadly the same points but starting from the source of the evidence.
67. Ms Demery records in her Wishes and Feelings report and by way of a position statement (produced in relation to the issue as to whether X should give evidence) which was confirmed by her orally, a number of allegations which the children make against the mother. The allegations in the report coming from the children include (i) that she beat them and hit them on their heads, (ii) that when trying to get away from her because she was angry X fell in the toilet and cut herself on something sharp; (iii) that she fought with and threatened the father including by way of stabbing him, poisoning him (this incident was repeated and expanded upon by T on a second visit); (iv) that she threatened to tell the Taliban where he was; (v) being beaten and hit after a trip to the bakery (an account which Ms Demery described as vivid), (vi) seeing their mother returning from her sister in law's covered in blood with a knife in her hand (this incident was repeated and expanded upon by X on a second visit); (vii) sitting on X's back and pulling her hair.
68. In the visit that the Guardian made in advance of me determining whether X should be allowed to give evidence X made clear to her that she wanted to give evidence to me directly. She feared that I would not understand her evidence and in particular 'the cruelty' we have experienced.
69. In answer to a question from me as to what weight I should put on these allegations Ms Demery told me that some of what they have said has 'the ring of truth' about it, and that their accounts were 'believable to a large extent'.
70. The father and MT each repeat what the children have said to them. The mother denies the allegations. She does accept that she would, appropriately and rarely, physically chastise the children when required.
71. There is some particular evidence that I should consider.
72. In relation to the fall in the toilet (in fact it appears bathroom) each parent gives an account, and I have pictures of the wound. There was a toilet roll holder in the bathroom which had a sharp metal edge. The mother's account is that the two girls were fighting in the bathroom while she was out getting a towel when X fell on the holder and slashed her wrist. She contacted the father (who was at the gym) and X had the wound stitched. The father in his first statement makes an allegation of carelessness against the mother. He was at the gym; the mother called him; X went to have stitches.
73. I make clear that I do not ignore X's account, but it is inevitable given the father's own account of this incident that on the balance of probabilities, I find that this incident is accidental. Further, I make clear that I do not consider it constitutes abuse. Neglect

obviously can be abuse but this is a simple accident. Somebody should have made sure that the paper roll holder did not have a sharp edge.

74. In relation to the return from the sister with a knife and with blood, I am told by the father that the mother was charged with a stabbing. The mother denies the incident entirely. I have seen no evidence of a charge. MT referred in her oral evidence to having seen a video of the stabbing. I cannot rely on that, it had not been referred to before, let alone produced. I have however seen messages referring to stabbing. First there is the audio recording recited above. Second there is a WhatsApp exchange between the parents. The first page of that exchange appears to be the father telling the mother that the world knows she used a knife, and also sets out that the children saw their mother coming home with her hands covered in blood. The second page contains more from the father and responses from the mother. She says 'The knife was not [used] because of something dishonourable. They were also a notorious family like yours.'
75. The mother says of this that 'I know how it may look as though I insinuate in the following page of text messages that a knife was used on one occasion, this is out of context'. She asserts that she has no criminal record but concedes that it is known that there are issues with her sister's family.
76. The mother has been unable to explain what the context was of this message that makes it wrongly look like an admission of using a knife when it in fact meant something else.
77. On this issue it is important I bear in mind inherent probabilities. It is not likely that the mother stabbed someone. I do however have the evidence of the children and the text message. I do, I note, also need to factor in that the mother clearly loses her temper dramatically. I must step back and consider what weight to give to what the children have reported. I must bear in mind that they want to stay in this country, and they have been with their father as he has conducted this case and that it is being said he has alienated them. I do however consider the text message and what the children have said to Ms Demery cannot just be discarded. They outbalance the potential lack of context, the lack of evidence as to a charge, the potential unreliability of the children's account. On a balance of probabilities assessment I do consider that the mother came back, and the children saw her, with a knife and with blood on her. I do not find that she has stabbed anyone, but I do find that the children having witnessed this, and having heard their mother talk about using a knife were frightened by what they saw.
78. As to the 'poisoning' the father relates that when he was about to have a milkshake (more properly a 'shlomby') he received a sign from T that he should not drink it because it had poison in it. I admitted at the beginning of the hearing a recording that the father said he made of T talking to him after the incident on the 23 June 2022 when she says that the mother had been told by a relative of a poison that could be put in drinks. It must not be put in water the recording relates because that will bring the colour back, but it can be put in shlomby.
79. The mother denied this completely. I was told by Ms Guha that there were a number of short recordings on that day. I note that the father appears to have selected only one. I will not make a finding on such a serious matter when the most compelling piece of evidence has only been produced on the morning of the first day of the hearing. I do not say that the children are giving a deliberately false story to Ms Demery. There are obvious alternative explanations to account for what they say, such as they heard threats

to poison. It is apparent from what I have said already, and will be more apparent from what is to come, that the mother makes violent threats. I cannot however make a finding of attempted poisoning on the evidence that I have.

80. As to the more generalised allegations that the children were beaten by the mother, the mother denies that she did anything more than administer appropriate physical chastisement. She points out to me that the approach to physical chastisement is different in Afghanistan to this country. She does not accept that she did anything more than administer a tap to the children. On this point I again have to confront the issues of what weight I should attach to the children's view. I will not repeat the points made above on that issue. I do repeat what I have already set out that Ms Demery considers the some of what the children have said has a ring of truth. I also bear in mind the mother's tendency to lose her temper – including in relation to the children, and her repeated threats in relation to use of a knife, and further threats I shall detail below. I also note my conclusion in relation to the 'stabbing' incident. I do note the consistent account the children give of their allegations and that, for the most part, they have not become more florid the longer the children have been with the father. This could be the consequence of good 'coaching' but may also indicate that the accounts reflect what actually happened. I do on balance find that the mother has lost her temper with the children and administered physical rebukes of them which are not to do with chastisement but her own loss of control. I find the children are telling the truth when they say she would beat them and hit them on the head, including on an occasion after a trip to the bakery and indeed that she would on occasions when she lost her temper, pull their hair.
81. I do therefore find that the mother has emotionally and physically abused the children as I have described above. I do want to note that this was in circumstances where there was a marriage that was not working, and was violent, and the father had taken another wife, and was threatening to take the children, and the day to day living arrangements were unquestionably very difficult.
82. The father also wants a finding on threats to others. The mother broadly accepts the allegation. Namely that she said to MT:
- You are the daughter of a matchmaker and a slut, and you let people fuck you every day. You provide sexual services for people one after another. You are a renowned slut and let guys fuck you for 2 AFN. I am going to enter your pussy and not going to let you live.*
83. The mother explains that this was her only time of talking to MT and occurred when MT rang to speak to the father shortly after she first heard of his second marriage and understanding that he would want to raise his children with her.
84. I am content to accept that explanation, but it does not lead to any other conclusion than that the mother has a violent temper and that she has made violent threats.

Alienation

85. I turn back to the charge brought by the mother that the father and MT have alienated the children from her.

86. There was some cross examination of both the father and MT on this topic. The allegation arises because the children are refusing to have contact with the mother. On this topic I found the oral evidence more helpful.
87. The father was clear that he had tried to get the children to engage with the mother, but they refuse. Though I need to check myself when believing anything he says I am inclined to believe that he is telling the truth in this regard. He is able to see that it is in his interest, so far as this case is concerned, to not only demonstrate that he is trying but also to bring about some contact.
88. MT, I felt gave lip service to encouraging the children to engage with their mother but at heart was entirely sympathetic to their refusal. M, MT thinks, is a terrible person who has abused her and the children. She could not see any advantage to the children in having a relationship with her.
89. MT was not able to identify any positive benefit of the children having a relationship with their mother. The father was able to make the obvious point that she was their mother, but I formed the impression that he felt contact was important because the court wanted it to happen.
90. Other than the fact that the children were resisting contact with their mother, which must be seen in the light of her behaviour to them, there was no evidence from which I could draw a positive finding that the father was engaged deliberately in trying to turn them against the mother. That however is rather to miss the obvious point. The children's interests and the father's and MT's interests align: they do not want to go back to Afghanistan. So long as that threat remains, and these proceedings embody that threat, the children are likely to believe it is necessary to reinforce the case that the mother is 'bad'. Hence there was an application for X to give evidence. The endeavour to show that the mother is 'bad' is common to both the father and the children. A better parent might have been able to stand back from the court fight enough to save the children from becoming sucked in, but F would need to show unusual, if not exceptional, qualities to have achieved that insight into the children's best interests.
91. My finding on this allegation of alienation is not merely one word. It is that there is no conscious attempt to turn the children against the mother, but there is a polarising effect of the litigation which will result in these circumstances in the children holding to a negative view of their mother. The children have not been sheltered from this litigation. Such sheltering would have been to their advantage, but it would have been unusual, if not exceptional.
92. I do further find that there is no real appreciation by the father or MT of the importance to the girls of having a relationship with their mother.

Conclusion

93. The matter is to return to me on the 27 March 2025 at which hearing consequential matters can be considered and directions made to progress the appropriate child arrangement orders in the light of these findings.

Mr Justice Trowell

11 March 2025