OUTER HOUSE, COURT OF SESSION

[2022] CSOH 38

F85/20

OPINION OF LADY CARMICHAEL

In the cause

ZA and MN

Pursuers

against

(FIRST) B, (SECOND) A, (THIRD) ADVOCATE GENERAL FOR SCOTLAND

Defenders

and

M

First Party Minuter, Fourth Defender

and

AI

Fifth Defender

Pursuers: Scott QC, Haddow; Drummond Miller LLP
First and second defenders: Crawford QC, Kiddie; Balfour + Manson LLP
Third defender: A McKinlay; Anderson Strathern LLP
Fourth defender and party minuter: Cheyne, Barbour; Clan Childlaw
Fifth defender: Brabender QC, A Welsh; Morton Fraser LLP

12 May 2022

[1] The pursuers ZA and MN are the mother and father respectively of M, the fourth defender and party minuter. They seek an order for M's return to Qatar. M is 13 years of

age. In January 2020, when she was 11, her older sisters, B, A and AI (the first, second and fifth defenders), brought M with them from Qatar to the United Kingdom. All of these parties are nationals of Qatar. The Secretary of State for the Home Department has granted asylum to all four sisters. The third defender appears for the interest of the Secretary of State.

[2] The first conclusion for ZA and MN is for a specific issue order for the return of M to their care in Qatar, and for an order for delivery for that purpose. The procedural history of the case up to October 2020 is set out in *ZA and MN* v *B* and others [2021] CSIH 52. It was common ground in the light of that decision, and the authorities discussed in it, that it was competent for me to grant that specific issue order, but that the order could not be enforced until such time as M was no longer recognised as a refugee, should that ever come to be the case. The pursuers also sought orders for contact, and interdict of the defenders from removing the child from Scotland. In April 2021 this court made an order for weekly contact by secure video conference platform. M attended some sessions but not others.

[3] At the close of the case for ZA and MN, senior counsel indicated that she would not be moving for an order in terms of the first conclusion as it appears on record. She moved at the close of proof for an order for the return of M to Qatar and for an order for delivery for that purpose, but did not seek an order for the return of M to the care of her parents. The proposal which was the focus of the proof was that M should be accommodated at least in the first instance in institutional care in Qatar, in either the Aman Centre ("Aman") or the Dreama Centre ("Dreama"), more likely the latter.

[4] M sought orders providing that she should reside in Scotland, and that she should live with her sister, A.

[5] The proof was during a period when additional restrictions were in force because of the Omicron variant. Five witnesses (three of them parties) gave evidence in person. Each of them had provided evidence in chief by way of affidavit, gave additional oral evidence in chief, and was cross-examined. The remainder of the witnesses who gave oral evidence did so using WebEx. During the in-person evidence, a limited number of legal representatives for the pursuers, the first, second, fourth and fifth defenders, court staff and an interpreter were present in court, in accordance with the limit on the number of persons who could be physically present in the court room at the time. The proceedings were live-streamed. The remaining legal representatives, parties and others watched and listened to the proceedings from other locations. Counsel who were in court were given time to communicate electronically with counsel and solicitors who were not, or adjournments when required.

[6] There was no order that the reports of professional witnesses should constitute their evidence, or their evidence in chief. In the absence of specific agreement that a report should be treated as evidence, I disregarded reports from persons who did not give oral evidence.

[7] Counsel for the third defender joined the court by WebEx, so that he could cross examine in the course of the in person evidence. The third defender did not lead any evidence, cross-examine any witness, or make submissions on the merits of the case.

Summary of decision

[8] I am refusing to grant the specific issue order sought by the pursuers, and granting the orders sought by M.

The evidence

Pursuers

[9] ZA gave evidence in person. There was no direct evidence from MN either by way of oral evidence or affidavit. It is a matter of agreement that he has type II diabetes, hypertension, mixed depression and anxiety disorder and Parkinson's disease. ZA gave evidence that his health was poor. X, who is M's sixteen year old brother, gave evidence in person, as did ZA's sister, BA. All three of them gave evidence with the assistance of an interpreter. There were at times difficulties with the interpretation. Senior counsel for the pursuers had available to her an interpreter outwith the court room. At some points she received information that a question or answer had not been properly translated. I gave her the opportunity to try to address any difficulty of that sort in re-examination. Both ZA and BA offered to remove their face coverings when giving evidence. I made it clear to each of them that there was no requirement that she do so, and that I was happy that each wear her face covering if she preferred to do so.

[10] The report of Professor Sonia El Euch Mallek and her curriculum vitae were agreed to be her evidence. The position was the same in relation to Dr Nazar A S Mahmoud. It was agreed that a report by Nurse Therapist Cheryl Connelly of an assessment dated 13 August 2021 should be treated as her evidence.

ZA

[11] ZA adopted her affidavit, save for making a correction to paragraph 43, about a matter which is not material for present purposes. She wanted M to return to Qatar. She was at pains to stress that there was no risk that M would be killed or harmed in any way if she were to return to Qatar. She accepted that her son Y had a history of violence towards

his sisters, but said that the law, and the government, in Qatar would prevent him from harming M in the future. Y would not think of coming to Scotland to harm M. ZA thought that it would be a good idea for M to live at Dreama in Qatar. She stressed that M needed her mother. ZA did not think that there was anyone else who could protect M and meet her needs in the way that she, ZA, could. M's sisters could not do so. ZA wanted M to return to Qatar, even if that meant that Y ended up in prison.

[12] MN was very sad that his daughters had left. Both his and ZA's health had deteriorated after they left. MN had been particularly close to M and to AI.

[13] On 26 February 2020 ZA had contacted AI using Instagram. They had exchanged text and voice messages over a period of thirty to forty five minutes. AI had posted voice messages, which she later deleted. Screenshots of the exchange and a translation of the text messages were produced. In the text messages AI had assured ZA that she and her sisters were well. AI had said that she wanted to be able to reassure ZA every day, but feared that someone else would find out that she was doing so. ZA agreed with her counsel's characterisation of the exchange as affectionate.

[14] ZA and MN had wished to support their daughters financially and had written, through their agents, an open letter offering to do so.

[15] ZA accepted that Y had behaved badly to his sisters. She had found that difficult to admit. Y lived in the family camel farm in the desert, a 45 mile drive away from the family home in Doha. He had lived there since he was 19 years of age. He came to the family home only on Fridays to shower, change his clothes, and for prayers. She had not seen Y hit M, and had not been aware before her daughters left that he had done so.

[16] ZA was shown photographs. They showed a limb or limbs and the back of a person. The back had on it a red mark in the shape of a narrow, elongated U, lying horizontally

across the upper back. She said the photos did not show M. She said the clothing shown in the photographs was not M's. In two of the photographs (856 and 859 in the core bundle) an area of pink background was shown transected both horizontally and vertically with an apparently brown line. Asked if she recognised it, she said, "I don't think this is a bedroom". Asked if it looked like part of her house in Doha, she said, that it did not. Photograph 860 showed an item of footwear (something resembling a grey and white Adidas slider shoe). She said that "we" do not have such a thing. She suggested that the person in the photograph had wider shoulders than M.

[17] ZA was asked about the transcript of the conversation between B and Y. She accepted as a generality that B and Y argued a lot, shouted at each other and said unpleasant things to each other. She did not think that if one of them threatened to kill the other, that expressed a serious intention. She seemed reluctant to accept that either of them would have issued such a threat. Neither Y nor MN owned a gun. There was no gun in the family home in Doha, or at the farm in the desert.

[18] M had had a difficult time at her first school in Qatar, but was transferred to a second school, where she fared better. She had had a friend called Maryam at the latter school. She had achieved good marks in PE, computing, IT and visual arts. Those were her favourite subjects. She had liked school and attended daily. ZA thought she would have had good prospects of going on to university after school. She did not take time away from school because she was unwell. ZA was concerned that M was missing school in Scotland. In Qatar M had had lots of friends. She had not been an "angry" child, and she had not suffered from low moods or unhappiness.

[19] During video contact since July 2021, M had told ZA that she missed her and wanted to hug her. She had wanted to smell ZA's abaya (an item of clothing). M told ZA that she

had played the sound of air conditioning through her phone to help her sleep. She told ZA that she wanted to come back to Qatar, but she "stopped that idea". ZA believed that that was because M was afraid of her sisters. M had asked for a new mobile phone and money for clothes. She had told ZA that the sisters lived separately because of problems between them.

[20] ZA said that shame associated with her daughters' having left Qatar would not make her reluctant to have M back. She had spoken to Mariam Al Misnat, a government minister, who had agreed to oversee a plan for M's return. If Y were to be abusive in the future, ZA would report that to the police or to Ms Al Misnat. If M were to remain in Scotland, ZA would wish to have contact using video, but also contact in person in Scotland. She disclaimed any intention to try to find out M's location by means of the technology used for video contact.

[21] In cross examination she agreed that in the event of MN's death, Y would become the head of the household. She agreed that he was hot-headed, regarded himself as the family disciplinarian, and that he had been rude, strict and physically harsh to his younger siblings. She said that he had made a written promise that he would not harm M. She accepted that he had injured B's nose, but said that that had happened a long time ago, and that MN had physically punished him for doing so. She said that there had been a one hundred and eighty degree change in Y's behaviour. When asked why she had not reported to the police that Y had injured B's nose, she suggested that she, ZA, had not been available at the time. She also suggested that B had not respected Y, and had said bad words to him.

[22] ZA was referred to a passage in her affidavit in which she said the following:

> "I remember once my daughters came to me and showed me bruises to their arms. They told me that Y had caused these injuries. I was mad and pained by this. I told them to please obey the rules and that I would tell Y he could not hit them anymore.

> But the girls did not heed my advice. They would misbehave, cause fights and disobey the rules at home and so more fights occurred. I know Y used force but this is unfortunately part of the culture here. However, I did not fully know how just [sic] violent he was and of course I would have intervened further if I could have."

She suggested that these events had taken place some time ago, and that there had been no significant violence on Y's part for three or four years before her daughters left Qatar. She believed that the police could in the future prevent him from behaving in the way that he had done previously. She accepted that Y had given a written promise not to "hit the girls" only after her daughters had left Qatar. Y had not offered the undertaking; the police had requested it.

[23] ZA did not accept the suggestion put to her that the injury depicted on the back of the person shown on the photographs was caused by an iqal/agal (the cord worn round a man's headdress). She did not accept that there had been an occasion when Y had injured X's nose.

[24] She insisted that Y was not allowed to return home if her daughters returned home, but accepted that there was no court order preventing him from doing so. She was prepared to live with M separately from her husband. The government would provide her with accommodation. Asked about an incident when her older daughters had asked their uncle to intervene on their behalf, she said that this had pre-dated their departure by three or four years. MN and the uncle had both reprimanded Y at the time.

[25] In relation to corporal punishment of children generally, she said that it was part of the tradition in Qatar, and backed by scriptural authority, to tell children aged five how to behave, and to deliver corporal punishment, by hitting, if a ten year old misbehaved. The example she gave was of a child not saying his or her prayers. The hitting was not designed to hurt the child. She would hit a female child aged 15 in order to reinforce instruction that

the child should be accompanied by a male relative if going out. A young woman of 25 would be permitted to go out alone, but would still be advised not to. When questioned by Ms Crawford she did not accept that she had given Y authority to deliver corporal punishment. That was something he had done of his own accord because his father was frail and because she was working. When examined by Ms Brabender, however, she did accept that she had asked Y to punish the other children when they were very young, and in relation to important matters. She stressed that that was a long time ago.

[26] In her affidavit ZA accepted that there was an occasion when she had hit AI shortly before B and her sisters left Qatar. She had done so after AI changed her WhatsApp display screen to a picture of a Bollywood actress who was "inappropriately dressed". A "strange boy" sent AI suggestive text messages, something that ZA attributed to AI's use of the display screen picture. ZA was appalled because AI's actions "could have led to her being harmed, and her name could have been tarnished in the community". According to ZA, she and AI reconciled shortly after.

[27] She had physically chastised her children by hitting them on the back with a small stick, which she described as an asah, measuring between two and three feet in length. That could be more than once a week if required. It would not hurt them, and they would not be hit on the head or on any part of the body other than the back. She had struck B for failing an examination, in order to encourage her to work hard and graduate from school. She denied physically chastising her children in other ways. She accepted that B had gone to the hospital when Y injured her nose. She denied that the nose was broken. She denied having told B to say that the injury was accidental, and to keep quiet or it would happen again. She accepted that it was customary not to share family problems outside the family. Families

were expected to take care of their own problems. She said that it was, however, possible to seek advice from others in special circumstances.

[28] Ms Crawford asked ZA about a passage in her affidavit regarding an occasion on which her daughters had tried to involve their uncle after Y beat them using an iqal (paragraphs 37 and 38):

> "I was personally very upset by the whole thing. This was a private matter and not anyone else's business. I did not want my in-laws involved or interfering in this matter."

She said that she had not wanted her in-laws involved, because her own family had the ability to solve the problem, and family matters were private. It was wrong for her daughters to speak to people outside the immediate family about family problems, but they had not been punished for doing so. She accepted that she had said at the time that B brought the family into disrepute by going to her uncle. She denied that Y had hit B after this incident. She denied that MN had threatened to shoot B if she "exposed" the family again.

[29] ZA had thought it important that her daughters wear traditional forms of dress. That reflected values that were important in Muslim society. If she had thought that there was a problem for her daughters in wearing the niqab, she would not have insisted that they do so. She denied that AI had been made to wear the niqab despite having asthma. She accepted that women needed the consent of their male guardian to marry. If one of her daughters wished to marry someone of whom she and their father did not approve, that would have been permitted. She also said, however, that they would prefer for the benefit of the woman concerned that the suitor was someone responsible and with a good reputation, and that if he was not, it would be better to withhold permission.

[30] In re-examination she said that her view about using a stick to punish children had changed entirely. She had found it helpful to speak to a social worker at Aman. She was sorry that she had asked her daughters to wear the niqab. She regretted that Y had hit the younger children. ZA stressed that she regarded the interests of M as more important than cultural matters. She had, for example, travelled to Scotland, and removed her face covering in court, for the sake of her daughter.

X

[31] X said that he never saw Y hurt M. He thought M would have told him if Y had done that. M was a happy girl. She could be angry, but he could not remember specific times when that had happened. She had liked school, although there were occasions when she was unwell and could not attend. That did not happen a lot. He said that the person shown in the photographs was not M. He thought the person was older than M, and had wide shoulders. He conceded that he had generally seen M clothed in a jalabiya, but said that he could nevertheless tell the size of her waist from the back. He said that the limb shown had more hair on it than M's arm. He had been able to see her forearms when she was clothed. He did not recognise the clothing shown on some of the photographs. He said there was a similarity between the pink area of background shown in some of the photographs and a location in his home. He said the area that was similar in his home was coloured brown rather than pink.

[32] In examination in chief he said that neither his father nor Y had a gun and that there was no gun at the family farm.

[33] He recalled an occasion when ZA had been angry with M because M had refused the services of a private tutor. ZA was not angry with M at the time of the proof. X did not

think that either his parents or Y wanted to harm M. He was concerned that M was missing school in Scotland. He had heard that she was "thinking of committing suicide". He was supportive of the idea of M living in the Dreama Centre, and said he would support M if she were to make a complaint against Y.

[34] In cross examination X expressed the view that the mark on the back of the person in the photographs had been caused by striking the person with a wire. He said that an iqal would not leave a mark like that. Y had hit him on many occasions using a wire, on his back and arm. Y had also struck him on the nose. X's affidavit said that Y had broken his nose. In oral evidence he said that Y had not broken his nose, but it had been painful. He thought that had happened when he was 11 years old.

[35] X described Y as being harsh on everyone, and using anything he could get his hands on to administer discipline, including a wire and a stick. He mentioned a time when he was 8 or 9 years old, and B was crying and covering her nose. ZA took her to hospital. In cross examination he said this had happened five or six years before the proof.

[36] Mr Cheyne asked X about an incident he described involving Y, and his other brothers, S and N, in the following terms in his affidavit:

> "I remember a fight between S and N. My Mum told Y about this, and I remember Y coming home and beating them both. This is the most severe act I have seen Y do. I saw him use a wire, and he left open streaks on S's back. When my mum realised that Y was beating the boys, she actually had to intervene by shouting and screamed for Y to stop and leave the boys alone. She was mad at Y for his overreaction as she did not want him to beat the boys with a wire."

He confirmed that his mother had told Y that S and N had been fighting because she did not have sufficient "physical power" to discipline them. Only Y could do that. X said that he no longer felt at risk of harm from Y, because he was now older.

[37] X described a firearm mounted in a frame as a decoration or ornament at the family farm. His evidence was that the firearm was not capable of being used, and was of the nature of a replica. He said that because of the way that the firearm was fixed in the frame, it could not be removed from the frame without being broken.

BA

[38] BA said that M's departure had affected ZA physically and psychologically. MN was very unwell. She had never seen Y being violent, but had learned from ZA that he had been. She did not believe that anyone would wish to kill M. She said she would support M if she were to report Y to the police. She accepted having said in the past that Y could and should use force to discipline B.

Dr Nazar A S Mahmoud

[39] Dr Mahmoud is the executive director of a NGO which holds consultative status with the United Nations Economic and Social Council. He is the permanent representative of the Arab Organizations for Human Rights to the United Nations. He was asked questions about whether in Qatar generally or in the Al-Marri tribes there is a practice of honour killing, and whether Qatar provides protection to women and girls who leave their family homes and would be considered vulnerable to honour-based abuse.

[40] There are no official records that document honour killings in Qatar. Dr Mahmoud was not aware of any cases, studies or empirical data indicating that the Al-Marri tribe was inclined to commit honour killings against their own female members either generally or as compared with other Qatari tribes. He could not say that honour killings did not happen in Qatar, but they were not common or accepted. They were "deeply frowned on" by both the

community and the law. They were contrary to the sacred law of Islam, and punishable by death if proven in court. United Nations reports did not indicate that Qatar was responsible for extrajudicial killings either within or outside its own territory. Reports on the human rights situation in Qatar had not highlighted any case of honour killing.

[41] Qatar provides protection facilities to women and girls who leave their homes due to domestic or internal disagreements. The primary institution is Aman, which houses, shelters and rehabilitates women in need, and provides secure premises. The Community Police plays a significant role in protecting such persons from harm from their families. Dreama provides analogous support to vulnerable children. The National Human Rights Commission can take up cases involving the alleged abuse of women and children, and has handled some prominent historic women's abuse cases. The procedural law of Qatar provides for witness protection if a woman is required to give evidence against her male family members. The potential protections include anonymity orders and non-molestation orders. Women and children can be rehoused, given fresh identities and opportunities for economic activity by the state, and can be provided with security measures as well.

Professor Sonia El Euch Mallek

[42] Professor Mallek is professor of civil law at Qatar University. She specialises in teaching civil law, shari'ah (Islamic private law and jurisprudence) and family law. She teaches a course in family law and is the co-author of a book on family law in Qatar.

[43] The family is an important unit of society in Islam and in Gulf culture. Qatari law strives to safeguard the integrity of the family where there are disputes as to divorce, alimony, and the custody of children. Although Qatari courts will endeavour to keep the family together, there are limits to that principle. The integrity of the family does not trump

the safety of a child. The "legal actors" in Qatar routinely remove children from the family environment where it is perceived that there is a risk to their safety or wellbeing. Professor Mallek does not indicate who the "legal actors" are. She provides the following example:

> "… a child who has been physically or sexually abused will be taken under the protection of the AMAN Centre or DREAMA whilst police investigations into the abuse are carried out. During this period, the family is not permitted to retrieve or contact the child and the Community Police plays a very significant role in preventing any such attempts. If there are attempts on the part of the family, these are treated as separate offences and sometimes referred for prosecution."

[44] A judge has the power to transfer custody over a child away from family members to another person or institution under article 169, Law No 22 of 2006 Promulgating the Family Law. Judges can and do make orders that children at risk be protected in "specialist, anonymised facilities where educational, psychological and pastoral care is provided by specialists".

[45] Article 22 of the Qatari Constitution places a duty on the state to protect children from abuse in certain specified respects. There is no law prohibiting the physical chastisement of children. Article 269 of Law No. 11 of 2004 Issuing the Penal Code provides:

> "Anyone who jeopardizes a person under sixteen or a person incapable of protecting themselves due to their mental, psychological or health condition is convicted to no more than two years in prison and to a fine of no more than ten thousand Qatari Riyals (QR 10,000), or to one of these two penalties. The penalty is no more than three years in prison in addition to a fine of no more than fifteen thousand Qatari Riyals (QR 15,000), or one of these two penalties, if the person is left in a deserted place or if the guardian commits the crime."

Cases involving minor injury to a child are likely to result in a financial penalty, and be dealt with by the Court of Misdemeanour. More serious offending is dealt with by the Court of Felony, and may result in a custodial sentence. The court may also order an inquiry as to where the child will best be protected. Professor Mallek gives the example of a mother who

allegedly tortured her son. She was arrested and detained pending trial. The child was placed in Dreama. Family members attempted to retrieve the child by negotiating with officials. They were not permitted to do so until "the relevant safeguarding bodies" had satisfied themselves that there was no risk to the child.

[46] If a child has been beaten at home, but is released back to the care of the parents, an undertaking may be employed. The police produce a contract for the alleged abuser to sign. In it, he or she would promise not to re-offend against the child. There would be regular inspections and unannounced visits by the police. In Professor Mallek's experience those were effective in preventing reoffending.

[47] In Qatar child protection is delivered by governmental and non-governmental bodies "hand-in-hand". The NGOs tasked with child protection are analogous to non-departmental public bodies. They "exercise the writ of the state through a non-governmental structure". Professor Mallek acknowledges shortcomings in the care provided by Aman in the past, although she regards criticism of the centre as overstated. Up until 2018, when there was a change of leadership, the residents were not allowed to have telephones on site, and their movement was limited and controlled. After 2018 mobile phones were permitted, and residents were given greater freedom of movement and allowed to apply for jobs. Things were improving.

[48] Professor Mallek posed to herself and answered the question, "If a child is suspected to have been abused in Qatar, what is the response from the State?" If a call is made to the police, community police officers will investigate. They will remove the child and take her to Aman or Dreama. If their investigations indicate that there is a case against a family member, the matter will be referred for prosecution. The child will be cared for at the relevant agency, and their health and education needs assessed. The relevant agencies will

consult. A member of the Ministry of Families and Social Development will be present and report back to the Minister, Her Excellency Mariam Al-Misnad, who personally intervenes on occasion.

[49] Professor Mallek finds it difficult to believe that the state would leave a child "in the position of M" liable to abuse by returning her to a dangerous family environment. Professor Mallek provided an example of a situation in which a family of considerable social standing in Qatar tried and failed to exercise influence to have a child returned to them who was in the care of Aman. The young person in question still remains in Aman at the age of twenty.

[50] There is no system whereby a criminal prosecution can be pursued without a complaint from the person offended against. Professor Mallek is confident that M would be given the opportunity of making a complaint if she returned. The process that would follow would involve the preparation of a case. If convicted, Y might receive either a custodial or non-custodial penalty. There might be "civil orders" handed down which would prevent or limit his access to M.

[51] Professor Mallek provides a summary of some legal provisions which relate to the guardianship and custody of children. The two are distinct concepts. There are also more than one kind of guardianship. I did not find it easy to glean a sophisticated understanding as to what the different types of guardianship entail, from this part of the report. Personal guardianship belongs to the father, and is defined as "all of the rights and duties owed for and onto the guardian in relation to the minor's person". It includes education, discipline and attention to the minor's affairs. Marriage can only be allowed with the approval of the guardian. Guardians, for the purposes of marriage, are in the following order: father, agnate grandfather, son, full brother, paternal half-brother, full uncle, and paternal uncle. The

guardian must be a male of sound mind. A mother may be a legal guardian with responsibility for the property of a minor if the father has appointed her as such before his death or incapacity. The mother has the right to custody of the child for keeping, maintaining, nurturing, upbringing and educating the child. There is an apparent overlap in that both personal guardianship and custody are said to involve education. On divorce, there is a presumption that the mother will have custody, although that may be rebutted in the interests of the child. Custody granted to a woman terminates when a female child is 15.

[52] There are legal provisions that permit the court to alter who has custody or guardianship of a child. For present purposes, the most relevant are these. The law prescribes an order of eligible custodians. Essentially these appear to be various categories of family members. If none will accept custody, the judge can entrust custody to "a reliable family or person". A juvenile court may suspend some or all guardianship rights if the juvenile is placed in a social care home in accordance with the provisions of Law No 1 of 1994 on Juveniles. Professor Mallek's report does not provide any more information about that law.

Dr Ifaf Asghar

[53] Counsel for the fifth defender objected to the evidence of this witness in its entirety. The basis of the objection was that the witness was a psychologist who purported to give opinion evidence without having met or assessed M or any of her sisters. I heard the evidence under reservation as to competency and relevancy. In the course of the witness's evidence counsel for the first and second defenders objected to a specific passage of evidence which was inconsistent with the position of the parties as agreed in the first joint minute. I sustained that objection. The evidence of the witness was otherwise admissible.

She provided competent evidence on the basis of her qualifications and expertise as a psychologist, in relation to general matters regarding attachment and child development. She was also in a position to give evidence as to fact as to her experience of working with the Child and Adolescent Mental Health Service "CAMHS") in Glasgow, and of working as a clinical psychologist in Qatar.

[54] Dr Asghar is a clinical psychologist. She works in the department of psychiatry at Sidra Medicine in Doha as lead psychologist for inpatient psychology and the emergency department. Sidra is a hospital for women and children. Her department offered the first in-patients beds specifically for children in Qatar; children previously had to be accommodated in adult psychiatric wards. She is not directly involved in child protection. On occasion, however, she would have to work with "the child protection team" where child protection issues arose. If a child presented with injury from physical chastisement that would not be ignored. Sidra catered for Qatari and expatriate patients. Since working in Qatar she had become more aware of the impacts of cultural and religious matters on mental health than she had been when working in Glasgow. It did not, however, make much difference to her clinical practice that Qatar was an Islamic country.

[55] Dr Asghar gave evidence about attachment theory. A child bonded with an adult caregiver – not necessarily a parent – who responded appropriately to the needs of the child. If an attachment were interrupted at any stage of the child's life, that could have an adverse effect on the child's development, so far as the child's relationships were concerned. She referred to research carried out regarding looked after and accommodated children who had been neglected or abused and who had been removed from their families. The concrete operational stage of development was between ages 7 and 11 years. M had been 11 when she travelled to the UK. She had since begun the progression into adolescence. That was a

difficult stage in the life of a child when stability and security were crucial. Dr Asghar had seen the report from CAMHS. It highlighted behavioural difficulties, including anger.

[56] A need to be prompted regarding self-care was normal for someone M's age. Someone of that age would be trying to establish her independence, but was still a child who would have to be told to follow rules and develop boundaries. There tended to be "pushback" from adolescents. It would be confusing to have siblings transitioning into a parental role. It would be helpful to have information from M's school. There was information that M was not getting on well with her peers, and a psychology professional would want to know why that was. Theoretically the upheaval M had experienced could have affected her ability to form and maintain peer relationships.

[57] In Dr Asghar's experience, CAMHS was "stretched", and had substantial waiting lists. When she worked for CAMHS, there were never sufficient clinicians for the children that needed the service. Dr Asghar had not worked for CAMHS for four years at the time of the proof, and could not comment on current waiting lists or targets. There were media reports that CAMHS was under-resourced. If a child said she was fine, professionals might take that at face value, and decide that the child did not need to be seen again. CAMHS did not have the luxury of time to allow a child to "open up". Dr Asghar was however careful to say that if something in the child's presentation, including her body language, caused a professional at CAMHS to think that she was at risk, the professional would have continued to see the child. M's sisters had gone through trauma themselves and might find it difficult to step into the role of parents.

[58] A child or adult living with a fear of something that provoked anxiety would experience stress and arousal. Safety and security were important for a child's development.

[59] Dr Asghar did not examine or assess M or her sisters. She acknowledged that she did not have the opportunity to make any assessment of the effect on them of violence they experienced in Qatar, of their experience as refugees, or any continuing fears that they had that they might be traced in their new home. She acknowledged, as a general proposition, that if a primary caregiver beat a child with a stick, they would not be responding to the needs of the child. People who had post-traumatic stress disorder or depression generally would be capable of looking after a child, so long as they were addressing their own difficulties.

Mary MacKinnon

[60] Ms MacKinnon has academic qualifications in the fields of psychology, sociology and law. She has had a long career including extensive experience in a variety of posts in the field of child protection social work. She has also worked as a counsellor and counselling supervisor, and as a solicitor. She retired in 2019 but continues to provide reports for court proceedings, and pro bono advice. She was instructed for the pursuers to consider and report on the robustness of a child protection plan for M. There is no dispute that Ms MacKinnon's experience qualifies her to provide opinion evidence about care plans for children, including child protection plans.

[61] She was asked to consider the matter on these hypotheses. M had fled physical violence in her family home. M and her elder sisters left Qatar and arrived in London, but had spent most of their time in the United Kingdom in Glasgow. There had been significant abuse which had resulted in marks on M's body. M's older brother was the perpetrator of the abuse. He was charged by his parents with disciplining the family.

[62] Ms MacKinnon had travelled to Qatar in November 2021. Before doing so she tried to gain an understanding of the agencies and facilities there, and of the relevant law. She carried out online research. When she arrived, she met Mr Fahrid Chishty, a legal adviser to the Qatari Embassy in the United Kingdom. He facilitated her meeting with the minister for social development and family. The minister set up meetings for Ms MacKinnon with other agencies. Ms MacKinnon visited Aman and Dreama and met residents there. She thought it important to speak to residents to gain a picture of what it was like to live in those institutions.

[63] When assessing a care plan, Ms MacKinnon did so on the basis of trauma informed practice. If a young person had experienced trauma, it was important to respect their experiences. A young person had to be and feel safe before starting therapeutic work. Without trust the therapeutic process would not work to best effect. The young person had to be given choice as to what was happening to him or her. A child or young person who had been abused had already had choice or control taken away from them. The need for them to have agency could extend to what might appear to be relatively minor matters such as the room where they met professionals, or who they worked with. Having peer support was also important.

[64] A robust child protection plan was one that was well constructed. It must cover all the initial needs of the child and lead to safety. It would look at the development of the child, and at family relationships and how those were to be dealt with. It would be constructed around the individual child. It would cover what was to happen regarding the child's health and education, and who would deal with those matters. In the present case Ms MacKinnon had limited information about M, and was not able to go into specifics with the individuals who would form a child protection team in Qatar. She did not know M's

views. She did not know with whom M felt safe, or unsafe. A plan based on assumptions was adult-centric, rather than, as it should be, child-centric. There was no guarantee such a plan would work.

[65] The place of safety for M would be Dreama. Aman was also safe, but Dreama was more appropriate given M's age and circumstances. Dreama was called an orphanage but was in fact a resource for children who could not live with their families. Residents ranged from babies to persons aged 20. They included children who had arrived there recently, and young people who had been there for a number of years. It provided comfortable accommodation. Relationships between staff and residents were positive. There were high walls surrounding the villas on the premises, although it seemed to be usual for homes in Qatar to have high walls and gates. The premises were well furnished and resources did not appear to be a problem. They compared very favourably with residential children's homes in Scotland. Someone accommodated at Dreama would have the use of facilities at Aman, and also at Sidra Medical. The facilities at Aman were larger with specialised therapy rooms and a play room. Ms MacKinnon had been impressed with the facilities, which included appropriate equipment geared to working sensitively with children and young people. She had been impressed by her interactions with residents at both institutions. She did not think she was being shown what the authorities wanted her to see and nothing else. She had learned that Dreama had at one point been more an institution than a home, but that that had changed in 2015 or 2017. Her impression was that the minister could step into the role of any of her colleagues, and that she would be personally involved in M's case.

[66] Ms MacKinnon identified a number of named individuals who would be team members with roles in a child protection plan for M. They included Mariam Al-Misnad, the minister already referred to. Ms Al-Misnad told her that after assessments had been

completed, if ZA and M wished to live together in their own separate housing that could be provided for them, along with an allowance. Ms MacKinnon met Colonel Sheikh Nasser Bin Ahmed Al-Thani, the head of the community police. He would progress proceedings against Y once M had made a complaint. Ms MacKinnon could not be provided with a copy of the undertaking that Y was said to have given to the police. His account to her was that the court could order placement of a child in Dreama while an assessment was carried out on "the non-abusive carer and their ability to protect the child". Dreama would advise as to whether the child wished to go home and whether it was safe for them to do so.

[67] Ms MacKinnon identified other named prospective team members including a social worker with the community police; the head of legal support and consultation at the Aman centre; the clinical psychologist for Dreama; a social worker in Dreama; and the head of accommodation at Dreama. The social worker with the community police would liaise with M by video link to get to know her and reassure her. If the court were to order M's return to Qatar M could meet other residents by Zoom. She would be presented with choices and listened to. There would be support for M if she wished to make a complaint about Y. The focus of work would be in gaining M's trust and allowing her to talk when she wished.

[68] Ms MacKinnon's evidence was that she had not had time to consider the law that would regulate M's residence at Dream. She would defer to experts in the law of Qatar. In relation to two of the residents in Aman that Ms MacKinnon met, no-one had been convicted of abusing them. In cross examination she was asked whether it would be possible for M to be protected in Dreama without having made a criminal complaint. Ms MacKinnon responded that she did not have sufficient information to explain, but she was left with the understanding that M would be protected, "whatever". For Y to be jailed or otherwise sanctioned there would have to be a complaint. She thought M might be on a "civil order"

while assessments were ongoing, but she had not referred to that matter in her report because she did not have sufficient knowledge about it.

[69] The starting point in devising what would be helpful for a child or young person was information about her.

[70] Ms MacKinnon was firmly of the view that M should not return to the care of ZA immediately if she were to be returned to Qatar. It would be necessary for there to be focused work with ZA to ensure that she understood that physical abuse was wholly unacceptable within the family. ZA had been unable or unwilling to protect M from violence in the household. M had been abused in her care. There would have to be work done to empower ZA to stop abuse towards M in the future. Work with ZA could take six months or a year. Ms MacKinnon imagined that M would want contact with her sisters, and that would have to be managed.

[71] Ms MacKinnon had been told that no complaint had been made in relation to M or her sisters before they left. She said that information had come from the community police.

[72] Cross-examined, Ms MacKinnon said she did not meet with the director of either Aman or Dreama. If M did not want to be in Qatar at all, then that would present a very difficult decision for the court. It would be difficult to move forward with a care plan for a child who did not want to be there. She might feel she was being incarcerated. For a child of M's age to be removed against her wishes would be very traumatic. It would be necessary to consider whether M's decision was her own, and based on accurate information. It might be necessary to consider why she believed she would be killed.

Cheryl Connelly

[73] On 30 July 2021 M attended CAMHS with B and an interpreter. The reasons for referral to CAMHS were low mood and motivation, anger, suicidal ideation and flashbacks. B agreed with the reasons for referral, but M was unsure. M said she had no worries and was unsure why she was attending, but consented to an assessment.

[74] B and M agreed that anger was the main concern. M said that she was aware that she reacted with anger to everyday demands. M presented as well-kempt, relaxed and engaging. She did not display any distress. She said she had voiced thoughts around ending her life, but was clear that she had no ongoing suicidal ideation or plan to end her life. She would not always attend to personal care. She was resistant to boundaries and everyday demands. Life was different for M in the UK from her life in Qatar, where she was "rich" and her mother allowed her to do as she wanted.

[75] Ms Connelly's assessment was that the aspects of M's presentation that concerned her sisters were in the context of parenting difficulties, rather than deteriorated mental health. School enrolment should be a priority. She recommended that the family access support through the Central Parenting team. M was discharged from CAMHS with an assurance that should her mental health deteriorate a further referral could be made.

Fourth defender/party minuter

[76] The defenders agreed that M's case should precede that of the other defenders.

[77] M's evidence was that she felt safe in Scotland and was happy that she had been granted asylum. If she had stayed in Qatar she might have gone to university. She would have been expected to marry, possibly a cousin. Her family would choose a husband, and she would not be allowed to choose. She did not want to return to Qatar, because she would

be forced to marry someone she did not love, and her brother would keep on hitting her. She described being beaten repeatedly by Y, sometimes at ZA's instigation. On one occasion that was because M had eaten noodles. In her affidavit she referred to an occasion when Y grabbed her by the throat and then hit her with his agal, after which her sisters took photographs of the injuries he inflicted. She referred to her mother and father hitting her with a "walking stick", although not sufficiently hard to leave marks. Her mother would hit her to wake her for school. When M was 10 or 11 years old her mother instructed a member of domestic staff to wake her for school. M described an occasion when ZA grabbed and pulled AI by the hair, and threw a bottle of rosewater at her.

[78] She was happy to have video calls with her mother and X, and also her father.

[79] M did not believe that either her parents or the police would protect her from Y. She feared he would kill her. She did not want to stay at Aman or Dreama. She had read a story online about a girl who had returned to Qatar, and had then gone missing. Her sisters had asked the police for help in Qatar, but no one had cared.

[80] In oral evidence M said that the photographs in process showed marks on her body which had been inflicted by Y. In relation to marks on her arm, she said he had used a wire. She said that marks on her back had been caused by his using his headband or a wire. She said that the background to some of the photographs showed the door of a closet in her family home in Qatar. A had taken the photographs when M was about 9 years old.

[81] Cross examined, M said she would like to become a detective and work for the FBI in the United States. Although she had achieved good grades for PE and computing in Qatar, she had not enjoyed the subjects. She liked drawing. Her favourite subject at present was dancing, which she pursued at school. She had had problems at school in Qatar, but had seen a friend and a cousin there daily. She had first started school in Scotland in

September 2020, and her attendance had been 82 per cent. She said that was because she was being bullied. She did not accept that she had been sent home for fighting. She had later attended a second school. Her evidence as to the date at which she had left the first school was confused. She thought she had left before Christmas 2020. She thought her sisters had changed address and that she had changed school because she had a bullying issue at school, and because the house was not comfortable. She did not understand the move to be because of any danger to herself or her sisters.

[82] She had started a new school in October 2021, and her attendance there had been 67 per cent. M said she had again been bullied. Sometimes she did not go to school because she was not well, and sometimes she did not want to go to school. She did not accept that she was angry or aggressive at school, although she could sometimes be angry at home. She did not accept that there were any difficulties with her personal care in respect of her personal hygiene. She sometimes became angry when people asked her to do things she didn't want to. Although she had been "rich" in Qatar, she "loved" living in Scotland. When she had not been at school she had spent a lot of time on her phone. She had, however, gone out with her sisters. There was no problem about going out, and she liked doing so.

[83] M said she missed her mother, but "not too much", and that she missed X. She accepted that in February 2021, when she spoke to the child welfare reporter, she was a little bit sad that she had left her family. In evidence she say that she was "way happier" than she had been then. She was open to seeing her mother and X in Scotland, not now, but in the future, if they stayed for "two days". She was scared that her mother might kidnap her and take her back to Qatar if her mother found out where she lived. She accepted that she had told her mother that she missed the smell of some of her clothing. She had initially had

difficulty sleeping in Scotland, and had used an air conditioning sound effect on her phone because the sound reminded her of home. She said she had used that "a couple of times". She had changed her mind between February 2021 and the time of the proof about speaking to her father. She was worried about using "ordinary Zoom" to speak to her parents, in case that led to their finding out where she was. She believed that her mother and father would kill her if she returned.

First and second defenders

[84] It was agreed that I should accept the evidence of Catherine Lown, Jessica Docherty and Khalid Ibrahim in their affidavits. There was a more limited agreement in relation to the evidence of Dr Sue Moser and Dr Eileen Sanderson, regarding the content of their respective reports.

A

[85] A gave an account of repeated physical abuse from her father, mother and Y. She said they threatened to kill and detain her. She described being hit with wooden sticks, wire and an iqal. BA exercised some influence over ZA. BA would tell ZA to call Y if A and her sisters were not listening to ZA. On one occasion B wanted to visit a friend and asked permission of her mother. ZA asked BA's advice. BA said that ZA should refuse permission, and that ZA should "get Y if we don't listen."

[86] Y would threaten to kill A and her sisters by suffocating them or hitting them. A described an occasion when Y "nearly killed" B by suffocating her. On another occasion he broke B's nose.

[87] It is agreed that on 24 August 2016 A telephoned Aman in Doha to make a complaint of abuse. On the same day she called again to reject the services of the centre. The Aman records show that the centre received a call from A complaining of physical abuse by her father and "deprivation of rights", noted as going out of the house and using the mobile phone. In oral evidence A explained that she had been asking for protection, but that the centre was like a jail. She would have been without television or a mobile phone there. That was why she rejected the services of the centre.

[88] A described trying to get help from the authorities. She had been crying on the phone. A high ranking male police had officer said to her, "If you don't want to be killed you need to listen to your family and be obedient." She told Dr Sue Moser that that happened in 2019. In both cross examination and re-examination she indicated that that conversation had occurred in 2019. She confirmed that her account to Dr Moser was true.

[89] A believed that M would be punished, and could be killed, if she were returned to Qatar.

[90] A described moving in March 2021 from the second house in which the sisters were accommodated in Glasgow because some girls at M's school had shared where she went to school on TikTok. A had had difficulty in enrolling M in her second school. M had two or three school friends. At the time of the proof A and M were due imminently to move to permanent accommodation with two bedrooms. When this happened, there would be a further change of school for M. The new school would be about 13 minutes' walk from the new address. The teachers at M's current school were not helping.

[91] A said that she took the photographs in process showing injuries to a person's arm and back. They were photographs of M taken in B's room in Qatar. She said the injuries were caused by Y using the wire of a phone charger. She had taken the photographs so that

people would believe her. She thought she took one of the photographs of M's back on the day of the injury, and another hours or days later. M was 9 years old at the time.

[92] Cross-examined, A accepted that M had not attended either her first or second school fully. She said that M had been bullied. She accepted that M had been sent home for fighting, but said that someone had been fighting with M. A had asked M what had happened, and M had explained that the incident happened because she was being bullied. She thought that M left her first school in January 2021. She next went to school in October 2021. In the meantime A had registered M in a new school and had not received any reply from the school. After that she had changed her address. The level of M's attendance in her current school was also poor because M was bullied. A had gone to the school "many times" to tell the teachers, but the teachers blamed M for "not smiling". The teachers said that M was aggressive. A understood that children required to go to school, and took responsibility for her attendance.

[93] A had seen M's TikTok account, and observed a social media post that caused her concern. She called the police because she was concerned about her location, and that of her sisters, becoming known to her family in Qatar. The police told her that they would speak to the girls who had been involved in posting the information. A and her sisters moved to another address. She did not want her parents to know where she lived. They had threatened to kill her and her sisters. She questioned why, if her mother loved her and her sisters, she had not protected them. She would not want M to know her address if M were returned to Qatar, for the same reason.

[94] A agreed that Y had lived on the family farm since he was about 19 years old, returning to the family home on Fridays, but said that sometimes he would spend all day at home.

[95] A believed that psychologists in Qatar would tell patients that difficulties with mental health should be dealt with by reading the Qur'an. She said that that approach was widespread in Qatari society. She was asked about an offer made by the pursuers to pay for psychological help for M in Scotland. She had not understood that there was an offer that the outcome that assistance should be confidential, and not conveyed to the pursuers. She had taken the view that the help was not required. She had understood that the psychologist would be offering assistance, not reporting to the court. All the sisters had declined the assistance.

[96] She had declined financial assistance from her parents because it was not needed. All the sisters had declined the offer, and she had not prevented her sisters from accepting it. When M was at school, the school had offered Wi-Fi for online classes.

[97] She explained that at the time of the proof she was still waiting for assistance from the Central Parenting Team. She had been offered an appointment but was unable to attend it because it was during the proof. She was asked why she had waited four months from the recommendation from CAMHS before contacting the team in November 2021. She had not read the report from CAMHS in August 2021, but had an account of the assessment from her sisters.

[98] In A's opinion it was necessary that online contact between M and ZA take place using an encrypted laptop and from a secret location in order to prevent disclosure of the whereabouts of A and her sisters. She believed that her family could kill her even in Scotland, as they had hurt her on many occasions before. She felt that whether M had contact with ZA depended on M's own preference.

[99] A's evidence was that she and B cooked dinner for M. She was worried that M ate noodles and mozzarella sticks too often, and had consulted a nutritionist about that. She

described dancing and watching television with M, and visiting the cinema with her. A assisted M with packing her schoolbag for the following day and prepared snacks for her to eat at school. A had had help from Ms Jessica Docherty with claiming child benefit for M, and with getting a school place for M. A thought that she and B cared for M better than their parents had done. She said that she cared about M's feelings and problems, and that she had also intervened with the school in Qatar when M was bullied there. A had contacted Central Parenting Team, and they had given her "a book and papers to answer" about M. They had not yet started offering assistance. A wished to study and then to work. She wanted M to go to university. She thought that M would have difficulty in Qatar having experienced a life in Glasgow which provided her with much greater freedom. The story of Noof Al-Maadeed had caused A concern. She had returned to Qatar from the UK, and there had been online stories that she had been murdered on her return. A believed that the Qatar government had let Ms Al-Maadeed go because the proof in the present case was about to be heard.

[100] A did not think that M should have to live in Dreama centre. She described it as a prison, where M would not have access to a mobile phone. She thought that it would be very difficult for M, having experienced the freedoms that she has in Scotland, to return to live in Qatar.

B

[101] B did not give evidence in person. It was not agreed that her affidavit should be accepted as her evidence without the need for cross examination. Mrs Scott submitted I should set it to one side altogether. The other parties submitted that its content was consistent with other evidence before me, and that I should accept material parts of it.

[102] Before turning to the remainder of her affidavit, however, it is important to note that there is some agreement about a matter that she mentions at paragraph 25 of her affidavit. That is an argument between her and Y, in which Y lost his temper. She made an audio recording of the incident on her phone, and shared the recording with A. What was agreed to be a translation of the transcription of the conversation was available to the court. It was agreed that those shown as speaking on the transcript were B and Y. There is no agreement as to when the incident took place.

[103] In the conversation, B tells Y that ZA had initially given her permission to visit a friend, but then withdrew permission. MN had then provided permission. B had also consulted BA. Y is at pains to emphasise that problems are to be sorted out behind closed doors. On a number of occasions during the exchange he emphasises his authority in the household, and in particular over his sisters. He emphasises the need for B to respect her parents, and not to seek help from others outside the family. He issues threats of violence towards B and her sisters. He threatens to kill them. He says he has a weapon. He threatens to behead B, and to suffocate her. He expresses the view that nothing good comes from girls; they are worthless. He says that the only things that come out of girls are bad things. The exchange is a protracted one.

[104] B described regular physical abuse from her mother and from Y. Y had permission from both her parents to inflict abuse. Y and ZA used cables, metal wires and other implements. B had bruises and broken skin and saw her sisters being beaten and injured. Y assaulted her by hitting her on the nose after ZA told him that B had failed an examination at school. ZA told her to keep quiet and say it had been an accident or "they would do it all over again". The girls in the family were treated as second class citizens. The sisters learned what would trigger bad moods. B described herself as in a constant state of vigilance and

anxiety. She said that A took pictures on her phone of M's bruises. B described an incident when she had downloaded Snapchat and shared it with her sisters, and Y called to say he was coming home to get her. This incident resulted in B and A contacting their father's brother. ZA told B that she had shamed ZA, MN, Y and her sisters by going to her uncle. MN told her that Y would not beat her, because he, MN had told Y not to, but afterwards Y had hit her hard. MN then beat Y. MN told B, "If you expose us again, I will shoot you".

[105] B mentions in her affidavit an occasion when Y put his hands round her neck and attempted to suffocate her. Y threatened her with a gun when she said she did not wish to get married. I do not understand her account to be that he pointed a weapon at her, because she goes on to say, "I knew he and my father had hunting rifles and I was terrified". She says that the "threat of marriage" was used when one of the girls did not perform well at school. Her father would threaten to marry her to a much older man.

[106] B gave an account similar to that of A as to BA's influence over ZA.

[107] According to B's account, M was due to return to school "post lockdown" but the sisters required to move because they feared they could be traced because of "a certain social media post". She said that the Home Office moved them as a matter of urgency.

[108] B's account about the arrangements for M's nutrition, care and education is generally consistent with that of A.

Catherine Lown

[109] Ms Lown works for Glasgow City Council as a social care worker dealing with the housing needs of refugees and asylum seekers. People are referred to the council when they are given leave to remain, because at that point they have to leave their temporary Home Office accommodation, and become homeless.

[110] Ms Lown has not spoken directly with M. She has communicated with A, B and AI using messaging and phone discussions, with the assistance of an interpreter.

[111] AI and B's referral was made earlier than that of A and M, and they were housed first. A and M were then moved to temporary accommodation some distance from AI and B. Ms Lown and the temporary accommodation team were sympathetic to the sisters' wishes to live near each other. A two bedroom flat near to AI and B became available, and A and M were able to move to it.

[112] All accommodation, including temporary accommodation, must be wind and watertight, have smoke alarms, working heating and sanitary and cooking facilities. It may be of a lesser standard than permanent accommodation. It is a stepping stone to permanent accommodation. At the time of Ms Lown's affidavit, A was waiting for an offer of permanent accommodation. Tenants can contact Ms Lown if any issue arises. Her practice is to contact service users monthly to check on their wellbeing. A has been in touch with her on four occasions in relation to various practical matters, and about permanent accommodation.

[113] Glasgow City Council homeless services operate a partnership with Wheatley Care and Turning Point Scotland, called the flexible homelessness outreach support service ("FHOSS"). The service helps with benefits, housing issues, sustaining tenancies, and accessing services in the community and can report concerns to the council. Ms Lown has not found it difficult to communicate with A. She regards A as assertive and good at looking for support and assistance when she needs it. Wheatley Care asked to close her case, because they felt she did not need support, but Ms Lown asked them to continue to provide support to her. Wheatley Care continue to provide support for six weeks after a client receives an offer of permanent accommodation. The settlement plans for A and M

have been updated with the hope that they can be rehoused near to B. Ms Lown's impression is that the sisters are close to each other, and that they seem to be doing well.

Jessica Docherty

[114] Ms Docherty is employed by the Scottish Refugee Council ("SRC") as a refugee integration adviser. She supports refugees for a year after they are recognised as refugees. She became involved with A and M after A contacted the SRC helpline at the end of June 2021.

[115] She has not met A or M in person, but has communicated with A by phone and messaging. When A contacted SRC, she and M had their biometric residence permits, but had not yet received a discontinuation of support letter from the Home Office. A was being proactive regarding arrangements for the future. She had applied for universal credit, and had opened a bank account. She asked for advice in relation to child benefit. Ms Docherty thought that A was confident and resilient. She was keen for M to go to school. A asked about university, and about learning English as a second language. She was keen to learn about employment services. Ms Docherty referred A to WEA (the Workers' Educational Association), which I understand to be an organisation which provides opportunities for adult learners. A has enrolled on a language course. Ms Docherty referred her also to the SRC's employability service.

[116] Ms Docherty helped when A was encountering bureaucratic obstacles to enrolling M in school. One catchment school had no space for M. Following the move to A and M's current accommodation, A approached another catchment school and it accepted M. In August 2021, A had been concerned as to whether she should wait until she had permanent accommodation before enrolling M in school, because there might be another change of

schools and more disruption for M. That was a legitimate and common concern among refugees.

Dr Sue Moser, Dr Eileen Sanderson

[117] Dr Sue Moser and Dr Eileen Sanderson of Freedom from Torture Medico-Legal Report Service produced reports in relation to A and B respectively. It was agreed that the reports should be treated as the evidence of what A and B said to Dr Moser and Dr Sanderson, and as evidence of the opinion of each doctor, based on what was stated to her. Dr Moser's opinion is that A has post-traumatic stress disorder and depression. Dr Sanderson formed the same opinion in relation to B.

Khalid Ibrahim

[118] Mr Ibrahim is the executive director and co-founder of the Gulf Centre for human rights ("GCHR"), an independent NGO with its headquarters in Beirut.

[119] GCHR published information about a Qatari woman, Noof Al-Maadeed. That information includes the following. Ms Al-Maadeed spoke in a television interview on 4 August 2020 about having travelled from Qatar to Britain via Ukraine in order to escape violence from her family and from which the Qatari state failed to protect her. She submitted an application for asylum, but later withdrew it. On 6 October 2021 she published a video on Instagram explaining the details of her return to Doha on 30 September 2021. She posted on Twitter on 12 October 2021 to say that her family had tried to assassinate her. She posted twice on Twitter the following day, first to say "Hi. Still not safe" and then, "A bit more ok". She then stopped posting on social media accounts, and did not answer her friends' telephone calls. In December 2021 GCHR received reports

that she may have been murdered or forcibly detained in Qatar. In January 2022 she posted three videos confirming that she was alive and well and in Doha.

[120] Mr Ibrahim inferred that international pressure, including pressure from GCHR, and the imminent opening of the World Cup in Qatar, caused the Qatari authorities to "reveal the fate of Al-Maadeed, and protect her civil and human rights." Mr Ibrahim also referred to a report by Human Rights Watch indicating that male guardianship in Qatar restricted the rights of women to make independent decisions about marriage, study, work and travel.

Fifth defender

[121] It was agreed that I should accept the evidence of Nikki Hunter in terms of her affidavit. She simply spoke to the arrangements for swearing AI's affidavit.

AI

[122] AI's evidence in chief was in the form of her affidavit. She did not give oral evidence, and there was no agreement that her evidence should be accepted without the need for cross-examination. Mrs Scott again submitted that I should disregard it entirely. Her account is rather more detailed than that of A or B in relation to the Islamic practices of her family. She gives an account of physical violence inflicted on her from an early age by ZA and Y. AI was her father's favourite, but he sometimes verbally abused her and her sisters, and also used physical violence. He did protect them on one occasion; he rushed home when Y was strangling B. AI described her mother pulling her hair, screaming in her face and spitting on her face. ZA told Y that AI had failed an exam. He dragged her up from the floor by her hair, and ZA hit her so hard with a stick that the stick broke. On another occasion when AI failed an exam, Y beat her with his iqal/agal. Y frequently

threatened to kill and get rid of his sisters. Y, and also his brothers, with the exception of X, would beat M.

Decision

Applicable law

[123] In considering whether to make any order under section 11 of the Children (Scotland) Act 1995, I must regard M's welfare as the paramount consideration. I must not make any order unless I consider it would be better for her that the order be made than that none at all should be made: section 11(7)(a). In carrying out those duties I must, taking account of the child's age and maturity, have regard to the views she has expressed: section 11(7)(b). I must also have regard to the matters mentioned in section 11(7B): section 11(7A). Section 11(7B) and (7C) provides:

> "(7B) Those matters are—
> (a) the need to protect the child from—
> (i) any abuse; or
> (ii) the risk of any abuse,
> which affects, or might affect, the child;
>
> (b) the effect such abuse, or the risk of such abuse, might have on the child;
> (c) the ability of a person—
> (i) who has carried out abuse which affects or might affect the child; or
> (ii) who might carry out such abuse,
> to care for, or otherwise meet the needs of, the child; and
> (d) the effect any abuse, or the risk of any abuse, might have on the carrying out of responsibilities in connection with the welfare of the child by a person who has (or, by virtue of an order under subsection (1), would have) those responsibilities.
>
> (7C) In subsection (7B) above—
> 'abuse' includes—
> (a) violence, harassment, threatening conduct and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress;
> (b) abuse of a person other than the child; and
> (c) domestic abuse;
>
> 'conduct' includes—

(a) speech; and
(b) presence in a specified place or area."

[124] I approach this case as one involving a proposal that M, who is resident in Scotland, should relocate to Qatar: cf *H* v *W* 2021 Fam LR 142, paragraph 39. I take the same approach to the law, and to the evidential burden on the party seeking to have the child returned to live in another jurisdiction, as Lady Wise did in *H* v *W* at paragraphs 39 and 40. The welfare and best interests of the child are paramount, and fall to be judged without any preconceived leaning in favour of the rights and interests of others: *M* v *M* 2012 SLT 428, paragraph 9. The approach should be "presumption free", and much will depend on the facts of any given case: *Donaldson* v *Donaldson* 2014 Fam LR 126, paragraph 27. The party seeking that the child relocate must furnish the court with material potentially capable of justifying the making of the orders sought, and show that relocation would be in the child's best interests, and that from the child's perspective it would be better to allow relocation than to make no order.

[125] In light of the decision of the Inner House, it is common ground that it is competent for me to deal with the specific issue order originally sought by the pursuers. The fact that M has been granted asylum does not prevent me from doing so, although she cannot be returned to Qatar while she is recognised as being a refugee. Asylum is a matter for the Secretary of State. It is for her to determine whether any findings in this process are relevant to asylum, and, if so advised, to consider whether to revoke the grant of asylum.

[126] There is a dispute as to whether it is competent for me to grant the specific issue order in the modified form in which the pursuers now seek it. The pursuers' proposal was that I should make a decision in principle that M should be returned to Qatar, and then put the case out by order to address practical matters arising from it, referring to *H* v *W*; *MCB* v

NMF 2018 SCLR 660; *J* v *J* 2021 SLT 1152; *CM* v *ER* [2017] CSIH 18. Alternatively, I should grant an order with extract superseded for so long as M had refugee status, with any issue as to further orders raised by way of minute and answers in the existing process.

[127] The first, second and fifth defenders submitted that the order sought was incompetent, because it did not satisfy the definition of a specific issue order. The first and second defenders pointed to the lack of specification in the order. The fifth defender submitted that the order sought could only possibly be in connection with the pursuers' rights to regulate the place of the child's residence; the evidence did not support that.

[128] A specific issue order is an order regulating any specific question which has arisen, or may arise, in connection with any of the matters mentioned in section 11(1)(a) to (d): section 11(2)(e). Those matters are:

> "(a) parental responsibilities;
> (b) parental rights;
> (c) guardianship; or
> (d) subject to section 14(1) and (2) of this Act, the administration of a child's property."

[129] The order originally sought was plainly competent, as it sought M's return to the care of her parents. It would enable them to exercise a variety of parental rights and responsibilities. The order now sought does not specify in whose care M should be, or where she should live. What is proposed, and the focus of the pursuers' case in evidence, is that M should live in institutional care in Qatar for an unspecified period.

[130] In addition to the matter identified by the fifth defender, parental responsibilities and rights include the responsibility and right of the parent, if the child is not living with him or her, to maintain personal relations and direct contact with the child. Section 11(2) (e)

merely requires that a specific question arise "in connection with", among other things, parental rights and responsibilities.

[131] I do not require to reach a concluded view as to whether the order now sought is competent. For the reasons which I set out below, I have decided not to grant it. That is because it would not be in M's best interests for her to move from her current situation, in the care of her sisters, and in particular A, in Scotland, to institutional care in Qatar, which is what is proposed in at least the short to medium term. That is sufficient to dispose of the matter.

[132] For completeness, however, I record that I am in some doubt as to whether the pursuers have established that the order they seek is, at least in the short to medium term, connected to any of their parental rights or responsibilities so as to be a specific issue order as defined in the 1995 Act. There are a number of matters about arrangements in Qatar about which I am unable, after proof, to make findings. They are of a fundamental nature. They are not just of the nature of practical arrangements to enable a decision made in principle to be put into effect.

[133] I discuss these in more detail below, but among them are the following. The pursuers are asking me to make an order simply for M to be returned to Qatar. That is with a view to her living in institutional care, and, on their analysis, protected by the state from abuse by them or any other family member. It is unusual to be asked by parents to make an order with a view to the institutional care of a child, although it is conceivable that such an order could be connected with parental rights or responsibilities. Neither the institution in question nor the state of Qatar is a party to these proceedings. There is no indication as to how the state or any state or quasi-state agency would gain the legal authority to allow that to happen, absent a complaint to the police. There is no evidence as to the effect that that

would or might have on any or all of what are recognised in Scots law as the pursuers' parental rights and responsibilities. With all of that in mind any connection between the order sought and those rights and responsibilities is remote.

Conclusions on the evidence

[134] There is no dispute that Y assaulted his sisters. ZA's own affidavit narrates that Y was strict by nature and assumed the role of disciplinarian. MN was seriously unwell and unable to resolve his children's disputes, and ZA was working, and tired when she returned home. She described Y as impulsive and having a superiority complex. ZA's position was, however, that Y's abuse of his sisters stopped at least three years before they left. Any physical chastisement she delivered herself was moderate in nature and culturally accepted, with the exception of the incident involving AI shortly before her daughters left.

[135] The pursuers submitted that they did not accept the accounts given by A, B and AI. Their accounts of abuse were exaggerated. They were ill-informed; I took that to be a reference to A's, B's and AI's understanding as to the availability of protection in Qatar was concerned. An important part of the pursuers' case was that I should not afford weight to M's wish to remain in Scotland for a number of reasons, which I discuss more fully below. Among those was that her sisters had induced in her an unfounded fear that she would be killed if she were returned to Qatar. They had also induced in her an unfounded fear that her family would seek to find her in Scotland. In oral submission Mrs Scott accepted that A, B and AI had a genuine, but mistaken, fear that their family would try to find them in Scotland.

[136] I accept the accounts of physical abuse by Y provided by M, A, B and AI, and that that took place over a long period. I formed the view that ZA was minimising her own

knowledge of and complicity in Y's abuse of his sisters. I have borne in mind that B and AI were not cross-examined. There are, however, consistent themes in their evidence, taken along with the evidence of witnesses who did give oral evidence. There are a number of accounts of an occasion when Y injured B's nose sufficiently severely for her to attend hospital, although there is a dispute as to whether her nose was actually broken. ZA accepted that this happened. X referred to the incident in his evidence. He referred to an occasion on which Y had inflicted a similar injury on him. A referred to the incident at paragraph 13 of her affidavit. Both A and B refer to an occasion when Y attempted to suffocate B. Although B was not cross-examined, A was. That behaviour was consistent with the threats Y made towards B in the recorded argument. I accept that Y assaulted B by attempting to restrict her breathing. An assault involving the restriction of breathing is a serious one, and has the potential to cause danger to life. The accounts of threats by Y to kill his sisters is consistent with the language he used towards B in the recorded argument. I accept that at various times ZA, MN and Y made threats to kill A, B and AI.

[137] The pursuers were aware that Y was violent towards their three older daughters. On ZA's own account, she and MN knew about the incident in which Y injured B's nose. I accept B's account that she was told to keep quiet about this, and reject ZA's account to the contrary. I accept the evidence, including evidence from ZA that it was conventional to try to keep family difficulties private, and contained within the family itself. The content of the recorded argument between B and Y contains reference by Y to the need to avoid seeking help outside the family unit. ZA knew that Y had inflicted injuries on B, A and AI. She accepted this as part of her culture. She did not report his behaviour to the police, but advised her daughters to "obey the rules".

[138] It is a matter of agreement that A telephoned the Aman Centre in August 2016 and complained of abuse. I accept as credible and reliable her account of why she rejected their services. It is consistent with information gathered by Ms MacKinnon about the regime in Aman as it would have been in 2016, and also with information in Professor Mallek's report about that. I accept her account that she telephoned the police in 2019, and her account of her telephone conversation with the police. I do not regard that as undermined by Ms MacKinnon's hearsay account of being told that there was no record of a complaint by A or her sisters. I have no doubt that Ms MacKinnon was told that, but there is no direct evidence as to what efforts may or may not have been made to locate a record of that sort. I do not accept ZA's account that there was no physical abuse by Y in the three years before the defenders left Qatar. The photographs of injury to M, to which I refer below, fall within that three year period. None of B, A or AI gave evidence as to the latest date on which Y had assaulted her, but all gave accounts of continuing abuse over a lengthy period. A's account of a tearful call to the police asking for help in 2019 indicates abuse continuing in 2019.

[139] I do not regard AI's account of abuse as undermined by the circumstance that she was at one point in touch with ZA using a social media account. I accept that AI wanted to reassure ZA about her wellbeing. I accept ZA's account of a generally affectionate exchange. That AI may have had, or still have, affectionate feelings towards someone who abused her, or failed to protect her from abuse, is not incredible.

[140] I accept that the photographs in process and referred to in evidence are photographs of M, taken at her home in Doha when she was aged 9. That was her evidence, and A's evidence. Both were cross-examined. I reject the evidence of ZA and X when they said the photographs were not of M, and suggested that they were of a male. The photographs are

taken from an angle which seems to cause some degree of foreshortening. I would therefore be reluctant to draw any conclusions from the way that the shape of the subject's body appears in the photographs, which is with an upper back relatively broad compared to the waist. X accepted that he only saw M when she was wearing loose clothing such as a jalabiya. Tellingly, he accepted that what could be seen in the bottom right hand corner of one of the photographs looked like something in his family home.

[141] The evidence about ZA's capacity to protect M from harm at Y's hands is perhaps less material than it initially appeared to be, given the concession that the pursuers were not in a position to seek the return of M to their care. It is, however, relevant in that it remains in contemplation that after M had spent an unspecified time in Dreama, she might be returned to the care of her parents, or at least her mother. It is also relevant because of the state of the evidence as to the lawful basis on which M would be accommodated in Dreama, as opposed to with her family, on her return to Qatar.

[142] I do not consider that ZA wishes to kill M if she returns to Qatar. I accept she wishes M to return alive, and hopes to have a relationship with her in the future. I do not consider that ZA and/or MN would be able, without outside assistance, to protect M from Y. He still comes to the family home. There is nothing to stop him from doing so.

[143] I accept that ZA was sincere in her wish to protect M from harm by Y if M returned to Qatar, and that she genuinely believed as she spoke in evidence that she would take steps to do so. The earlier history, however, causes me to doubt whether ZA would be able carry that intention into action if she found herself in a situation in which Y, she and M were together, and a conflict arose in relation to the conduct expected of M. ZA gave no adequate explanation for not having reported the assault that resulted in injury to B's nose. Her realisation that Y's behaviour should be treated as unacceptable entirely post-dates the

departure of her daughters. The justification that she offers for having tolerated Y's conduct is that her daughters did not heed her advice to behave themselves. Even at proof she demonstrated a tendency to deny or minimise Y's violence towards his siblings. She insisted that B's nose had not been broken. She denied any incident in which X's nose had been injured.

[144] Mrs Scott submitted that, without seeking to minimise the physical punishment carried out by ZA herself, there was a legitimate distinction between parental corporal punishment which conformed to the "norms of Islamic behaviour" and the violent and abusive behaviour of Y. She referred to *R (Williamson and others)* v *Secretary of State for Education and Employment* [2005] 2 AC 246, paragraphs 3, 4, 6 and 84. Corporal punishment of children had been routine in the United Kingdom until relatively recently, and proscribed entirely in Scotland only very recently. Physical punishment in a family setting required nuanced consideration. ZA was in any event now prepared to abandon corporal punishment, although it was the norm in Qatar.

[145] On ZA's own account, her conduct was not confined to the physical chastisement of children. It included hitting AI shortly before AI left Qatar, when AI would have been an older teenager. M also gives an account of ZA's inflicting violence on AI. So far as M herself is concerned, I accept that the physical punishment carried out by ZA personally was by hitting M with a stick without sufficient force to leave marks. It is less serious than the violence inflicted on M and her sisters by Y. I accept that it is chastisement of a type that is accepted in Qatari society. It does, however, constitute abuse as defined in section 11(7C) of the 1995 Act, as it is likely to cause fear, alarm or distress, if not physical injury.

[146] There is a significant gap in the evidence concerning the legal provisions and procedures that would apply to arrangements for M's care, guardianship and custody were

she returned to Qatar. The examples given in Professor Mallek's evidence were in the context of a complaint having been made to the police. M has not made a complaint. I have no information as to the legal basis on which, or means by which, the pursuers would be deprived of what I understand to be their existing rights to guardianship and custody of M if she were, as they ask, returned to Qatar. I do not know on what juristic basis the state would assume rights and responsibility for her care, or on which she would lawfully be accommodated at Dreama, rather than with family members. Ms MacKinnon's evidence about a "civil order" involved speculation on her part, and she acknowledged she did not have sufficient information to offer evidence about that matter. As I have outlined above, I do not regard this as a merely formal or practical matter. The question of how M's residence in Dreama could be secured as a matter of law is an important element in assessing whether her safety would in fact be secured on her return to Qatar. In the absence of information about this, I am not satisfied on the evidence that her residence in Dreama would be secured on her return to Qatar.

[147] I have concluded in any event that it would not be in M's best interests to relocate from Scotland to Qatar even if I were satisfied that her residence in Dreama would be secured in some way by the operation of the law of Qatar.

[148] I accept that if M were accommodated in Dreama, it is likely that while she was so accommodated she would be safe from physical harm at the hands from any member of her family, including Y. The accommodation and facilities at Dreama are of good quality and compare favourably with facilities for the institutional care of children in Scotland. Ms MacKinnon is well qualified to assess and report on those matters. I accept that there are suitably qualified social workers, psychologists and other professionals available to work with children accommodated in Dreama who have experienced abuse. There is, however, in

reality, no detailed plan for M, beyond placing her in institutional care to protect her from physical abuse, and attempting rehabilitation with ZA. The facilities and personnel described in Ms MacKinnon's evidence would in principle be available to assess M's needs in Qatar, and to try to meet them. The plan, such as it is, depends on M's engagement and that of ZA. There is no information as to what the arrangements would be for M's education if she were to return to Qatar and be accommodated in the Dreama Centre, although I accept that her educational needs would be assessed on her return there.

[149] There are some aspects of M's situation in Scotland that give cause for concern. The main one is that she has not been attending school as much as she should. I leave out of account the period between her arrival in the United Kingdom in January 2020 and September 2020. There was very little time following her arrival before in person schooling ceased entirely from March to August 2020. The disruption that has occurred in her schooling has to be viewed in the context of her being a refugee, and cared for by other refugees. Their accommodation has of necessity been temporary, first from the Home Office, and later from Glasgow City Council. They have moved house. That is largely an incident of their being refugees. Looking to the future, A now has access to permanent accommodation, and it is probable that M will have an enduring home there, without further moves of the sort she has experienced in Scotland thus far.

[150] The accounts in evidence of her schooling were a little confused. It is, however, reasonably clear to me that she started attending school in August or September 2020. What is less clear is whether she left that school before or after Christmas 2020. In person schooling was suspended for a period in early 2021. Both A and AI give accounts of a move of house in about March 2021 connected with a post on social media which might have revealed their whereabouts. I accept that that is why they moved house, notwithstanding

that M either did not know or did not remember that that was the reason for their having done so. A's account of this in oral evidence was convincing.

[151] M's experience of school in Qatar in the past was not entirely positive. There had been sufficient difficulties in one school in Qatar for her parents to have moved her to another. ZA's affidavit contains the following:

> "M did not have an easy time at school. She was hyperactive and did not focus in class. Sometimes she distracted and fought with the other pupils. Her teacher called me into school as a result and we discussed what special support she could be given. I ultimately decided to move M to a school where I felt she would be more comfortable. I would say that M lacked maturity for her age, but I always put this down to the fact she was the youngest child. She was definitely spoiled and received lots of love and attention at home."

According to the school reports referred to in the course of ZA's oral evidence, M attended the first school in Qatar in sessions 2014-15, 2015-16, 2017-18, and the second in session 2019-2020. The set of reports is not complete, and I am not sure whether the change of school took place in session 2018-19 or 2019-20. I have no evidence about whether M spent more than part of a single academic session at the second school. Other than the marks she achieved, I know little about how she fared there. I accept M's evidence that she had two friends at the school she was attending before she left Qatar. The difficulties that M is experiencing at school in Scotland are, in some respects, strikingly similar to those that she experienced in the first school in Qatar: it has come to the attention of teaching staff that she has been involved in altercations with other pupils. Her difficulties appear to be principally in interacting with her peers. On the evidence it seems likely that this is both because she has been bullied, as she and A describe, and because she on occasion presented aggressively towards other students. I am therefore cautious about concluding that M's presentation at, and difficulties with, school in Scotland are the result of inadequate parenting by A or any of

M's other sisters. A's response to the difficulties is very similar to ZA's own response in Qatar, namely to seek a change of school for M.

[152] M lived in greater affluence in Qatar than she currently does in Scotland. In Qatar her family had a number of domestic servants, although the evidence is that her family are of moderate means. Standards of living in Qatar for a family of moderate means appear generally to be higher than for a family of moderate means in Scotland. The accommodation in Dreama is of a high standard. In Scotland, for the foreseeable future, M will be accommodated in social housing and cared for by A. I accept A's evidence that the financial resources now available to her are sufficient for her to provide adequately for M's material needs.

[153] As I have already indicated, I accept that there are psychologists available in Qatar should M have need of their services. I do not accept, as A thought, that all psychologists in Qatar would give advice of a primarily religious character. Dr Asghar is an example of a psychologist who would not give advice on that basis. On the basis of the assessment by Ms Connelly of CAMHS, however, M does not have a mental health condition that requires the services of a psychologist.

[154] Dr Asghar was at pains to say that she did not think that professionals in CAMHS would discharge a young person they thought was at risk. There was, however, at least an innuendo in the earlier part of her evidence that less weight might be accorded to a conclusion by a CAMHS professional that a young person did not need the service, because of the pressures on that service. It was a matter of agreement that Ms Connelly's evidence was that she assessed that M's presentation was not in the context of a deterioration in her mental health, but in the context of parenting difficulties. The fact that CAMHS resources

are finite and under some pressure does not undermine that agreed assessment. It is the evidence of a professional who has, unlike Dr Asghar, seen and assessed M.

[155] Whether on the basis of testimony of Dr Asghar or on the basis of common sense and experience, I have no difficulty accepting that young adolescents of M's age both seek to establish their independence and require continuing guidance and instruction from their caregivers. As Dr Asghar put it, they are liable from time to time to "push back"; that is not to do what their caregivers would like them to do, or ask them to do. That M may be angry or at times uncooperative towards her sisters is consistent with that sort of presentation.

[156] The pursuers were critical of the parenting skills of A. She had not succeeded in securing that M attended school with sufficient regularity. Ms Connelly had seen M's presentation with anger as arising in the context of parenting difficulties. A had not immediately responded to the recommendation from CAMHS regarding the Central Parenting Team. She had declined offers from the pursuers of financial assistance and of the services of a psychologist for M, contrary to M's interests.

[157] I formed the view that A was motivated and competent to care for M, and to think with sensitivity and intelligence about her needs, and how to meet them. When there was a perception that M might need psychological services, her sisters appropriately approached their GP, and secured a referral to CAMHS. A has now engaged with the Central Parenting Team, and at the time of the proof there was an appointment available for her. I accept that she intends to take up that opportunity. A presented as someone weary from the stress of seeking asylum, and of these proceedings, but also as a competent and intelligent young woman who thought about M's needs and interests and consistently had them in mind. That is consistent with the evidence of Ms Lown and Ms Docherty. A is capable of

identifying services that will benefit M, applying for them, and seeking support to do so when that is necessary.

[158] M has expressed a firm preference to remain in Scotland with her sisters. She said in her evidence that she no longer missed her mother. I think that the position is probably rather more nuanced than she was prepared to admit in her evidence, so far as her feelings towards her mother are concerned. The pursuers suggested that I should not accord weight to M's views. They submitted that she had not left home by choice, but had been kidnapped. She had been dependent on her sisters in the meantime, and A was a "forceful character". M missed ZA and X. M's wishes had not been consistent, as she did not initially want to have contact with her father, but changed her mind about that between February and December 2021. Her views about Qatar were based on a fear of death conveyed by her sisters. M falsely believed that she would be forced to marry. She had been physically chastised by ZA, but only in a manner which was accepted, customary, and now regretted. It was now accepted that Y's conduct towards her was criminal and wrong.

[159] It is true that M did not leave Qatar of her own volition; she was not party to her sisters' plan to leave, and it is also true that she has been exclusively in their care for two years. I accept ZA's evidence that she and MN would not force M to marry any particular individual, if she refused to do so. I also accept, however, that she would be expected to marry. I infer that there would be moral pressure exerted on her to do so, although her refusal of a particular individual would probably be respected. Forced marriage has been used as a threat against at least one of her sisters. If her family did not approve of someone whom M wanted to marry, they would not permit her to do so. I understood that to be ZA's position. There might be circumstances in which it would be better, in ZA's view, to refuse permission. M would not have a free choice in relation to the matter. I am unable to make

any finding as to what course Y might take if he were to become the head of the family in the event of MN's death, and he were to be in a position of authority regarding M.

[160] M's fears of violence, and those of her sisters, have their basis in a history of assaults by Y, which were tolerated, and sometimes instigated, by their parents, and threats from ZA, MN and Y to kill them. It is notable that the basis on which the pursuers say M would be physically safe is on the basis that she would be accommodated, at least initially, in institutional care. Against that background I certainly do not regard the fears of A, B and AI as manufactured with a view to persuading M not to return to Qatar. M and her sisters genuinely fear that M would be killed if she were returned to Qatar. They are aware of media reports which suggested that Noof Al-Maadeed had come to harm after returning to her family in Qatar. The terms of a news article from GCHR dated 16 December 2021 about Ms Al-Maadeed are a matter of agreement. The publicly reported concerns about her safety are part of the context for the fears expressed by M and her sisters. A's experience of seeking help in Qatar is also part of that context. The fears of M and her sisters are informed by their individual and collective experience of life in Qatar in the past, and also by publicly available reports (whether or not those reports are accurate) which reasonably cause them worry and apprehension.

[161] I accept that M and her sisters genuinely fear detection in Scotland. It is clear from ZA's evidence that she did try to find out where M and her sisters were, and was frustrated and distressed when she was unable to do so. There is, however, no evidence before me to suggest that any of M's family in Qatar have a positive intention to learn where she and her sisters live in Scotland with a view to removing her or them back to Qatar. There is no evidence to suggest that they have either the will or the means to find out M's whereabouts

by using technological means to detect that from information that might be analysed regarding contact by an internet video call.

[162] I give considerable weight to M's views. Her views were not based only on a fear of harm from her family if she were to return to Qatar and apprehensions about forced marriage. M presented when giving her evidence as a 13 year old girl who knew her own mind. She said she loved living in Scotland, and I have no doubt that she positively likes life in Scotland. M did not wish to live in Dreama. It is not surprising that she should prefer to remain in Scotland with her sisters, and in the care of A, to living for an unspecified period in institutional care. I agree with A's assessment that it would be very difficult for M to return to live in Qatar, having experienced the freedom that she enjoys in Scotland.

[163] Despite her imperfect attendance at school, and the difficulties presented by isolation during the pandemic, M had obviously learned to speak English quite well during her time in Scotland. She presented as bright and as having adapted well and enthusiastically to life in Scotland. I do not regard her change of heart about contact with her father as undermining the weight to be given to her views. If anything it tells against the suggestion that she has been unduly influenced by her sisters against her family in Qatar. As I have already indicated, I consider it likely that M's feelings about ZA are complicated. She probably both misses her and genuinely wishes to remain in Scotland.

[164] Ms MacKinnon rightly referred to the need for trauma-informed, and child-centred, decisions. M has suffered trauma as a result of the abuse she suffered from Y, and her parents' failure to protect her from that. In my view, to return M to Qatar against her own expressed wishes would be a further and traumatic upheaval in her life. It would involve her being placed in institutional care. It is unclear whether she would eventually be returned to the care of her family, or what would happen to her if that were not possible.

[165] If returned to Qatar, M would be deprived of the care, company and society of her sisters, with whom she has lived closely all her life, and in whose care she has been for the last two years. For that to happen would be to inflict on M a new breach from people who are very important in her life, and to whom she is attached. No in person contact with them in Qatar would be possible. There is no realistic prospect that they will return to Qatar.

[166] In Scotland M will have the society of her sisters. There is permanent, suitable, accommodation available to A. That should support a more consistent approach to M's school attendance in the future. I accept that A is someone who will seek to secure for M any services that M requires, and that she is capable of doing so. M is not at risk of physical harm, or the fear of that, from her caregiver in Scotland. She loves M and will seek to act in her best interests.

[167] It would not be better for M that I make the specific issue order sought by the pursuers than make no order. It would be better for M that I make the orders that she seeks than that I make no order. These are a specific issue order that she reside in Scotland, and a residence order providing that she live with A. Those orders regulate the position so far as A's care for M is concerned. They provide M with security as to where and with whom she is to live.

[168] The pursuers asked that the interim interdict granted against B and A prohibiting them from removing M from Scotland save to return her to Qatar be made permanent. There is no evidence that either of them intends to remove M from Scotland, and I am not satisfied that I should make the order sought. I recall the interim interdict. The pursuers no longer moved their fourth and fifth conclusions.

[169] Senior counsel for B and A in oral submissions moved for a specific issue prohibiting the pursuers from taking any steps to remove M from their care. There is no evidence that the pursuers intend to do so, and I am not satisfied that I should grant the order.

[170] ZA and MN sought video contact with M pending her return, or in the event that I did not order her return to Qatar. B and A submitted that all matters relating to contact should continue to be dealt with by interim orders. M should have contact by video with both her parents, and with X. That is in accordance with her own wishes. The contact should continue to be weekly. To date video contact has taken place using a dedicated laptop supplied by Samurai Security. There is an ongoing cost associated with each call. There is no evidence that the pursuers have the will or the means to find out M's whereabouts by using technological means to detect that from information that might be analysed regarding contact by an internet video call. It is not necessary to continue using a dedicated laptop. There are a number of applications freely available for video calls, and their features, including encryption, vary. The calls should be made using a freely available application. That will facilitate contact. M's whereabouts should not be disclosed to the pursuers for the purposes of contact, or during contact. At this stage the disclosure of her whereabouts would be likely to cause M anxiety and would not be conducive to her engaging with contact.

[171] The second conclusion for ZA and MN also seeks an order for direct contact. There was very little focus in the evidence as to when or how that might be accomplished. M cannot travel to Qatar, and MN cannot travel to Scotland. Senior counsel for ZA and MN acknowledged that the matter would not arise unless I refused to order that M be returned to Qatar, and declined to make submissions about it on a hypothetical basis. M was open to some limited direct contact with ZA and X.

[172] I will put the case out by order for further submissions as to the disposal of the pursuers' second conclusion, including the terms of the order relating to indirect contact, and whether it should specify any particular application.