

SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

[2021] SC GLW 15

GLW-B2837

JUDGMENT OF SHERIFF ANDREW M MACKIE

in the cause

AB

Pursuer

against

CD and DD and EF

Defender

**Act: Dalziel**

**Alt: McCann, Doyle and Rankin**

GLASGOW 7 April 2017

The Sheriff, having resumed consideration of the cause, Finds the following facts admitted or proved:

- (1) The pursuer is the daughter of the first and second named defenders. The first and second named defenders have been married for around 35 years. The pursuer is 22 years of age, having been 21 years of age when the present action was raised. She is ordinarily resident at an address within the Sheriffdom of Glasgow and Strathkelvin. The pursuer's address has not been disclosed to any of the defenders. The pursuer resides within accommodation provided for those seeking asylum in the United Kingdom. Glasgow Sheriff Court has jurisdiction.
- (2) The pursuer and her parents are of Indian nationality. The pursuer grew up in India in the care of her parents, the first and second named defenders. The

pursuer has a younger brother aged 18 years. She lived in family with the first and second named defenders and her brother until she commenced her university education.

(3) During her childhood the pursuer was physically chastised, on a regular basis, by the second named defender. The first named defender was aware of said chastisement taking place, although he was usually absent from the family home during the working day and travelled abroad on business during several weeks each year.

(4) At the age of 16 years the pursuer left India to pursue her university education at the University of Y's Campus in south east Asia. The pursuer studied there for three years before transferring to the University of Y in the United Kingdom around September 2014.

(5) During the pursuer's studies in south east Asia, the first and second named defenders insisted that the pursuer contact them on a daily basis. The second named defender threatened that she would arrange for the pursuer to return to India if the pursuer did not return the second named defender's telephone calls while the pursuer was studying in south east Asia.

(6) During the pursuer's studies in south east Asia she returned home to India to stay with the first and second named defenders during the university vacation periods. In June 2014, following completion of her studies in south east Asia, the pursuer returned home to India where she lived with the first and second named defenders until September 2014 when she left India to travel to the UK to study at the University of Y.

(7) During said period in 2014, while the pursuer was living with the first and second named defenders, the second named defender told the pursuer that neighbours of the first and second named defenders had brought a marriage proposal to the first and second named defenders in respect of the pursuer. The proposal was that the pursuer would marry a man aged 28 years who lived in the United States of America.

(8) Arranged marriages are common in the culture of the first and second named defenders. The pursuer and the first and second named defenders are all of the Catholic faith (Syrian rite). Many arranged marriages take place between persons who have grown up in the same religious community either in India or elsewhere.

(9) Upon being told of said proposal, the pursuer became distressed and told the second named defender that she did not want to get married to the person proposed by the neighbours of the first and second named defenders. The second named defender became distressed and questioned the pursuer as to why she did not wish to marry the person proposed. The pursuer told the second named defender that she was too young to marry. The second named defender told the pursuer that she was mature enough to be married and that the second named defender had been married at the pursuer's age. The pursuer told the second named defender that she wished to continue with her studies. The second named defender told the pursuer that the marriage would not take place until the pursuer had completed her degree.

(10) The pursuer told the second named defender that she did not want to get married at all. The second named defender told the pursuer that this was not a reason to reject the proposal.

(11) The second named defender became angry with the pursuer after the pursuer intimated she did not wish to marry. The second named defender told the pursuer to agree to the marriage proposal which had been made. The second named defender pressed the pursuer to accept said proposal. The second named defender told the pursuer that if she did not do so the pursuer would be shaming her family and the first named defender would not be able to show his face within the first and second named defenders' community. The second named defender told the pursuer that if the first named defender were to die the pursuer would receive "horrible" marriage proposals.

(12) The second named defender continued to press the pursuer to accept the said marriage proposal for a period of several days after the said proposal was first mentioned to the pursuer. The second named defender was very angry that the pursuer wished to refuse the said proposal. The second named defender lost her temper and shouted at the pursuer about said marriage proposal in public in a restaurant.

(13) The second named defender took the pursuer to see a priest. The pursuer heard the second named defender telling the priest that she had brought a marriage proposal to the pursuer but that the pursuer was refusing to accept the proposal. The pursuer heard the second named defender asking the priest if she was doing anything wrong. The pursuer heard the priest telling the second named defender that she was only doing what a concerned parent would do.

(14) The second named defender told the pursuer that, because the first and second named defenders were allowing the pursuer to go to the UK to study and

were paying for the pursuer's education, the pursuer should agree to said marriage proposal.

(15) The first named defender did not speak to the pursuer about the said proposal.

(16) The second named defender told the pursuer that the man concerned would be visiting the family during August 2014. The pursuer felt worn down by the pressure exerted on her by the second named defender. The pursuer felt that she had to agree to the marriage proposal. The pursuer told the second named defender, after three days, to do whatever she wanted to do in respect of said proposal.

(17) A meeting was due to take place in India during August 2014 between the intended parties to the marriage and their respective parents. Said meeting did not take place. The pursuer's maternal grandmother died shortly prior to the proposed date for said meeting. The second named defender did not wish to meet with the proposed bridegroom and his parents so soon after her mother's death. The pursuer has never met the proposed bridegroom.

(18) The pursuer travelled to Y, UK on 20 September 2014 on a student visa to study engineering at the University of Y. The first named defender accompanied the pursuer to the UK and remained in Y for around one week to help the pursuer get settled. The first named defender arranged to purchase various items required by the pursuer and introduced the pursuer to friends and relatives of the first and second named defenders.

(19) The pursuer was enrolled at said university until the end of the academic year 2016. The first and second named defenders had paid, in advance, for the pursuer's accommodation, which was provided by the said University, for a period

of 12 months from September 2014. The first and second named defenders provided the pursuer with financial support both when she resided in south east Asia and when she resided in the UK so that she did not need to seek paid employment while she pursued her studies.

(20) The first and second named defenders had weekly telephone contact with the pursuer during the period from 20 September 2014 until 20 December 2014.

(21) On or around 19 October 2014 the first named defender sent a text message to the pursuer saying that he could not protect the pursuer from the second named defender; that the proposed bridegroom was "back"; and that the second named defender was stuck with the said marriage proposal and could not get out of it.

(22) Following receipt of said text message the pursuer told the first and second named defenders that she did not wish to return to India for the Christmas vacation period. The pursuer anticipated that the first and second named defenders would have rearranged the meeting between the intended parties to the marriage and their respective parents for the university Christmas vacation period in 2014. The pursuer did not wish to proceed with the proposed marriage and wished to avoid such a meeting.

(23) The first and second named defenders did not accept the pursuer's express wish not to return to India during December 2014. They each telephoned the pursuer and insisted she return home during the university vacation period.

(24) The first named defender visited the pursuer in Y on 22 November 2014, at the instigation of the second named defender, to ascertain whether the pursuer had formed a relationship with a man. He stayed for one night, leaving Y to travel to London on the evening of 23 November 2014.

(25) On 3 December 2014 the first named defender booked a return flight to India from Heathrow Airport for the pursuer to enable her to return home during the Christmas vacation period of 2014. The air India Flight was due to depart London Heathrow for Delhi on 31 December 2014 and the return flight was due to depart Delhi for London Heathrow on 9 January 2015. The pursuer was due to start her new academic term on 16 January 2015. The first and second named defenders also booked a bus ticket for the pursuer to travel between Y and London Heathrow Airport.

(26) Between October and December 2014 the pursuer became more frightened about returning to India during the university vacation period, anticipating that the meeting in connection with the proposed marriage would take place during said vacation period. The pursuer's mental health deteriorated during said period. She stopped attending her university classes and became suicidal. She concluded that the first and second named defenders would not take "no" for an answer and were intent on forcing her into a marriage she did not want.

(27) The pursuer decided to travel to Liverpool to commit suicide by drowning. She wrote a long suicide note in the form of a draft email message addressed to the first and second named defenders. She also drafted an email message to her brother. The pursuer left a note in her student accommodation asking one of her flat mates to send the email messages on her behalf. The pursuer intended that said messages be issued after she had left her student accommodation to travel to Liverpool. Said messages were never sent to the first and second named defenders. The pursuer believed said messages had been sent and that her parents would believe she had committed suicide.

(28) On 20 December 2014 the pursuer left Y and travelled to Liverpool. She went to the docks in Liverpool. She was unable to take her own life. She then decided to travel to Glasgow with a view to travelling onwards to Edinburgh to meet up with one of her friends who was spending the university vacation period there. The pursuer travelled to Glasgow by overnight bus, arriving on 12 December 2014.

(29) On 20 December 2014 the first named defender attempted to telephone the pursuer on several occasions without success. The first named defender sought assistance from a relative living in the UK, GH, the third named defender. GH is a solicitor. He liaised with the police and with Y University on the first named defender's behalf. The pursuer was reported as a missing person by said GH to the police. The first named defender was provided with a police Incident Number.

(30) After her arrival in Glasgow on 12 December 2014 the pursuer felt guilty about her parents believing her to be dead when she was not dead. She telephoned and spoke to the first and second named defenders. She told them she was in Glasgow and that she might be having a nervous breakdown. The first named defender advised the pursuer he would seek help from the police in Scotland.

(31) The pursuer thereafter sent a text message from her mobile phone to the first named defender asking him to contact her. A copy of said text message is lodged as Production number 6/4 of process.

(32) On 12 December 2014 officers of the Police Service of Scotland found the pursuer at Buchanan Street bus station in Glasgow. They confirmed her identity. The pursuer had, in her possession, a copy of the suicide note which she had written to the first and second named defenders. She showed the note to the police officers.

(33) The pursuer was taken by the police officers to R Hospital in Glasgow for assessment. Due to the pursuer's suicidal behaviour and vulnerability she was admitted to Q Hospital, Glasgow on 12 December 2014. On the date of her admission the pursuer was unable to say that she did not have further suicidal intent.

(34) The pursuer was asked by the hospital authorities whether she wished any information to be passed on to her parents. The pursuer stated that she did not wish any information to be given to the first and second named defenders.

(35) Police officers subsequently told the first named defender that the pursuer was safe and well.

(36) On or around 22 December 2014 police officers visited the pursuer at Q Hospital and advised her that the said GH had asked them to pass a message on to her that "the arranged marriage" had been cancelled.

(37) The first named defender travelled to Glasgow from India on 22 December 2014. On 22, 23 and 24 December 2014 the first named defender attended at police stations in Glasgow seeking information about the whereabouts of the pursuer. On 23 December 2014 the first named defender was advised by police officers that the pursuer was in a psychiatric hospital but that they could provide him with no further information. On 24 December 2014 the first named defender was advised by police officers of the names of three local hospitals which provided psychiatric services.

(38) On 24 December 2014 the first named defender and the said GH attended at X Hospital, Glasgow and were advised the pursuer was not a patient within said hospital. On the same date they also visited Z and Q Hospitals. They found no reception at Q Hospital and attended at the doors to a ward. They met a staff

member outside the ward and said they were looking for the pursuer. The staff member told them that they were not supposed to have come there. They judged, from the reaction of the staff member, that the pursuer had been admitted to Q Hospital.

(39) On or about 26 December 2014 a priest from a local church in Glasgow attended at Q Hospital to speak to the pursuer following a discussion with the first named defender about the pursuer after a church service on 25 December 2014. The pursuer refused to speak to said priest.

(40) On 4 January 2015 the first named defender was interviewed by PC JK from H Constabulary.

(41) Upon her admission to Q Hospital the pursuer gave her account of the previous conduct of the first and second named defenders. Shortly after her admission to said hospital, the examining doctor made some telephone enquiries of the appropriate authorities and, thereafter, suggested to the pursuer that she should consider making an asylum application. The pursuer sought assistance in relation to an application for asylum in the UK on 8 January 2015. The screening interview with regard to her application for asylum took place on 14 January 2015. The pursuer's application for asylum is sisted in the Upper Tribunal pending the outcome of this application.

(42) The first and second named defenders contacted said hospital to ask about the pursuer but were denied information. No other information was passed on to the first and second named defenders by Q Hospital in terms of their policy on confidentiality. The pursuer's mental health deteriorated when she was advised of the efforts of the first and second named defenders to make contact with her or to

find out information about her from the hospital authorities. The pursuer became fearful and distressed when told of these efforts.

(43) On 11 February 2015 the first and second named defenders sent a letter to the pursuer, care of Q Hospital, in which they (i) expressed a wish to meet with the pursuer; (ii) referred to their proposal that the pursuer get married after her studies as the issue which the first and second named defenders thought might be the one which had upset the pursuer the most; and (iii) assured the pursuer that they would not come up with any more proposals.

(44) During February 2015, at the request of the first and second named defenders, the Consul General of India in Edinburgh requested consular access to the pursuer and a meeting with her psychiatrist at Q Hospital. The pursuer refused these requests. Police Scotland confirmed to the Consul General that the pursuer was safe and well in hospital.

(45) The suggestion that the Indian Consul General would attend at the said hospital caused the pursuer to be fearful. The pursuer was frightened by the prospect of being made to return to India.

(46) Shortly after contact had been made with Q Hospital by the said Consul General the pursuer took legal advice in respect of seeking a forced marriage protection order against the first and second named defenders. The pursuer decided not to pursue such an order at that time.

(47) During the pursuer's stay in Q Hospital she received a telephone call from Mr S, the boyfriend of one of her friends. During said telephone call Mr S told the pursuer that the first named defender had telephoned him and had spoken to Mr S. Mr S told the pursuer that the first named defender had said that he would not agree

to the proposed arranged marriage and that the pursuer did not have to get married if she did not want to.

(48) The pursuer remained within said hospital as a voluntary inpatient until 20 May 2015. The pursuer's admission to Q Hospital was prolonged by the negotiations amongst various agencies as to which agency would provide accommodation for the pursuer upon her discharge from hospital. Ultimately, the pursuer was provided with accommodation by the National Asylum Support Service (NASS) upon her discharge from said hospital.

(49) Dr T was the treating consultant of the pursuer during the period of the pursuer's voluntary admission in Q Hospital. During said period the pursuer exhibited some post-traumatic stress type symptoms including nightmares causing sleep difficulties. The pursuer was quite distressed when awaking from nightmares. The pursuer was quite worried about going outside the hospital and was anxious when she was outside the hospital. The pursuer told Dr T that the second named defender had been very abusive towards the pursuer, verbally, emotionally and physically. Dr T diagnosed the pursuer as having an adjustment disorder.

(50) Following the pursuer's discharge from Q Hospital on 20 May 2015 she was offered a follow up appointment with the outpatient clinic but declined this offer.

(51) During the period of her admission in said hospital a referral was made in respect of the pursuer to the Ruby Project at Glasgow Rape Crisis Centre. Said project is a support and advocacy service that specialises in working with women from black and minority ethnic communities, including those going through the asylum system. The pursuer has received support from said project since February 2015.

(52) During the period of her admission in said hospital, a referral was made in respect of the pursuer under the Adult Support and Protection (Scotland) Act 2007 to the social work department of Glasgow City Council. Ms P, social worker with Glasgow City Council, was assigned to work with the pursuer. Ms P first met with the pursuer on 27 February 2015. The pursuer instructed Ms P that no information about her should be released to the first and second named defenders or to any member of the pursuer's family. Neither the first nor the second named defender contacted Ms P to seek information about the pursuer.

(53) Between 12 December 2014 and July 2015 the first and second named defenders contacted Police Scotland on several occasions requesting information about the pursuer. On 19 March 2015 the first named defender contacted Police Scotland and asked if they could undertake mediation between the parties. This request was refused. The first named defender attended at the offices of Police Scotland at Eastgate, Glasgow on 11 June 2015 seeking information about the pursuer. No information was disclosed to the first named defender by Police Scotland on said date.

(54) The pursuer told PC S of Police Scotland that she felt if she had any contact with the first and second named defenders she would be put under so much emotional pressure that she would be emotionally worn down until she agreed to their wishes.

(55) The fourth named defender is 55 years of age. She is a British citizen or has leave to remain in the UK, having resided in the United Kingdom since 1985. She is a maternal cousin of the second named defender. She lives near the south coast of England. She is employed, on a full time basis, as an IT professional. The fourth

named defender has met the pursuer on two occasions. Both meetings were at family weddings.

(56) During August 2015 the second named defender asked the fourth named defender to try to make contact with the pursuer on her behalf. The second named defender asked the fourth named defender to make enquiries about the pursuer and about the disposal of those possessions of the pursuer which she had left in her student accommodation at Y University when she travelled to Glasgow on 12 December 2014.

(57) The fourth named defender telephoned the pursuer on two occasions. On the first occasion the pursuer answered her phone but then hung up when the fourth named defender identified herself. On the second occasion the pursuer did not answer her phone and the fourth named defender left a voicemail message on the pursuer's phone confirming her telephone number should the pursuer wish to contact her.

(58) Between 19 August and 30 September 2015 the fourth named defender repeatedly telephoned the social work department of Glasgow City Council seeking information about the pursuer. The fourth named defender spoke to Ms P, social worker, on several occasions during said period. On each occasion Ms P advised the fourth named defender that she could not release any information about the pursuer. Ms P advised the fourth named defender that making further calls to Ms P would not be productive. During one of said telephone calls Ms P told the fourth named defender that Glasgow City Council could not release any information to her due to data protection laws.

(59) During said period the fourth named defender also contacted the out of hours help line/social work standby service of Glasgow City Council seeking information about the pursuer. A member of staff within the said service disclosed the pursuer's address to the fourth named defender and advised her that the pursuer was being supported by NASS and by the Ruby Project at the Glasgow Rape Crisis Centre. The fourth named defender was provided with contact telephone numbers for these organisations.

(60) The fourth named defender subsequently made contact with said organisations by telephone to seek further information about the pursuer. Between 10 September and 2 October 2015 the fourth named defender telephoned the Glasgow Rape Crisis Centre on several occasions and spoke to several staff members seeking information about the pursuer.

(61) After being provided with an address for the pursuer, the fourth named defender made a further telephone call to the said social work department to seek to confirm the post code for said address. Following said telephone call, the police removed the pursuer from her home for 1 night as a precautionary, protective measure before arranging for the pursuer to be allocated alternative accommodation. The pursuer was rehoused quite close to her original home.

(62) On 25 September 2015 the first and fourth named defenders attended at the address of a flat in Glasgow which had been disclosed to the fourth named defender by the said social work department. They were looking for the pursuer. They found the flat empty and the door locked. They spoke to one of the neighbours who confirmed that a young girl had previously stayed in the house. One of the neighbours reported to Police Scotland that three people of Asian appearance were

acting suspiciously at the locus. Several officers of Police Scotland attended at the locus and drove around the area but the individuals were not traced at the time.

(63) Police officers subsequently made contact with the pursuer and advised her that people of Asian description were knocking on doors near to where the pursuer was now staying, looking for an Asian female. The pursuer was then rehoused for a second time.

(64) On Friday, 25 September 2015 the fourth named defender attended at The L Centre in Glasgow. The said Centre is a mental health outpatient facility that supports patients within the community and, at that time, was the place of employment of said Ms P, social worker.

(65) On said date the fourth named defender spoke to Ms W, receptionist and team secretary, within said Centre and sought a meeting with said Ms P as well as information about the pursuer. Ms P was on leave. The fourth named defender told Ms W that the pursuer's family was looking for the pursuer. The fourth named defender had previously spoken to Ms W on the telephone, on several occasions, seeking information about the pursuer. Ms W had been instructed by said Ms P not to provide any information about the pursuer to the fourth named defender. No information was provided to the fourth named defender by Ms W on 25 September 2015, despite the fourth named defender's repeated requests for same.

(66) Ms W reported the visit from the fourth named defender to Police Scotland to alert them to members of the pursuer's family being present in Glasgow, looking for the pursuer, on 25 September 2015.

(67) The fourth named defender made several telephone calls to Orchard and Shipman, property managers for NASS, seeking information about the pursuer.

(68) Police Scotland received a report of a female impersonating the pursuer having telephoned Orchard and Shipman, said property managers, on 8 October 2015.

(69) The summary application in relation to the present action was lodged at Glasgow Sheriff Court on 7 October 2015. The first, second and fourth named defenders have made no further attempts to contact the pursuer since the interim orders, granted in these proceedings on 9 October 2015, were served on said defenders.

(70) The first and second named defenders have offered to provide an undertaking that they will refrain from contacting, approaching, attempting to communicate or obtain information regarding the pursuer, including her whereabouts. This offer has been refused by the pursuer.

(71) The fourth named defender has offered to provide an undertaking that she will refrain from contacting the pursuer in the future. This offer has been refused by the pursuer.

(72) The third named defender GH has undertaken not to force or attempt to force the pursuer to enter into a marriage, nor to aid, abet, counsel, procure, encourage or assist another person to force or attempt to force the pursuer into a marriage. On the basis of said undertaking, the proceedings against the third named defender were dismissed, on a no expenses basis, on 23 May 2016.

#### **FINDS IN FACT AND IN LAW:**

(1) The pursuer is a person at risk from attempts to force her into a marriage on the part of the first and second named defenders.

- (2) The pursuer requires the protection of a forced marriage protection order to protect her from being forced into a marriage by the first and second named defenders.
- (3) A forced marriage protection order is required to secure the health, safety and well-being of the pursuer.
- (4) The pursuer wishes the court to make a forced marriage protection order.

THEREFORE, Sustains the second and fifth pleas-in-law for the pursuer to the extent of making a forced marriage protection order in the following terms:

Makes a Forced Marriage Protection Order, in terms of section 1 of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (hereafter "the 2011 Act"), for a period of five years from this date in respect of AB (the protected person), whereby:

- 1) Ordains CD
  - (i) To refrain from conspiring to force or attempting to force the protected person to enter into a marriage;
  - (ii) To refrain from aiding, abetting, counselling, procuring, encouraging or assisting another person to force or attempt to force the protected person to enter into a marriage;
  - (iii) To refrain from violent, threatening or intimidating conduct against the protected person;
  - (iv) To refrain from obtaining any travel document(s) on behalf of the protected person;

(v) To refrain from taking the protected person outside of the United Kingdom;

(vi) To refrain from trying to obtain information regarding the protected person, including her whereabouts; and

(vii) To refrain from impersonating the protected person to the UK government, statutory or voluntary organisations for the purposes of obtaining information about the protected person; and

2) Ordains DD

(i) To refrain from conspiring to force or attempting to force the protected person to enter into a marriage;

(ii) To refrain from aiding, abetting, counselling, procuring, encouraging or assisting another person to force or attempt to force the protected person to enter into a marriage;

(iii) To refrain from violent, threatening or intimidating conduct against the protected person;

(iv) To refrain from obtaining any travel document(s) on behalf of the protected person;

(v) To refrain from taking the protected person outside of the United Kingdom;

(vi) To refrain from trying to obtain information regarding the protected person, including her whereabouts; and

- (vii) To refrain from impersonating the protected person to the UK government, statutory or voluntary organisations for the purposes of obtaining information about the protected person;

Repels all other outstanding pleas-in-law for the pursuer as well as those for the first and second named defenders; sustains the pleas-in-law for the fourth named defender to the extent of dismissing the application quoad the fourth named defender, recalling the interim forced marriage protection order insofar as it applies to the fourth named defender and allows to be substituted therefor the undertaking offered to the court by the fourth named defender, namely that the fourth named defender will refrain from contacting the pursuer in future; assigns a hearing on expenses on 26 April 2017 at 12 noon.

A M Mackie SHERIFF

## NOTE

### **Evidential hearing**

[1] This Evidential Hearing commenced on 25 January 2017. Evidence was led on 25, 26 and 27 January 2017. Evidence not having been concluded on 27 January 2017, the Evidential Hearing was adjourned until 3 February 2017 when further evidence was led and concluded. Thereafter, I heard parties on their submissions and a summary of same comprises the appendix to this judgment. In most respects I preferred and accepted the submissions made on behalf of the pursuer for the reasons set out below.

[2] In the course of the hearing, the pursuer led evidence from five witnesses, namely, herself, Ms P, Social Worker, Ms J of Glasgow Rape Crisis Centre, Dr T, Consultant

Psychiatrist and PC S of the Police Service of Scotland. The first defender led evidence from himself and from a family friend, Ms B. The second and fourth named defenders led evidence from themselves only.

### **Assessment of witnesses**

#### *The pursuer*

[3] The pursuer gave her evidence in a straightforward manner. She remained calm throughout her evidence. She gave careful consideration to all of the questions posed. She did not appear to be obviously dissembling at any point. Her evidence in respect of the marriage proposal and about the conduct of the second named defender relative thereto was compelling. She was unshakeable in her recollections of significant events. I assessed her evidence as being both credible and reliable.

[4] The pursuer gave evidence about a number of distressing events in a calm and dignified manner. It was submitted on behalf of the first and second named defenders that the pursuer had shown a lack of emotion during such evidence and it was submitted on behalf of the second named defender that this was surprising. I understood these submissions to suggest that the pursuer's evidence in respect of such matters should not be treated as credible or reliable, in view of the manner in which the evidence had been given. I rejected these submissions insofar as they invited the court to conclude, on said basis, that the pursuer's said evidence was either incredible or unreliable. In my view, the pursuer gave a compelling account of said events. She appeared to answer all questions posed of her in a straightforward and truthful manner. Her evidence did not appear to me to be rehearsed or false. The fact that the pursuer answered questions in a matter of fact way did not lead me to conclude that she was dissembling or that she was an unreliable historian.

[5] It was also submitted on behalf of the second named defender that the pursuer had not shown any fear when entering the court and giving her evidence despite the first and second named defenders sitting only a few feet away, behind a screen. I made nothing of this submission. The pursuer was a vulnerable witness in terms of section 11(1) (b) of the Vulnerable Witnesses (Scotland) Act 2004. A vulnerable witness application had been made in respect of the pursuer (number 19 of process) earlier in the proceedings and I had authorised special measures, allowing the pursuer to give evidence with the use of screens and a supporter. In my view, these measures enabled the pursuer to give her evidence without the quality of same being diminished.

[6] The pursuer showed a good understanding of the differences between arranged and forced marriages. During cross examination on behalf of the first named defender, the pursuer said that forced marriage was: “when you do not give consent and they force you to do it anyway” and that arranged marriage was: “when parents suggest a marriage and you give your consent”. The pursuer refused to accept the position advanced by the first and second named defenders that what had happened in this case was that a proposal for an arranged marriage had been received by the first and second named defenders and that the pursuer had refused same, thereby ending the matter. I preferred the evidence of the pursuer to that of the first and second named defenders in this regard.

[7] The pursuer gave evidence, which I assessed as credible and reliable, that the second named defender did not accept the pursuer’s refusal of the specific marriage proposal which was made in respect of the American man but, rather, she attempted, by verbal means and by harassment, over a period of several days, to force the pursuer to accept said proposal and to thereby force the pursuer into a marriage. The pursuer was clear in her evidence that the second named defender would not take “no” for an answer and that the first named

defender did not seek to dissuade the second named defender from this course of action, thereby acquiescing in said attempts. I accepted the pursuer's evidence that, even if the specific marriage proposal in respect of the American man had been rejected, the second named defender would have continued to attempt to force the pursuer into marriage, the second named defender having rejected the pursuer's position that she did not wish to marry at all.

[8] The pursuer was candid in her description of the freedom which she had enjoyed after her arrival in the UK in September 2014 and until she made her decision to leave university in Y in December 2014 to travel to Liverpool to commit suicide. She did not flinch from disclosing that she had begun to drink alcohol, go out clubbing with friends and miss classes. She did not seek to present herself in a particular light but, rather, appeared to answer questions openly and honestly. She contrasted the freedom which she enjoyed in the UK with the control to which she had previously been subjected by the first and second named defenders, principally the second named defender.

[9] The pursuer was equally candid about her reasons for deciding to commit suicide. In October 2014, she received a text message from the first named defender in which he told the pursuer that the second named defender "was stuck with" the marriage proposal in respect of the American man. The pursuer's evidence was that she could not really enjoy her life in the UK because she had the said proposal "to go back to". Her evidence was that she had been told the proposal had not been rejected but simply postponed. The pursuer was clear that if she returned to India she would be returning to the said proposal and that the second named defender would continue in her attempts to force the pursuer to accept said proposal and to thereby force the pursuer into a marriage which she did not want. I accepted the pursuer's evidence in this regard. When asked why she had decided to end her

own life she said: "I had no control over my life ... I thought it would be better to be dead than to live my life as a puppet ... because I had no control over my life I would have control over how I'd die". I accepted the pursuer's evidence in this regard.

[10] In this context the pursuer was asked about the contents of the bag she took with her to Liverpool and brought with her to Glasgow. She was asked about having taken "clubbing" clothes and other personal items such as shampoo with her when she left Y with the intention of committing suicide in Liverpool. The pursuer said that she had not specifically packed some of the items in her bag for this particular journey but that some of them had already been in her bag. She also said that she had taken some of the items because they were "precious" to her and were things that the second named defender would not normally allow the pursuer to have in her possession. These items included a bottle of shampoo and clothes which the pursuer described as "a bit short" and which the second named defender would "never allow (the pursuer) to wear". When, during re-examination, she was asked why these items were so important to her, the pursuer's response was telling. She said:

"Because I was controlled all my life. I was told what to wear, what to eat, what goes in my hair, what goes outside my hair, not even allowed to suggest or even ask if I could try something else. If I did she would just scold me for doing that. So, when I came to the UK I was a bit more free to buy things and of course I didn't tell them about any of those things. I bought quite short clothes she would never have allowed me to. I bought a Hallowe'en costume that she would never have allowed me to take. I even bought shampoo which she would never have allowed me to take because it really represented my freedom. It was a tiny bit of freedom that I'd had and I wanted that to go with me."

I found this chapter of the pursuer's evidence to be compelling and accepted her evidence in this regard. I also accepted that she had been extremely distressed by the prospect of returning to India where she had good reason to suspect that the second named defender, in

particular, would seek to coerce her further into accepting the aforementioned marriage proposal.

[11] The pursuer's evidence about a lack of control over her own life was not limited to the conduct of the first and second named defenders before the pursuer was admitted to Q Hospital in Glasgow on 12 December 2014. During her evidence the pursuer confirmed that, upon her admission to said hospital, she had made it clear that she did not wish to have any further contact with the first and second named defenders. The pursuer confirmed that she had instructed the police service, the medical authorities at said hospital and, subsequently, the social work department of Glasgow City Council not to provide any information to the first and second named defenders. The pursuer said, simply: "I thought that was clear enough". Despite this, and despite being told of the pursuer's position by representatives of the police, hospital and social work services, throughout the period from 22 December 2014 until service of the interim orders in this case, the first and second named defenders continued to attempt to obtain information about the pursuer from various authorities and, from August 2015, they were assisted in their efforts by the fourth named defender. The pursuer's evidence was that she had made it clear, since 12 December 2014, that she did not want to have any contact with the first and second named defenders and that they would not respect her wishes. The first and second named defenders largely accepted that they had continued to seek information about the pursuer during said period and that they had sought to arrange meetings with her, thereby confirming that they would not respect her wishes. They justified their positions by repeatedly saying that they had not heard from the pursuer directly that she wished no further contact with them.

[12] The pursuer was questioned about her motives for leaving Y University and seeking asylum. She rejected the proposition that it had been her intention to stay in the UK "at all

costs". The pursuer said that she had made an asylum application only after discussions with the police and with medical staff at said hospital as a means to keep her safe. I accepted her evidence in this regard.

[13] The pursuer said that she could no longer study now that she was "in the asylum system" in the UK. She said it would be easier for her if the first and second named defenders were giving her financial support but her opinion was that they would only do so if she agreed to a marriage. She accepted that the first and second named defenders had offered, during the course of these proceedings, to provide financial support to enable the pursuer to live in the UK and that they had said they would not insist on her having contact with them. The pursuer did not believe their assurances about them not having contact with her and did not wish to accept their offer. She had, therefore, opted to remain within the asylum system, despite being unable to work or to study on a full-time basis while a final decision on her asylum application remains outstanding, rather than accept financial support from the first and second named defenders.

***Ms P – social worker, Glasgow City Council***

[14] Ms P previously worked as a social worker alongside the community mental health team at the L Centre in Glasgow. Ms P gave evidence in a straightforward manner. I assessed Ms P as a credible and reliable witness. She confirmed that she had had no direct contact with the first and second named defenders. She also confirmed the extent of her contact with the fourth named defender.

*Ms J – Independent Sexual Violence Advocate, Glasgow Rape Crisis Centre*

[15] Ms J supports women going through the asylum system and has been supporting the pursuer since May 2015, although the pursuer has been working with the Ruby Project at the Glasgow Rape Crisis Centre since February 2015. Ms J gave evidence in a straightforward manner. I found her to be a credible and reliable witness.

*Dr T – consultant psychiatrist*

[16] Dr T was the treating consultant of the pursuer during the period of the pursuer's voluntary admission in Q Hospital, Glasgow from 12 December 2014 until her discharge from said hospital on 20 May 2015. Dr T's evidence in chief largely comprised the contents of her affidavit dated 24 January 2017 (number 28 of process) which referred extensively to her report in respect of the pursuer dated 6 June 2016 (number 5/14 of process). She was cross examined on behalf of the first and second named defenders. Dr T gave evidence in a straightforward manner. I found her to be a credible and reliable witness and accepted her evidence.

[17] Dr T's opinion was that, during her admission in said hospital, the pursuer experienced low mood, hopelessness and suicidal behaviour and exhibited some post-traumatic stress type symptoms. Dr T diagnosed the pursuer with an adjustment disorder. Said diagnosis was based on information provided to Dr T by the pursuer and on observations of the pursuer during the extended period of her admission in said hospital. Based on her discussions with and observations of the pursuer, Dr T believed the pursuer's account of childhood abuse.

*PC S – Police Scotland*

[18] PC S has been a police officer for ten years. She has been based within the domestic abuse unit for the past five years and has specialised in honour based violence and forced marriage for the past three years. PC S gave evidence in a straightforward manner. I assessed her as being a credible and reliable witness and I accepted her evidence.

*The first named defender*

[19] At times during his evidence the first named defender appeared evasive, particularly when being asked questions about the marriage proposal which had been received in respect of the pursuer during summer 2014. I concluded that, at times during his evidence, he was neither a credible or reliable witness.

[20] For example, during examination in chief, he was asked a series of straightforward questions about the aforementioned marriage proposal which he did not answer in a straightforward manner. He appeared to want to make general statements rather than give specific responses. He was asked to state his position regarding the pursuer's evidence that a meeting had been planned for August 2014 by the first and second named defenders involving the proposed bride and bridegroom and their immediate families. His response began in the following manner: "Normally if we get a proposal and we are not interested we don't say anything at that time. We just keep quiet". He went on to say that his mother in law had died around this time and that the first and second named defenders had not been interested in the proposal. He was asked whether the family from whom the proposal had come had been advised of their position before the proposed meeting. Again, he did not give a straightforward answer. He said: "Because they live abroad, somewhere in

America, because we hadn't said 'no' to them, that's when they enquired whether we wished to take this forward".

[21] I understood from this evidence that (i) the first and second named defenders had not, in fact, made it clear to the parties from whom the proposal had originated that the pursuer did not wish to accept the proposal and (ii) the planned meeting between the proposed bride and bridegroom and their two families was still due to take place.

[22] The first named defender did not answer straightforwardly when asked whether any meeting had been arranged with the proposed bridegroom and his family. He did not immediately deny that such a meeting had been arranged. He was asked about this more than once before he denied that any such meeting had been arranged. I did not consider his denial could be relied upon.

[23] When asked if he had sent a text message to the pursuer saying that he could not protect her from her "selfish mother", as had been asserted by the pursuer, the first named defender did not give a straightforward response. He said: "I don't remember". His recall appeared good at other times. As well as saying that he could not remember if he had sent any text message like that, when asked if he would have sent any such text message, the first named defender's response was equivocal, to some extent. He said: "I don't think so".

[24] When asked whether he had talked to Mr S about the proposed arranged marriage for the pursuer, the first named defender equivocated. He said, initially: "I don't remember saying that". It was only when the specific entry in the police chronology of events was put to him that the first named defender denied mentioning "anything about a marriage" to Mr S. I did not consider his denial could be relied upon.

[25] The first named defender was asked whether there had been any discussion with the pursuer about her having to get married after she had finished her university studies and

had obtained her degree. He appeared evasive in his response. In response to several of the immediately preceding questions the first named defender had spoken on behalf of both himself and his wife. He had repeatedly said “we” when discussing the specific marriage proposal which had been received. However, when asked about discussions with the pursuer about the timing of any marriage he denied that he had spoken to the pursuer about it. It appeared he sought to distance himself from any discussions between the second named defender and the pursuer in this regard. He then went on to contradict his initial response by saying that the pursuer had told him that she only wanted to get married when she was 25 years old. He said that “at that time I wasn’t too concerned about her being married at that stage”. This appeared to contradict his position as set out in the terms of the letter, dated 11 February 2015, signed by the first and second named defenders and sent to the pursuer while she was within Q Hospital, in which the said defenders made it clear that they had previously proposed to the pursuer that she be married after completing her studies. In said letter the first and second named defenders stated inter alia:

“When we look back on what has happened, we cannot but help think that perhaps what has upset you the most might have been the issue of our proposal to you to get married after your studies. Since we think that that might have been one of the reasons for you to get to this stage we really feel guilty of it and be assured that we will not come up with any more proposals as we do not want you to have any more disturbances. Please take this as a word from us.”

[26] I did not consider the first named defender was being entirely candid in his responses to questions about the pursuer’s allegations of physical abuse at the hands of the second named defender. The first named defender confirmed that the second named defender had been responsible for disciplining the pursuer. The first named defender accepted that there had been some physical chastisement of the pursuer by the second named defender. He appeared to seek to minimise the extent of same, although, in what

appeared to be an unguarded moment towards the end of cross examination by the second named defender's agent, he said that he would not have interfered with "some beating and scolding" of the pursuer but that, if it had gone beyond a limit, he would have "got involved". He said he had never had to become involved. I consider that this, apparently unguarded, comment served to support the pursuer's evidence of having been beaten by the second named defender. It was significant, in my view, that the first named defender had used the same word as the pursuer to describe the physical chastisement of the pursuer by the second named defender, namely, "beating".

[27] During cross examination on behalf of the pursuer, the first named defender sought to redefine the physical chastisement of the pursuer by the second named defender as "gentle smacking" rather than as "beating". I did not consider this evidence to be reliable in view of the apparent contradiction between this evidence and his earlier evidence as noted above.

[28] Towards the end of his examination-in-chief, it was put to the first named defender that the pursuer did not want to have contact with him and he was asked whether, if a forced marriage protection order were not in place, he would attempt to make contact with the pursuer. Initially, it appeared that the first named defender answered honestly by confirming that he would try to talk to the pursuer to "sort out things". He then clarified that by this he meant sorting out the "misunderstanding" on the part of the pursuer. When he was asked again whether he would refrain from contacting the pursuer he said (apparently referring to both himself and the second named defender) "we will try" but he went on to say that "even then we will try for reconciliation and mediation". When he was asked for a third time if he would respect the pursuer's wishes and not have contact with her, the first named defender said that if the order was there then it would be respected. At

the fourth time of asking the first named defender agreed that if the pursuer said she did not want to have contact with him then he would respect her wishes. He had offered an undertaking to the court that he would refrain from contacting, approaching, attempting to communicate with or obtain information regarding the pursuer, including her whereabouts.

[29] I did not believe the first named defender when he said that that he would respect the pursuer's wishes and not contact her or attempt to ascertain her whereabouts absent a court order. Despite being repeatedly asked the same question the first named defender's eagerness to make contact with the pursuer was obvious and palpable. I consider the first named defender's initial responses reflected his true intentions and it is clear that, absent a court order, he would endeavour to make contact with the pursuer.

[30] I was also doubtful as to whether the first named defender's intentions were limited to making contact with the pursuer. The first named defender, when giving his account of the telephone conversation with Mr S, did not say that he had sought to enlist Mr S's assistance in making contact with the pursuer. Rather, the first named defender said that he had asked Mr S: "If you can help us get our daughter back". I took this to mean that the first named defender had sought Mr S's assistance in having the pursuer returned to the control of the first and second named defenders.

[31] Although the first named defender sought to play down the social consequences of refusing to accept a proposal in respect of an arranged marriage these days, he also gave some evidence which appeared to contradict this position and which also appeared to cast doubt on his evidence that the parties to the proposed marriage are effectively in control of matters. For example, the first named defender gave evidence that, when one of his nieces intimated that she could not go ahead with an engagement, all of his brothers and sisters were informed and a family meeting took place to consider "what they could do". The first

named defender said that this meeting had taken place while his niece was at her place of work, thereby making it clear that she was not present at the family meeting and that her parents and older family members had some control over the process. At another point in his evidence, when the first named defender was describing the process of arranged marriage, he was at pains to describe the control which the parties to the proposed marriage had but went on to say that, normally, after the parties' first meeting, "we allow them to talk to each other on the phone". The first named defender had sought to give the impression that the parties to the proposed marriage were in control of events but, at times, his evidence made it clear that the real control lay in the hands of the parents of the parties to the proposed marriage.

***Ms B***

[32] Ms B is a family friend of the first and second named defenders. She has known them, and their children, for more than ten years. At one time Ms B and her family lived in the same apartment block as the first and second named defenders and their family. Ms B's evidence was of little value and I placed little weight on it for the following reasons.

[33] Ms B did not appear to know the intimate details of the family life of the first and second named defenders. No criticism is intended of Ms B for not knowing such details as it is often the case that people outside a family will not know all the intimate details of family life.

[34] For example, Ms B could not say whether the pursuer had ever been physically chastised by the first or second named defenders, even when the two families had been living in the same apartment block. Ms B said that she had smacked her own children and that it was quite common in her culture to physically chastise children. Furthermore, Ms B

did not know the extent of the investigations made by the first and second named defenders with third parties from December 2014 relative to the whereabouts of the pursuer.

[35] In addition, Ms B's evidence in respect of certain matters did not accord with the evidence of the first and second named defenders (or indeed the pursuer). For example, she said that, because the pursuer had not been interested in the marriage proposal, the first and second named defenders had decided to send her abroad for her studies. That had not been the evidence of either the pursuer or first or second named defenders.

[36] Much of Ms B's evidence was hearsay. For example, she said the pursuer had been told "casually" about the marriage proposal. Ms B had not been present when the pursuer was told of said proposal. Ms B was clearly relaying what she has since been told by the first and/or second named defenders.

[37] Ms B appeared to be concerned about presenting the first and second named defenders in the best possible light. To this end she sought, during cross examination, to retract some of her evidence in chief. During her examination in chief Ms B had volunteered that the first and second named defenders had been "continuously looking for" the pursuer since December 2014. During cross examination on behalf of the second named defender, Ms B denied that she had made such a statement during her evidence in chief. She said: "I didn't say they were looking for her continuously but they were looking for her". It appeared that Ms B thought the first and second named defenders might be open to criticism for "continuously" looking for the pursuer after December 2014 and she sought to tailor her earlier evidence in a more helpful manner. I considered she was a partial witness whose evidence was of little value.

*The second named defender*

[38] Like the first named defender, at times during her evidence the second named defender appeared deliberately evasive and obstructive, particularly when being asked questions about the marriage proposal which had been received in respect of the pursuer during summer 2014. I concluded that, at times during her evidence, she was neither a credible or reliable witness.

[39] For example, the second named defender sought to play down the importance of said proposal from a cultural perspective and was reluctant to acknowledge that any meeting had been due to take place between the families of the proposed bride and bridegroom during August 2014. While the second named defender confirmed that the proposed bridegroom and his family had travelled from the USA to India around August 2014, she said that she did not know why they had come to India at that time.

[40] I consider the second named defender was deliberately obfuscating during that chapter of her evidence as she well knew why the proposed bridegroom and his family had travelled to India, at least in part. They had travelled to India to enable the planned meeting between the proposed bride and bridegroom and their respective families to take place.

[41] The evidence of the second named defender was that she had not told the neighbours who had brought the marriage proposal to her that it had been rejected by the pursuer until the neighbours contacted her again, during August 2014, to tell her that the proposed bridegroom and his family had travelled to India. It seemed clear from her demeanour that this had caused embarrassment for the second named defender and that it had not been the casual matter she had earlier sought to describe.

[42] The second named defender had a tendency not to give straightforward answers to straightforward questions but, at times, sought to make statements. At other times she

answered questions by saying “never” but, on being asked again, contradicted her first response. For example, she was asked if she had been physically abusive towards the pursuer every day until the pursuer was sixteen years of age to which she responded “never”. She subsequently admitted that she had physically chastised the pursuer when she was “young”. When the second named defender was asked if she had gone to the pursuer’s room to tell her of the marriage proposal she initially said “never”. She subsequently answered the same question in the affirmative.

[43] The second named defender initially made it clear that, despite hearing the pursuer say that she did not wish to have any contact with her parents, the second named defender would, nonetheless seek to meet with the pursuer to “sort out the problems”. The second named defender said that she was sure the pursuer had “some misunderstanding” and some “baseless fear”. When she was asked specifically what she would do if the pursuer did not want to meet with her, the second named defender said that she would “respect her free wish”. I rejected this evidence. I consider it was clear that the second named defender would seek to make contact with the pursuer absent any court order.

#### *Fourth named defender*

[44] It appeared to me that the fourth named defender was, at times during her evidence, being obstructive and less than truthful. At times she was not a credible witness and I considered her to be deliberately obfuscating.

[45] In answer to questions from the court, the fourth named defender maintained that she could not remember whether the specific address which she had obtained for the pursuer (and at which she had attended in the company of the first named defender) was the address set out in the pursuer’s production, 5/10 of process. The fourth named defender

also maintained that she could not remember who had provided her with said address. I rejected her evidence on these matters.

[46] According to the fourth named defender, she had become involved in the efforts to make contact with the pursuer out of concern for her cousin, the second named defender. According to the fourth named defender, the second named defender had been “really desperate to get information about her daughter” and had been “very anxious” every time the fourth named defender had spoken to her. According to the fourth named defender, the second named defender had described the pursuer as “missing”. Obtaining an address for the pursuer was clearly a very significant development in the attempts by the pursuer’s family to locate the pursuer. In these circumstances, I found the fourth named defender’s evidence that she could not remember the address to be incredible, particularly when referred to the pursuer’s aforementioned production. I consider the fourth named defender was obfuscating at this and other points in her evidence.

[47] During her examination-in-chief, the fourth named defender confirmed that, during a telephone conversation with Ms P, Social Worker, Ms P told her that she could not provide the information about the pursuer being sought by the fourth named defender on the basis of data protection legislation. In answer to questions from the court the fourth named defender confirmed that she had moved to the United Kingdom in 1985 and when asked whether she was aware of the data protection legislation she indicated that she was aware of such legislation in the context of IT systems. The fourth named defender described herself as an IT professional working for an IT firm. The fourth named defender maintained that she was not otherwise aware of data protection legislation until Ms P, Social Worker, told her that information about the pursuer could not be released on the basis of data protection legislation. I did not find the fourth named defender’s evidence in this regard to be credible.

[48] The fourth named defender continued to try to obtain information from third party agencies, including the social work department of Glasgow City Council, after being told by Ms P that such information could not be released due to data protection laws. In these circumstances, the persistence of her efforts not only to obtain information about the pursuer's state of health, but also to obtain her address, renders it quite understandable, in my view, why the pursuer has raised proceedings against her. However, on the basis of the evidence, I am unable to conclude that the fourth named defender telephoned Orchard and Shipman impersonating the pursuer or that the fourth named defender was party to a conspiracy with the first and second named defenders to attempt to force the pursuer into marriage. I accepted the fourth named defender's evidence that she had been motivated by concern for the second named defender. Accordingly, despite significant reservations about the conduct of the fourth named defender during the period of her involvement, I have recalled the interim order granted against her and allowed the undertaking which she offered to be substituted therefor.

### **Discussion**

[49] Many of the facts of this troubling case were agreed. Where facts were disputed I preferred the evidence of the pursuer, which I found to be, generally, credible and reliable, for the reasons set out above.

[50] In respect of the physical chastisement of the pursuer during her childhood, the pursuer and the first and second named defenders are agreed that (i) as between the first and second named defenders, the second named defender was, largely, responsible for disciplining the pursuer; (ii) the second named defender physically chastised the pursuer, at

times, during her childhood; and (iii) the first named defender was aware of said physical chastisement.

[51] The pursuer and the first and second named defenders are not agreed about the frequency and force involved in said physical chastisement of the pursuer. The first named defender was rarely, if ever, present when the pursuer was physically chastised by the second named defender. The competing evidence in respect of said physical chastisement came, largely, from the pursuer and the second named defender. Mother and daughter had very different recollections of said chastisement. The pursuer said that the second named defender had been physically, emotionally and psychologically abusive towards her throughout her childhood and that the physical abuse had stopped when the pursuer became 16 years old. The pursuer described being terrified of her mother “all the time” and of wanting “to keep (her) head down and to stay safe”. The second named defender said that the pursuer had been a precious and happy child. The second named defender admitted that she had smacked the pursuer during part of the pursuer’s childhood (up to age 10). She described these smackings as “very small” and said that the pursuer had been smacked “only very rarely”. The second named defender said that she had mostly smacked the pursuer while she had been teaching her within the family home.

[52] I found this chapter of the second named defender’s evidence to be unconvincing. She seemed intent on minimising the extent of her physical chastisement of the pursuer during the pursuer’s childhood. The second named defender was at pains to say that, in India, there was nothing unusual in the physical chastisement of children by their parents. The evidence of the first and second named defenders, together with that of Ms B, had been that the use of physical chastisement on children was practised routinely by Indian parents. However, the second named defender was at pains to say that it had been unusual for her to

physically chastise the pursuer. She said, more than once, that this had been done only very rarely. I rejected the second named defender's evidence in respect of the frequency of said physical chastisement. I found that the pursuer had been physically chastised, on a regular basis, throughout her childhood by the second named defender.

[53] In preferring the pursuer's account of said chastisement, I have taken into account that it is unlikely the pursuer was physically chastised every day of her childhood, as she stated. It might have seemed, from a child's perspective, that such chastisement had taken place every day. I accepted that such chastisement took place far more frequently than stated by the second named defender. Further, whatever the actual frequency of said chastisement, I accepted the pursuer's evidence that she had been frightened of her mother and that what might have seemed "very small smackings" to the second named defender might well have seemed considerably more than that to the pursuer when she was a child.

[54] Such regular physical chastisement can lead to a child (a) becoming fearful of the parent concerned and (b) being conditioned to obey that parent. I concluded that this had happened in this case. I accepted the pursuer's evidence that the second named defender, with the support or acquiescence of the first named defender, exerted control over many aspects of the pursuer's life, including how the pursuer dressed and her choice of friends and associates. Furthermore, the pursuer and her parents form part of a close knit community in which arranged marriage is common and I found that the second named defender sought to exert control over the pursuer in respect of the pursuer's decision whether to marry and, if so, her choice of whom she would marry.

[55] In respect of the specific marriage proposal which was received, the pursuer and the first and second named defenders are agreed that (i) arranged marriages are common in their culture; (ii) a marriage proposal was intimated to the first and second named defenders

in summer 2014 in respect of the pursuer; (iii) said proposal related to an American man some 9 years older than the pursuer whom the pursuer had not met; (iv) the pursuer did not wish to enter into a marriage with said man; and (v) the pursuer told the first and second named defenders that she did not wish to marry.

[56] The remainder of the evidence of the first and second named defenders about said marriage proposal can be summarised thus: a marriage proposal had been received; the pursuer had intimated her wish not to accept it; the proposal had either been ignored or dropped; and little further had been said about it. The first and second named defenders sought to give the impression that this had not been a significant matter. I rejected their evidence in this respect and accepted the pursuer's evidence that the second named defender had become angry upon the pursuer indicating that she did not wish to accept the specific proposal which had been made and that she did not wish to marry. I accepted the pursuer's evidence that, for several days after the pursuer intimated that she did not wish to accept said proposal and did not wish to marry, the second named defender had attempted to coerce the pursuer, by verbal means and by her conduct, to agree to the marriage proposal which had been made and that the first named defender had either encouraged such an attempt or, at least, acquiesced in same.

[57] Some of the evidence of the first and second named defenders contradicted the impression which they sought to convey to the court that the pursuer's rejection of the specific marriage proposal and her stated wish to remain unmarried were not matters of significance and had not caused great upset within the family. The first named defender told the court that, during his only telephone conversation with the pursuer after she had arrived in Glasgow on 12 December 2014, he said to the pursuer: "Don't worry about that. No-one will ever say anything about marriage to you". The first named defender said he

had been told by a police officer that the pursuer's upset was "to do with a family problem". He said that he "thought it might be to do with getting married" and had told the pursuer not to worry about that. This evidence, from the first named defender himself, appeared to support the pursuer's evidence that the marriage proposal had not been dropped by December 2014 or, at least, had not been dropped quite as straightforwardly as the first and second named defenders sought to persuade the court. The first named defender's initial response, when told by a police officer that the pursuer's upset was to do with a family problem, was to attribute this to the issue of the pursuer getting married. I considered it was implicit in his response that the first named defender well knew that this subject was a source of considerable upset and concern on the part of the pursuer. His response also belied the evidence of the first and second named defenders that the marriage proposal had been made and then dropped and there had been no further discussion in respect of a marriage.

[58] Furthermore, in the letter dated 11 February 2015, sent by the first and second named defenders to the pursuer care of Q Hospital, Glasgow, the first and second named defenders say they cannot "but help think that perhaps" what had upset the pursuer "the most might have been the issue of our proposal to you to get married after your studies". In my view, the first and second named defenders would have had no reason to think that this might have been the issue which had "upset (the pursuer) the most" if they had, in truth, dropped the initial marriage proposal in August/September 2014. If they had done so, what would have been the cause of the continuing upset of the pursuer? I accepted the pursuer's evidence that the second named defender had told her that the proposed marriage would go ahead once the pursuer had completed her studies at Y University. The terms of the said letter are, in my view, consistent with the pursuer's evidence that her parents intended that

the proposed marriage would proceed upon completion of her studies in the UK. It is also clear from the first named defender's account of said telephone conversation and from the terms of said letter that the first and second named defenders were both involved in the efforts to coerce the pursuer into marriage.

[59] Although there was a specific proposal in this case which the pursuer did not wish to accept and which the second named defender sought to force the pursuer to accept, the matter does not rest there. As well as the specific marriage proposal, the court also requires to take into account the insistence on the part of the first and second named defenders that the pursuer should marry after her studies had been completed. It was clear from the evidence of the first and second named defenders that they would not respect the pursuer's express wish not to marry. In her evidence to the court the second named defender maintained the position that "after study every girl should marry". The second named defender appeared to pay no regard to the pursuer's express wish not to marry. The pursuer did not know (and had no way of knowing) whether the specific marriage proposal which had been made would remain open until she had completed her studies. The first and second named defenders had clearly assessed the specific proposal as acceptable to them, otherwise they would not have told the pursuer about the proposal. However, it was clear from the evidence of the first and second named defenders that, even if the specific proposal had been withdrawn, they were intent on the pursuer being married, whatever the pursuer's express wish might be. As the pursuer put it in her evidence: "It would be that marriage or another one".

[60] The first and second named defenders are, no doubt, loving and concerned parents but they are also controlling parents who are determined to have their own way in respect of the pursuer being married. The pursuer explained her reasoning for wishing to have no

contact with the first and second named defenders thus: "I did not want to speak to my parents ... they would try everything to take me back to India and force me into a marriage that they wanted and I didn't want that". The first and second named defenders have attempted to exert control over the pursuer's life by insisting that she get married, despite the pursuer's protests that she did not wish to marry. The pursuer is an adult with autonomy in respect of the decision making relative to such matters. The first and second named defenders have either refused to accept this or have been unable to accept it and have sought to continue to exert control over the pursuer's decision making from her childhood into adulthood.

[61] In this case it was, principally, the second named defender who undertook the task of disciplining the pursuer and this included physically chastising the pursuer during her childhood. From a young age the pursuer has been conditioned to be an obedient child, particularly towards the second named defender who was the disciplinarian. In this context it is significant that the second named defender took the lead in seeking to coerce the pursuer into accepting the specific marriage proposal which was received and in seeking to coerce the pursuer into agreeing to marry upon completion of her studies. On this basis I accepted the pursuer's evidence that she would be susceptible to pressure from the first and second named defenders (particularly from the second named defender) relative to accepting a marriage proposal. I accepted the pursuer's evidence that the first and second named defenders would not take "no" for an answer in respect of the proposed marriage of the pursuer and that they would be likely to coerce the pursuer into a marriage against her wishes.

[62] The pursuer's evidence in this regard was supported, to some extent, by the persistency of the actions of the first and second named defenders upon being told by the

police, social work and health services that the pursuer wished to have no further contact with them. Despite being told of the pursuer's wishes and despite being advised by said services that they could not provide further information, the first and second named defenders persisted in their efforts to make contact with the pursuer, thereby failing to respect the pursuer's wishes, as an adult, to have no further contact with them.

[63] The order sought by the pursuer remains necessary on the basis that it is likely that the first and second named defenders will continue to fail to respect the pursuer's wishes for there to be no contact between them and, in the event of contact being re-established, the first and second named defenders will continue in their efforts to force the pursuer into marriage. The first named defender repeatedly said in his evidence that he still wished to meet with and speak to the pursuer, despite having heard her say in evidence that she wished to have no contact with her parents. The second named defender said that she respected her daughter's wishes but that her daughter had not told her directly that she wished no contact with the first and second named defenders, "only the authorities" had conveyed this message. The second named defender said she had persisted in trying to ascertain the pursuer's whereabouts and to find out information about her because of her concern for her daughter and because her daughter had not said directly to her parents that she wished no contact with them. I concluded that the second named defender would continue to try to contact the pursuer, absent a court order.

[64] In addition to what was said in evidence by the first and second named defenders, I have taken into account their conduct prior to the interim orders being granted in these proceedings. Prior to the grant of said orders the first and second named defenders made persistent attempts to ascertain information about the pursuer, including her whereabouts, and to make contact with the pursuer in the face of her express wishes to the contrary. They

attempted to do so directly and through third parties. The first and second named defenders contacted Police Scotland, the hospital authorities, the Indian Consulate and enlisted the assistance of the third and fourth named defenders. The fourth named defender contacted social work services, the Glasgow Rape Crisis Centre and Orchard and Shipman, property managers. This persistence led, ultimately, to (i) the fourth named defender obtaining an address for the pursuer from the social work department in breach of their data protection obligations and (ii) a telephone call being made to Orchard and Shipman, property managers, on 8 October 2015 by someone pretending to be the pursuer. The pursuer has failed to establish that it was the fourth named defender who held herself out to be the pursuer in said telephone call to Orchard and Shipman, although the pursuer suspects, perhaps understandably in view of the other actions of the fourth named defender, that it was the fourth named defender who made said call. However, if someone else did make said call I have no doubt that that person was acting on the instructions of the first and second named defenders in seeking to ascertain the whereabouts of the pursuer.

[65] Previous behaviour can be a predictor of future conduct. Taking into account the previous behaviour of the first and second named defenders in failing to respect the pursuer's wishes over an extended period of time, together with their evidence, I have concluded that the first and second named defenders have not yet accepted their daughter's decision to break all ties and to have no future contact with them. They did not appear to be able to accept that this was a decision for the pursuer to make. Throughout their evidence the first and second named defenders gave the impression that the pursuer was a child with whom they required to speak in order to resolve some simple misunderstanding. They seemed not to appreciate and accept that the pursuer is an adult who, having reflected upon

her life experiences to date, has opted to terminate all contact with her parents, as she is entitled to do.

[66] The first and second named defenders were dismissive of the pursuer's evidence that her life had been tightly controlled by them until December 2014. They denied that they had strictly controlled the pursuer's contact with boys during her adolescence. They insisted that they had given the pursuer a considerable amount of freedom. However, this appeared to be at odds with the first named defender's description of the arranged marriage process. When describing the early stages of the process, the first named defender described an initial meeting between the proposed bride and bridegroom and their immediate families in terms similar to the pursuer's description of a "meeting ceremony". He then went on to say that the next stage of the process would be that "we allow them to talk to each other on the phone". It appeared clear, from the evidence of the first named defender, that the extent of any contact between the proposed parties to the marriage was controlled by their families, belying the impression which the first and second named defenders had sought to give the court that the pursuer had been exaggerating when she gave evidence that she had had little freedom until she came to the UK to study and that her parents had controlled her life.

[67] At another point in his evidence, during cross examination on behalf of the pursuer, the first named defender recounted an incident when one of his nieces had told her father (one of the first named defender's brothers) that she could not, after all, go ahead with an engagement in the context of an arranged marriage. The first named defender recounted that all of his brothers and sisters were informed and a family meeting took place to consider what they "could do". The first named defender confirmed that this family meeting took place without the presence of his niece and while she was at work. This belied the impression, which the first and second named defenders had sought to give the court,

that progress in such matters is entirely determined by the parties to the proposed marriage and that no family pressure is brought to bear upon the parties to the proposed marriage.

[68] In the course of her evidence the second named defender went as far as to say that no family pressure is placed upon any of the parties to arranged marriages in her home state in India, describing it as the most advanced state in India. The second named defender is not in a position to know whether any family pressure is exerted upon any of the parties to arranged marriages throughout the state. Such a generalisation was not of assistance to the court in dealing with the specific circumstances of this case and was, in my view, indicative of the defensive manner in which both the first and second named defenders gave evidence in respect of arranged marriages.

[69] Further, the first named defender accepted that he had had a telephone conversation with Mr S, after the pursuer had travelled to Glasgow. Although the first named defender denied having said "anything about a marriage" to Mr S, he volunteered that he had said to Mr S: "If you can help us get our daughter back". In my view this was a telling statement by the first named defender in the context of parental control. The first named defender's agenda had been not only to obtain confirmation that the pursuer was safe and well but also to secure her physical return to the first and second named defenders.

[70] In seeking to explain their persistent attempts to contact the pursuer in the face of her wish to have no contact with them, the first and second named defenders made much of not having heard directly from the pursuer that she did not wish to have any contact with them. According to the fourth named defender, the first named defender had told her: "only if we hear it from (the pursuer's) mouth can we believe". In my view, for the reasons set out above, including the first named defender's avowed intention to make contact with the pursuer, the intentions of the first and second named defenders to make contact with the

pursuer, absent a court order, have not changed, despite having now heard the pursuer express a wish to have no contact with her parents.

[71] I have assessed that there is an ongoing risk to the pursuer of being forced into a marriage by the first and second named defenders. In making this assessment, I have taken into account not only the conduct of the second named defender in respect of the specific marriage proposal conveyed to the pursuer during summer 2014 but also the persistence of the subsequent conduct of the first and second named defenders in seeking to make contact with the pursuer and to discover her whereabouts, despite her wish to have no contact with her parents.

[72] I rejected the defenders' submissions that there would have been less difficulty in granting the orders sought by the pursuer had the court been hearing evidence shortly after December 2014. In rejecting that submission, I have taken into account the frequent and persistent attempts made by the first and second named defenders between December 2014 and October 2015 (when the interim orders were granted in this case) to try to make contact with the pursuer and to ascertain her whereabouts. The first and second named defenders persistently attempted to make contact with the pursuer through the police and health authorities and enlisted the assistance of the Consul General for India in Edinburgh. The second named defender also enlisted the help of the fourth named defender who repeatedly contacted the social work department of Glasgow City Council, Glasgow Rape Crisis Centre and Orchard and Shipman, property managers for NASS. The fourth named defender took an active role in, not only seeking information about the pursuer's welfare and what should be done with the personal possessions of the pursuer which remained in her student accommodation in Y, but also attempting to locate the pursuer. In so doing she travelled the significant distance to Glasgow from her home near the south coast of England. The first

and second named defenders conducted themselves in the foregoing manner in the face of the pursuer's express wish to have no contact with her parents and for them not to know her whereabouts, all as conveyed to the first, second and fourth named defenders, and to the Indian Consulate in Edinburgh, by health, social work and police services. These attempts ceased only after the interim orders were granted in this case.

[73] In rejecting said submission I have also taken into account that the first and second named defenders still do not appear to have accepted the pursuer's choice not to get married at all. It did not appear from their evidence that the first and second named defenders would countenance the pursuer deciding not to marry at all.

[74] I rejected the defenders' submissions that the pursuer had exaggerated the conduct of the first and second named defenders relative to the marriage proposal and to their control over the pursuer's life to assist the pursuer with her asylum application. For the reasons set out above I consider the pursuer to have been a truthful witness. The pursuer had given her account of the conduct of the first and second named defenders upon her admission to Q Hospital, prior to any asylum application having been made. In fact, the suggestion that the pursuer should make an application for asylum had been made by the examining doctor on the pursuer's admission to said hospital after he had made some telephone enquiries with the appropriate authorities.

[75] I have rejected the submission that the pursuer's purpose in raising these proceedings was to lend further weight to her asylum application. I accepted the pursuer's evidence that her purpose in raising these proceedings was to prevent her parents from finding her and forcing her into marriage. The pursuer first sought advice about forced marriage protection orders after the Consul General of India in Edinburgh contacted Q Hospital and intimated that someone from the consulate intended to attend at the hospital

in February 2015. The pursuer became fearful at that time but did not pursue forced marriage protection orders at that stage as she was reasonably confident of her safety in the hospital. The pursuer only raised these proceedings after she had had to be rehoused twice, in fairly quick succession, by NASS due to the persistence of the ongoing efforts by the first, second and fourth named defenders to ascertain the pursuer's whereabouts and to make contact with her after the pursuer's discharge from hospital.

### Decision

[76] It would be helpful to set out the relevant statutory provisions here. Section 1 of the 2011 Act provides:

- “(1) The court may make an order for the purposes of protecting a person (a “protected person”)—
- (a) from being forced into a marriage or from any attempt to force the person into a marriage, or
  - (b) who has been forced into a marriage.
- (2) In deciding whether to make such an order and, if so, what order to make, the court must have regard to all the circumstances including the need to secure the health, safety and well-being of the protected person.
- (3) In ascertaining the protected person's well-being, the court must, in particular, have such regard to the person's wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate on the basis of the person's age and understanding.
- (4) For the purposes of this Part, a person (“A”) is forced into a marriage if another person (“B”) forces A to enter into a marriage (whether with B or another person) without A's free and full consent.
- (5) For the purposes of subsection (4), it does not matter whether the conduct of B which forces A to enter into a marriage is directed against A, B or another person.
- (6) In this Part—“force” includes—
- (a) coerce by physical, verbal or psychological means, threatening conduct, harassment or other means,
  - (b) knowingly take advantage of a person's incapacity to consent to marriage or to understand the nature of the marriage,
- and related expressions are to be read accordingly,  
 “forced marriage protection order” means an order under subsection (1).”

[77] On the basis of the findings in fact which I have made, I have found that (i) the pursuer is a person at risk from attempts, by the first and second named defenders, to force her into a marriage, in terms of section 1(1)(a) of the 2011 Act; (ii) the order sought by the pursuer *quoad* the first and second named defenders is required to protect her from being forced into a marriage; and (iii) the order sought by the pursuer *quoad* the first and second named defenders is required to secure the health, safety and well-being of the pursuer, in terms of section 1(2) of the 2011 Act. In terms of section 1(3) of the 2011 Act, I am satisfied that the pursuer wishes such an order to be granted. Having regard to the definition of “force” in section 1(6) of the 2011 Act, I am satisfied that, by their conduct, the first and second named defenders have sought to coerce the pursuer to enter into a marriage and that they would continue in their attempts to force the pursuer into marriage in the absence of the order sought by the pursuer.

[78] Having made the findings in fact set out above, I have found, on a balance of probabilities, that the evidence supports the granting of the order sought by the pursuer *quoad* the first and second named defenders. The pursuer is an adult. She has the right to choose whether to marry at all and, if she chooses to marry, to whom she will be married and when. The first and second named defenders do not have the right to determine these matters for the pursuer. However, as the pursuer put it, these parents will not “take ‘no’ for an answer”. They have gone beyond making suggestions, even strong suggestions, to the pursuer. They have gone beyond offering advice and counsel to the pursuer. They have heard their daughter reject their advice and counsel and they have sought to coerce her to enter into a marriage. In so doing they have sought to force the pursuer into marriage when she has clearly said that she has no wish to marry. It was accepted by all parties that arranged marriages are common in the culture of the first and second named defenders. In

my view, the pursuer showed a good appreciation of the differences between arranged and forced marriages and had no doubt in her mind that her parents had attempted to force her into marriage on the basis that they did not accept her decision to reject the specific marriage proposal received during the summer of 2014 or her decision that she did not wish to marry at all.

[79] It appears that the first and second named defenders have continued to treat the pursuer as a child rather than as an adult. They appear to have coped badly with the transition of the pursuer from a child to an adult. They appear not to have accepted that the pursuer has asserted control over her own life. The first and second named defenders not only refused to accept the pursuer's decision that she did not wish to marry but also refused to accept the pursuer's decision that there should be no further contact between them and that the first and second named defenders should not have any information about the pursuer's whereabouts. The first and second named defenders have demonstrated, by their conduct both before and after the pursuer's departure from Y hospital in December 2014, that they do not respect the express wishes of the pursuer. In addition, for the reasons set out above, the evidence of the first and second named defenders about future contact with the pursuer gave me no confidence that their positions had changed in relation to respecting the pursuer's wishes and decisions.

[80] Absent the order sought being granted, I have concluded that the pursuer would be in a vulnerable position and that her well-being would be adversely affected. The pursuer's mood has deteriorated in the past when she has been advised of the attempts by the first and second named defenders to contact her. She has become anxious and fearful. I have concluded that this would recur in the event of the interim orders being recalled and no order being granted *quoad* the first and second named defenders.

[81] It was clear from the evidence of the first named defender, and from that of the pursuer, that the first named defender was fully aware of the specific marriage proposal which was received during summer 2014 and that he had spoken to the pursuer about her getting married. I accepted the pursuer's evidence that the first named defender had failed to intercede on her behalf when the second named defender was seeking to coerce the pursuer into accepting the said proposal. I concluded that the first named defender was aware of what was taking place within the family home relative to said marriage proposal, partly on the basis of the text message which I have found he sent to the pursuer in October 2014 (see finding in fact number 21 above) in which the first named defender acknowledged that the pursuer required protection from the second named defender. Although he did not state, expressly, that he had approved of the specific marriage proposal, I have concluded that the first named defender had approved of the proposed match, otherwise arrangements for a meeting in August 2014 would not have been made. On the basis of the available evidence, I concluded that the first named defender was aware of the attempts made by the second named defender to coerce the pursuer into the proposed marriage and that he had, at least, acquiesced in the attempts made by the second named defender to coerce the pursuer into said marriage.

[82] I accepted the pursuer's submission that there does not have to be an actual marriage planned at present to enable an order to be granted. Otherwise, the purpose of the legislation would be thwarted. As was observed by Sheriff Sheehan in *City of Edinburgh Council v S* 2015 SLT (Sh Ct) 69, at paragraph 82 of her judgment, the long title of the 2011 Act refers to the purpose of the 2011 Act as being, inter alia, "to make provision for protecting persons from being forced into marriage without their free and full consent". A literal interpretation of section 1 of the 2011 Act, requiring evidence of an actual or current

marriage proposal, would thwart the policy intention of the legislation. In this case the pursuer has led evidence of (i) a proposed marriage dating from the summer of 2014 and (ii) the intentions of the first and second named defenders that the pursuer would be married upon completion of her studies in the UK, thereby satisfying the requirements of section 1 of the 2011 Act.

[83] I have found that the pursuer is a protected person for the purposes of the 2011 Act and, as such, is entitled to make the application in terms of section 3(1) of the 2011 Act.

[84] Although not the subject of submissions, I have found that the terms of the order sought by the pursuer are proportionate and reasonable, having regard to the findings in fact set out above. I consider the prohibitions, restrictions, requirements and other terms of the order sought by the pursuer *quoad* the first and second named defenders to be appropriate for the purposes of the order in terms of section 2 of the 2011 Act. I have found the pursuer's fear that her parents would find her and take her back to India to be a reasonable one, given the lengths to which the first and second named defenders have gone to ascertain the pursuer's whereabouts, despite her express wish to the contrary. I have also taken into account that a report was made to Police Scotland of a female having telephoned Orchard and Shipman, property managers for NASS, impersonating the pursuer. In all the circumstances of this case I consider the terms of the order sought by the pursuer *quoad* the first and second named defenders to be proportionate, reasonable and appropriate.

[85] I have accepted the defenders' submissions that the granting of indefinite orders would not be proportionate, in all the circumstances. I consider it would be proportionate to grant orders for a period of five years, at least initially. Such a duration will provide the pursuer with the protection which she requires in the meantime and will allow the first and second named defenders an opportunity to consider, and to reflect upon, the terms of this

judgment and their future conduct. There are, of course, statutory provisions which would permit the extension of these orders, if necessary. Sections 6 and 8 of the 2011 Act refer.

[86] In respect of the submission that the Article 8 rights to family life of the pursuer and first and second named defenders are engaged, I would observe that the pursuer is an adult and is entitled to make her own decisions regarding contact with the first and second named defenders. She has autonomy over her decision making. In this respect the circumstances of this case can be distinguished from those in the case of *City of Edinburgh Council v S* where the application related to a child. In any event, the order which I have granted does not terminate the family relationships between the pursuer and her parents. The order does prohibit the first and second named defenders from taking certain steps (such as obtaining travel documents for the pursuer) which one would not expect the parents of an adult with full capacity to be taking in any event. In my view, the order sought by the pursuer *quoad* the first and second named defenders is necessary to protect the rights and freedoms of the pursuer and is proportionate in terms of the parties' Article 8 rights.

[87] I accepted the pursuer's submissions (set out in paragraph 34 of the appendix hereto) as to why the order sought by the pursuer *quoad* the first and second named defenders is necessary for the protection of the pursuer, despite the existence of penalties for committing an offence under section 122 of the Anti-Social Behaviour, Crime and Policing Act 2014 (hereafter "the 2014 Act"). In my view the existence of those penalties does not provide the protection to the pursuer that would be afforded by the order granted in the present proceedings under the 2011 Act. In particular, certain acts prohibited by the order granted under the 2011 Act would not constitute an offence in terms of section 122 of the 2014 Act.

[88] I accepted the pursuer's submissions (set out in paragraph 35 of the appendix hereto) as to why the acceptance of undertakings from the first and second named defenders would

not be appropriate and would not provide the pursuer with the protection which she requires. Although breaches of such undertakings could amount to contempt of court giving rise to further court proceedings, such proceedings would not provide the immediacy of response which would be provided by the police in the event of an alleged breach of the order granted in these proceedings. The powers of police officers in respect of breach of the order sought by the pursuer are set out in section 9 of the 2011 Act.

[89] Despite quite significant concerns about the conduct of the fourth named defender during the period of her involvement in seeking to make contact with the pursuer and to ascertain her whereabouts, I have not found that the fourth named defender was party to any conspiracy with the first and second named defenders to attempt to force the pursuer into marriage. In view of what might be described as the overzealousness of the fourth named defender's efforts to make contact with the pursuer and to ascertain her whereabouts, I can well understand why the pursuer suspected there was such a conspiracy. However, I accepted the evidence of the fourth named defender that she had acted as she did out of concern for the second named defender and had not been party to any conspiracy to force the pursuer into marriage. The fourth named defender appeared to me to be truthful as to her motives for becoming involved.

### **Expenses**

[90] Each defender reserved their position in respect of expenses pending the Court's determination of the application. The pursuer is in receipt of legal aid. In these circumstances, I have assigned a hearing on expenses.

## SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

GLW-B2837-15

## APPENDIX TO JUDGMENT OF SHERIFF ANDREW M MACKIE

In the cause

AB

Pursuer

Against

CD and DD and EF

Defenders**Submissions for the parties****A     *The pursuer's submissions***

[1]     The pursuer's agent provided a set of skeletal written submissions and expanded on same in her oral submissions. The pursuer's agent submitted that:

- (i)     The pursuer is a person at risk from attempts to force her into a marriage in terms of section 1(1) (a) of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (hereafter "the 2011 Act");
- (ii)    the Forced Marriage Protection Order sought by the pursuer is required to protect her from being forced into a marriage; and
- (iii)   the said Order is required to secure the health, safety and wellbeing of the pursuer in terms of section 1(2) of the 2011 Act.

[2]     The pursuer's agent also submitted that it had been established that the pursuer wishes such an order to be granted in terms of section 1(3) of the 2011 Act; that there is evidence to support an apprehension of force or coercion on the part of the pursuer in respect of a marriage; that interference with the defenders' rights under Article 8 of the

European Convention on Human Rights and Fundamental Freedoms is necessary to protect the pursuer's health and her rights and freedoms; and that while there are penalties for committing an offence under section 122 of the Anti-Social Behaviour, Crime and Policing Act 2014 (hereafter "the 2014 Act"), those penalties do not provide the protection to the pursuer that would be afforded by an Order being granted in the present proceedings under the 2011 Act.

[3] In support of the first three propositions set out above, the pursuer's agent submitted that, in terms of section 1(2) of the 2011 Act, in deciding whether to make an order and, if so, what order to make, the court must have regard to "all the circumstances including the need to secure the health, safety and wellbeing of the protected person". The pursuer's agent referred me to the decision of Sheriff Sheehan in the case of *City of Edinburgh Council v S* 2015 SLT (Sh Ct) 69 at paragraph 83 where the sheriff set out the terms of section 1(2) of the 2011 Act and the submissions made to her in respect thereof, including submissions that an Order should not be granted unless the evidence demonstrates "a very high level of risk" and "overwhelmingly supports the granting of an order" before rejecting those submissions and saying:

"All that is required is for the court to find that on the balance of probabilities the evidence supports the granting of orders which are needed to protect (the protected person) from being forced into a marriage and that the orders would secure her health, safety and wellbeing."

[4] The pursuer's agent submitted that the court had heard evidence from the pursuer that she was at risk from attempts by the first and second named defenders to force her into marriage. The pursuer's evidence had been that she had been told about a marriage proposal during summer 2014 and that she refused same. The pursuer's evidence had been that, following her refusal, the second named defender put pressure on the pursuer over the

following few days and until the pursuer left India in September 2014 to study in the UK. The conduct of the second named defender had included the repeated questioning of the pursuer to try to obtain her agreement to a marriage; suggestions that the pursuer would not be allowed to travel to the UK for her studies unless she agreed to the proposal; shouting and screaming at the pursuer; becoming upset; suggesting that there was something wrong with the pursuer as she would not agree to the proposal; and taking the pursuer to visit priests and doctors and asking them, within earshot of the pursuer, for confirmation that the second named defender was acting correctly in respect of the proposed marriage for the pursuer.

[5] The evidence of the first and second named defenders was that there had, indeed, been a marriage proposal in the summer of 2014; that the pursuer had been informed of the marriage proposal; that the proposal had been mentioned on only one occasion; that the pursuer had refused same; that, thereafter, no further mention was made of said proposal; and that the said proposal had subsequently been dropped. The pursuer's agent submitted that the evidence of the first and second named defenders in this regard was surprising given that, when the first and second named defenders wrote to the pursuer several months later, they considered that the thing most likely to have upset the pursuer had been the said marriage proposal. The first and second named defenders had accepted that they had written the said letter to the pursuer.

[6] In her evidence the pursuer stated that the first named defender had sent her a text message around November 2014 while she had been studying in the UK which message referred to the first named defender no longer being able to protect the pursuer from the second named defender and the "American boy's family" (referring to the family of the proposed bridegroom).

[7] The evidence of PC S included reference to a record held by the police in Y of a report made by Mr S (a friend of the pursuer's friend, K) to the police force in Y (which report was subsequently passed on by email to the Police Service of Scotland) of a telephone conversation between Mr S and the first named defender, during which the first named defender told Mr S that the second named defender had arranged a marriage for the pursuer and that the first named defender had gone along with it due to fear. Mr S had also reported that the first named defender told Mr S that the first named defender had been unhappy with the marriage proposal. The pursuer had also given evidence that Mr S had subsequently telephoned her and that he had told her about a telephone call between Mr S and the first named defender during which the first named defender had mentioned arranged marriage to Mr S.

[8] The pursuer gave evidence that a "meeting ceremony" for the proposed bride and bridegroom had been arranged for August 2014 but had not gone ahead due to the death of the pursuer's maternal grandmother. The second named defender's evidence had been that the proposed bridegroom was in India during August 2014 but her position was that she did not know why he was in India at that time.

[9] The pursuer had given a clear account of the steps which the second named defender had taken with regard to pressuring the pursuer into accepting the marriage proposal. The pursuer had described a specific incident during which the second named defender had shouted at the pursuer in a restaurant. The pursuer had given evidence about the pressure which she had felt she was under to agree to the marriage proposal.

[10] In paragraph 7 of Dr T's affidavit, dated 24 January 2017, it is confirmed that, on admission to Q Hospital on 12 December 2014, the pursuer referred to the marriage proposal

that her mother had “come up with” and that she (the pursuer) had “tried everything to get out of it”.

[11] The pursuer’s agent submitted that there had been a mixture of verbal and psychological pressure brought to bear upon the pursuer, principally by the second named defender, but with the support of the first named defender. The treatment of the pursuer by the first and second named defenders during her childhood was relevant to the court’s consideration of the psychological pressure brought to bear upon the pursuer by the second named defender. In relation to the role of the first named defender, he understood what the second named defender was doing and, as well as assisting her, he made repeated attempts to contact the pursuer and to find out information about the pursuer. There was evidence of repeated attempts on the part of the defenders to contact the pursuer; to find out information about the pursuer; and to ascertain the whereabouts of the pursuer. All of this took place after the pursuer had made clear, through the authorities, that she did not want contact with her parents or other family members. Despite this having been relayed to the first and second named defenders they continued to try to make contact with the pursuer and to find out her whereabouts. They also involved other family members, namely, the third and fourth named defenders, in their efforts to make contact with the pursuer and to ascertain her whereabouts.

[12] The pursuer’s position was that these attempts were not simply out of concern for her welfare but were designed to find out her whereabouts to enable the first and second named defenders to speak to her and, ultimately, to force her into a marriage.

[13] The evidence of PC S was that the lengths to which the defenders went to find out the pursuer’s whereabouts were of concern to the police. The Police Service assessed the pursuer as being at high risk and they had moved her from her accommodation on two

occasions due to concerns about the first and second named defenders attempting to ascertain the pursuer's whereabouts.

[14] The pursuer's agent submitted that the nature and the number of attempts by the defenders to make contact with the pursuer and to ascertain her whereabouts could be consistent with attempts to force the pursuer into marriage. The pursuer's agent acknowledged, however, that the nature and number of said attempts could also be consistent with two parents being concerned about their daughter's welfare. No criminal proceedings were instituted against any of the defenders. All attempts at contact stopped once the interim Forced Marriage Protection Order had been granted by the court.

[15] In relation to the role of the fourth named defender, the pursuer's agent referred to the evidence of Ms P, Social Worker, Ms W, Receptionist and Secretary at the L Centre in Glasgow and Ms J of Rape Crisis in respect of the attempts made by the fourth named defender to obtain information about the pursuer and to ascertain her whereabouts. It had been established that the fourth named defender does not know the pursuer well and all of her actions were on behalf of the first and second named defenders. All of the aforementioned witnesses described the fourth named defender as persistent. The evidence of Ms W had been that the fourth named defender attended personally at the L Centre on the Friday of the September Weekend holiday in 2015 and continually tried to find out information about the pursuer while speaking to Ms W in the Centre. This was around the same time as the fourth named defender attended at the address in Glasgow which she had managed to obtain from one of the agencies. Ms P gave evidence about the fourth named defender's attempts to confirm an address for the pursuer with the Social Work Department of Glasgow City Council. PC S confirmed that a report had been made to the police by a former neighbour of the pursuer in the building where the pursuer previously lived. The

fourth named defender had accepted in her evidence that she had attended at the pursuer's former address in the company of the first named defender. The fourth named defender had also accepted that she had made telephone calls to the Social Work Department and to the Rape Crisis Organisation. However, the fourth named defender accepted only that she had made telephone calls during which she had identified herself to the various organisations or authorities concerned. The pursuer's agent invited the court to find that other telephone calls had been made by the fourth named defender during which she failed to identify herself. In particular, the pursuer's agent invited the court to find that the fourth named defender had made a telephone call to Orchard and Shipman (a property management company providing accommodation to asylum seekers in Glasgow) on 5 October 2015 and again on 8 October 2015 seeking to confirm an address for the pursuer. During the first telephone call the caller referred to herself as the pursuer's aunt. During the second telephone call the caller stated that she was the pursuer herself and sought to report a light in her hallway which required attention. The address provided by the caller was not held on the Orchard and Shipman system. The same witness received both of said calls and reported to the Police Service of Scotland that she considered the same person had made both telephone calls.

[16] The pursuer's agent submitted that it was difficult to conceive who else could have made those telephone calls, particularly as, during the call on 5 October 2015, the caller identified herself as the pursuer's aunt.

[17] The first and second named defenders accepted that they had made contact with the police. Both also accepted that they were aware (or that the police had told them) that the pursuer was safe and well and that she did not wish to have any contact with them. The first and second named defenders also accepted that, after they involved the Indian

Consulate in the matter, the Consulate was advised that the pursuer was safe and well and did not wish to have any contact with the first and second named defenders.

[18] The position of the first, second and fourth named defenders had been that all attempts made by them to contact the pursuer, to find out information about the pursuer and to ascertain the pursuer's whereabouts, had been made out of concern for the pursuer's welfare.

[19] In relation to future contact, the first named defender initially stated, during his examination-in-chief, that even now he would still try to speak to the pursuer (in the event of no Forced Marriage Protection Order being granted) despite having heard the pursuer's evidence that she did not wish to have any contact with any of the defenders. Although he subsequently accepted that he would not contact the pursuer, the pursuer's agent submitted that his evidence was confused in that regard.

[20] The pursuer's agent submitted that, in all the circumstances, in light of the extreme lengths to which the defenders had gone to find out information about the pursuer, the Orders sought by the pursuer were necessary to protect her from the defenders' conduct and their efforts to force the pursuer into a marriage. The lengths to which the defenders had gone to find out about the pursuer and her whereabouts went beyond concern for her welfare.

[21] The conduct of the fourth named defender was all the more surprising given that she worked in IT and said that she was aware of data protection issues in IT but did not appreciate that organisations would not be able to release information to her about a third party. Her evidence in this regard was surprising given the length of time she had been resident in the UK and given the nature of her occupation. The fourth named defender had made further enquiries of other organisations about the pursuer after being advised by

Ms P, Social Worker, that the City Council could not release information in view of the data protection legislation. Ms P advised the fourth named defender of the existence of data protection legislation in August 2015. The fourth named defender made telephone calls to the Rape Crisis organisation well after August 2015 and also attended at the L Centre where she sought to obtain information from Ms W on 25 September 2015.

[22] In respect of the pursuer's health, safety and wellbeing (in terms of section 1(2) of the 2011 Act), the pursuer is afraid that the first and second named defenders would secure her return to India and could use physical force to achieve same. The pursuer gave an account of the pressure which she had felt while studying in the UK and gave an account of her decision to take her own life during December 2014. The pursuer remained as an in-patient in a psychiatric hospital (on a voluntary basis) from December 2014 until May 2015 rather than resume contact with her parents.

[23] PC S's evidence was that her impression had been that the pursuer was scared of her parents rather than scared to face her parents. Dr T's evidence had been that the defenders' attempts to contact the pursuer while she was an in-patient at Q Hospital adversely affected the pursuer's mental health when she was advised of these attempts. The information caused the pursuer distress. She became fearful of going outside, despite her condition having improved after approximately a period of one week of being in the hospital which Dr T attributed to the pursuer feeling safe within the hospital.

[24] Given the evidence of the pursuer and that of Dr T and PC S in respect of the pursuer's fear of the first and second named defenders, the Orders sought by the pursuer are necessary to protect her health, safety and wellbeing.

[25] In terms of ascertaining the pursuer's wellbeing, the court must, in particular, have such regard to the pursuer's wishes and feelings as the court considers appropriate on the

basis of her age and understanding, in terms of section 1(3) of the 2011 Act. The pursuer had raised this action and had given evidence of her wishes and feelings. The pursuer wished the Orders sought to be granted.

[26] The pursuer's agent referred to the definition of "force" as set out in section 1(6) of the 2011 Act. The pursuer's agent also referred to the comments of the sheriff in paragraph 84 of the decision in *City of Edinburgh Council v S, supra*, where the sheriff says:

"I accept (counsel for the protected person's) submission that while the definition of force is very widely drawn, there must be evidence to support an apprehension of force or coercion. He rightly stressed the need to avoid blurring the lines between forced and arranged marriage."

[27] The pursuer's agent submitted that the pursuer's evidence supported an apprehension, on her part, of force or coercion. The pursuer considered that her parents might use physical force to take her back to India. The pursuer's evidence had been that she had been the subject of physical, verbal and emotional abuse during her childhood. Although the first and second named defenders did not accept the pursuer's evidence in respect of said abuse (other than a concession that the pursuer had been physically chastised by the second named defender on rare occasions when very minimal force had been used), Dr T's evidence had been that the nightmares experienced by the pursuer and the adjustment disorder from which the pursuer suffers (as diagnosed by Dr T) are consistent with both the pursuer's account of her abusive childhood, as relayed to Dr T and with the pursuer being under threat of a forced marriage. The second threat could have acted as a trigger for the adjustment disorder on the part of the pursuer. Dr T's evidence was that the pursuer had been consistent in her descriptions of her childhood throughout her five month stay at Q Hospital and, on admission there, the pursuer had made reference to the verbal and physical abuse which she had suffered at the hands of the second named defender.

[28] By contrast, the positions of the first and second named defenders were that the pursuer had had a happy childhood. The pursuer's agent submitted, however, that there appeared to be no other explanation for the pursuer's mental health difficulties.

[29] Against the background of the abuse which she suffered during her childhood, it is reasonable for the pursuer to have an apprehension of force or coercion on the part of the first and second named defenders in seeking to have her enter into a marriage. The pursuer had given evidence that the first named defender had not stepped in at any stage to seek to protect the pursuer from the proposed marriage.

[30] In terms of the Article 8 rights of the pursuer and those of the first and second named defenders, the pursuer's agent acknowledged that the Orders sought could interfere with the rights of the first and second named defenders to respect for their private and family lives. However, in terms of Part II of Article 8, the Orders sought in this case were necessary for the protection of the pursuer's rights and freedoms.

[31] The pursuer's agent referred to paragraphs 78 and 79 of the judgment in *City of Edinburgh Council v S, supra*. The court must consider whether the Orders sought are proportionate and whether there are any more proportionate alternatives which may adequately protect the pursuer.

[32] The pursuer's agent sought to distinguish the circumstances of this case from those in *City of Edinburgh Council v S*. The orders sought in this case are quite different. The pursuer is an adult. She seeks to have the Orders granted. The pursuer seeks only that the defenders refrain from forcing her into a marriage and from taking the other steps set out in the Orders sought. These include prohibitions on trying to obtain information about the pursuer and impersonating the pursuer for the purpose of obtaining such information.

These are steps which the defenders would not usually take in any event as the pursuer is an adult.

[33] The specific orders sought in this case would not interfere with the defenders' Article 8 rights in the same way as those rights would have been interfered with had the orders sought by the pursuers been granted in the *City of Edinburgh Council v S* case.

[34] The sheriff makes reference to the criminal penalties which are available in respect of any breach of section 122 of the 2014 Act at paragraph 80 of her decision in the *City of Edinburgh Council v S* case (*supra*). However, the evidence of PC S had been that, although there are criminal penalties for conduct which is described in said section 122, the criminal law does not have the protective qualities which civil orders made under the 2011 Act would have in respect of the pursuer. The Orders sought in this case include Orders to prevent the defenders trying to ascertain the pursuer's whereabouts; taking the pursuer outside the UK; and impersonating the pursuer to the authorities to try to find out information about the pursuer. These actions themselves would not constitute a criminal offence under section 122 of the 2014 Act.

[35] The Orders sought by the pursuer would make it more difficult for the defenders to find the pursuer. The pursuer had rejected offers of undertakings on the part of each of the remaining defenders. The pursuer seeks the protection of the Orders sought. If granted, any breaches of these Orders would constitute an offence in terms of section 9(1) of the 2011 Act. In terms of section 9(2) of the 2011 Act, a constable may arrest, without warrant, any person the constable reasonably believes is committing or has committed an offence under section 9(1) of the 2011 Act. While any breach of an undertaking could amount to contempt of court, it would not allow a constable to detain or arrest the party in breach of the undertaking. It would not, therefore, provide the protection which would be provided

by the orders sought being granted. The degree of protection sought by the pursuer is necessary to prevent her from being forced into a marriage. The orders sought by the pursuer are necessary to protect the rights and freedoms of the pursuer.

*Submissions for the first named defender*

[36] The submissions for the first named defender were adopted by the second and fourth named defenders.

[37] The first named defender did not accept the pursuer's evidence that she will be forced into a marriage or that any attempt will be made to force the pursuer into a marriage. The first named defender does not accept that any attempts have been made to force the pursuer into a marriage. The Orders sought are not required to secure the health, safety or wellbeing of the pursuer. There is no risk of the pursuer being forced into a marriage and the Orders sought are not proportionate, in all the circumstances.

[38] The parties are in dispute about the motivation behind the first named defender contacting various agencies after the pursuer had been reported as a missing person in December 2014. The actions of the first named defender, thereafter, were those of a concerned and loving parent. In those circumstances, the Orders sought are not proportionate. When considering paragraph 79 of the sheriff's judgment in the *City of Edinburgh Council v S* case, the undertakings offered by the defenders would be more proportionate alternatives which would adequately protect the pursuer.

[39] Another crucial issue to be taken into account is the difference between forced and arranged marriages. It is a matter of agreement that arranged marriage is common in the culture of the first and second named defenders (paragraph 23 of the joint minute of admissions for the parties, number 25 of process). The first and second named defenders

accept that a marriage proposal was submitted to them and that they advised the pursuer of the proposal in the context of a possible arranged marriage. The defenders did not accept in their evidence that they had attempted to force the pursuer into a marriage. The agent for the first named defender invited me to accept the first named defender's evidence as credible and reliable. It had been clear from his evidence that he had made no threats against the pursuer. During cross-examination of Ms P, Social Worker and of PC S, both of those witnesses had accepted that no threats had been made by the first named defender, nor was any suggestion made by them that he had ever acted in an abusive, threatening or intimidating manner. All of his efforts had been due to his concern for the pursuer. The first named defender accepted that there had been a high level of contact between himself and the various agencies, including the police. The level of contact by the first and second named defenders was not in excess of that which would be expected of concerned parents.

[40] It was clear from the chronology of incidents prepared by PC S of the Police Service of Scotland that there had been seven telephone calls to the police service from the first and second named defenders during the period from December 2014 until July 2015. In addition, the first named defender had attended at Q Hospital in Glasgow on 24 December 2014. This visit took place a few days after the pursuer had been reported as a missing person. In the course of his evidence the first named defender had explained his reasons for attending at the hospital. In addition, he had attended at the Police Service of Scotland's premises at Eastgate, London Road, Glasgow. He had also attended at an address in Glasgow (provided by the fourth named defender) where he believed the pursuer to be residing in late September 2015.

[41] The court should accept the evidence of the first named defender that all of the actions which he took in an effort to make contact with or to ascertain the whereabouts of the pursuer had been taken due to his parental concern for the pursuer.

[42] There had been no reference in the social work records in respect of any contact between the first and second named defenders and the Social Work Department of Glasgow City Council. The first documented telephone call from the fourth named defender to said Social Work Department was on 20 August 2015. The evidence of the first named defender was that this telephone call had been made at his request due to the first named defender having received a telephone call from Y University about the proposed disposal of the pursuer's personal possessions which had remained in her student accommodation.

[43] The first defender had not been aware of the suicide note left by the pursuer nor had he been aware of the pursuer's alleged suicide attempt. He only became aware of a number of events and of the pursuer's allegations after receiving service of the summary application in October 2015.

[44] Although the first named defender accepted that he was being told that the pursuer was safe and well and that she did not wish to have any contact with him, the pursuer was an in-patient in a psychiatric hospital for a considerable period of time. Against that background, attempts were made by the first named defender to contact various agencies. His actions should be seen against the background of his last contact with the pursuer having been on 12 December 2014 when the pursuer told him that she thought she was "having a nervous breakdown" like her mother had had previously. The evidence of the first and second named defenders had been that the pursuer was scared when she telephoned them from Glasgow on said date. There was a subsequent text message from the pursuer to the first named defender asking the first named defender to contact the pursuer.

In her evidence, the pursuer said that she could not recall sending the text message. In the joint minute of admissions for the parties (number 25 of process) at paragraph 14, it is a matter of agreement that the said text message “appears to have been sent from the Pursuer’s mobile phone to the First Defender dated 21 December 2014”. Since then the actions of the first named defender have been nothing other than those of a concerned parent. The court required to interpret the defenders’ motivations from their actions and from all of the circumstances.

[45] It was acknowledged that the police would not have the authority to detain or arrest a party alleged to have breached an undertaking given to the court. The agent for the first named defender urged the court to consider the whole context of the case. The first and second named defenders are not resident in the UK. They reside in India. The court should consider the practical effect of the Orders sought being granted. The Orders would only operate if the defenders were in the UK. The police could only exercise their powers of detention or arrest if the first and second named defenders were within the UK.

[46] The undertaking offered by the first named defender which is still on offer would give the pursuer the protection she requires in respect of her attempts to prevent the first named defender from contacting the pursuer.

[47] The agent for the first named defender accepted that the evidence of the first named defender had been that he travels to Europe on a fairly regular basis in respect of his business activities. He has more freedom to travel than the second named defender. Nonetheless, were such an undertaking to be provided by the first named defender and were such an undertaking to be subsequently breached by him, there would be sanctions and implications for him in respect of such a breach.

[48] In respect of the marriage proposal, both the first and second named defenders confirmed that there had been such a proposal and that the proposal had been put to the pursuer. The evidence of the first and second named defenders was that the pursuer had refused the proposal as she did not wish to marry.

[49] Thereafter, the evidence of the first and second named defenders was clear in respect of the subsequent events. They said that the said marriage proposal had been dropped and that there had been no further discussion about the proposal. Their position in respect of same had been consistent throughout cross-examination.

[50] In respect of the pursuer's evidence, the agent for the first named defender submitted that, at points, her evidence appeared rehearsed. At other points, such as when the pursuer was giving evidence about difficult periods in her life, she lacked emotion. The pursuer had given evidence that, when making arrangements for her attempted suicide, she had packed an overnight bag containing clubbing clothes, shampoo and £700 in cash. The agent for the first named defender submitted that these actions were inconsistent with someone intending to commit suicide.

[51] The pursuer gave evidence that she had believed a meeting ceremony would take place in respect of the proposed marriage during the Christmas holiday period in 2014 when she returned to India. The pursuer gave evidence that, if she had not agreed to the proposal, the first and second named defenders would not have allowed her to return to the UK to continue and complete her studies. However, on 3 December 2014, the first named defender had booked a return flight for the pursuer to travel from London Heathrow to Delhi on 31 December 2014, returning from Delhi to London Heathrow on 9 January 2015 (paragraph 9 of the joint minute of admissions for the parties, number 25 of process). The pursuer was due to start her new academic term at Y University on 16 January 2015

(paragraph 10 of said joint minute of admissions). The first named defender had paid the costs of the pursuer's student accommodation, in advance, for the period up to the end of the 2014/2015 academic year.

[52] During her evidence the pursuer had been unable to specify when the proposed marriage would take place. The pursuer had accepted that she had opted for a post-graduate course at Y University and that she had extended her student visa to the end of the academic term in 2016.

[53] The agent for the first named defender invited the court to accept the evidence of the first and second named defenders to the effect that when the pursuer refused the marriage proposal and indicated that she wanted to continue with her studies, the first and second named defenders accepted her decision and told her not to worry about anything and to focus on her studies when she returned to the UK. In respect of the letter from the first and second named defenders to the pursuer dated 11 February 2015, reference is made in that letter to the proposal for the pursuer to get married after her studies had been completed. As at 11 February 2015, the first named defender did not know why the pursuer was acting in the way she was and, in the same letter, the first and second named defenders referred to the pursuer having difficulties with her studies as another possible explanation for her actions.

[54] It was not disputed on the part of the first named defender that the pursuer might have had an apprehension that further marriage proposals might have been discussed with her when she returned to India from the UK. However, the discussion of such proposals was quite different to a case of forced marriage. The pursuer was inviting the court to find that the first and second named defenders had attempted to force the pursuer into a marriage prior to December 2014.

[55] PC S gave evidence that the difficulties which the pursuer had been experiencing prior to her admission to Q Hospital on 12 December 2014 might have been due to factors other than a proposed marriage, such as health issues, housing issues and issues which the pursuer had with her peers. PC S accepted, under cross-examination, that, as a starting point, she had taken at face value the concerns raised by the pursuer in respect of the first and second named defenders. Under cross-examination Dr T accepted that the pursuer had been offered an out-patient follow up appointment following her discharge from Q Hospital in May 2015 but the offer had been declined by the pursuer. Ms P, Social Worker, had been referred to the pursuer's fourth inventory of productions and had confirmed the entry in the social work records that, as at February 2015, the pursuer did not meet the adult support and protection criteria for the purpose of accessing services provided by the local authority.

[56] The agent for the first named defender submitted that, following her discharge from hospital, the pursuer had not been rendered vulnerable and the attempts by the first and second named defenders to obtain information in relation to the pursuer did not, and could not, affect her health, safety and wellbeing.

[57] The agent for the first named defender invited the court to find the evidence of Ms B, the family friend of the first and second named defenders, to be credible and reliable. She had spoken to the pursuer's childhood, describing the pursuer as a happy child and describing the love and affection which the first and second named defenders have for the pursuer. Ms B confirmed that when she last saw the pursuer, before the pursuer travelled to the UK in 2014, the pursuer had been happy.

[58] The interim orders granted by the court in this case had been obtempered by the first named defender from 7 October 2015 to date, a period of some 15 months. The first named defender had made no attempt to contact the pursuer and had not been in contact with the

pursuer. There was now no requirement or necessity for the Orders sought. The first named defender does not know where the pursuer is residing. He accepted, albeit under re-examination, that now he has heard directly from the pursuer about her wishes in the matter he will not contact the pursuer. He had previously obtained information about the pursuer from third party sources which is why he continued to make persistent efforts to contact the pursuer.

[59] The application should be dismissed. No attempt had been made by the first named defender to force the pursuer into a marriage. She would not be forced into a marriage and no Order was required to secure the pursuer's health, safety or wellbeing. It was acknowledged that Dr T had given evidence about the attempts by the first and second named defenders to contact the pursuer during her period of admission at Q Hospital and that these attempts had caused the pursuer upset or distress when she had been advised of same. The agent for the first named defender submitted that there might have been other factors to be taken into consideration when assessing the reaction of the pursuer, such as the issues referred to in the evidence of PC S.

[60] It was acknowledged that a number of questions had had to be put to the first named defender before he agreed that he would make no further attempts to contact the pursuer. The court should take into account that it had only been during the pursuer's evidence that the first named defender had heard directly from his daughter for the first time that she wished no further contact with her parents. Although it would be difficult for the first named defender, and, although he cares for the pursuer very much, he would respect her wishes in that regard and would provide an undertaking to the court in the terms set out in paragraph 29 of the joint of admissions for the parties (number 25 of process).

*Submissions for the second named defender*

[61] As well as aligning herself with the submissions for the first named defender, the agent for the second named defender submitted that the behaviour on the part of the second named defender towards the pursuer as alleged by the pursuer had not been put to the second named defender during cross-examination by the pursuer's agent, with the exception of the pursuer's allegation that the second named defender had shouted at the pursuer in a restaurant.

[62] The evidence which had been given to the court of what the first named defender had said to Mr S could not be relied upon because of the number of times the account of what had been said by the first named defender to Mr S was removed from the original source. In any event, the thrust of the information which was said to have been given to Mr S was that the marriage proposal which had been put to the pursuer in summer 2014 had been dropped.

[63] The pursuer had only suspected that a meeting ceremony had been arranged for the pursuer and the proposed bridegroom. The pursuer had given evidence of an apprehension on her part as to what might happen but it was difficult to work out what had been based in fact and what the pursuer had made up in her head. The pursuer's position had been that all of this goes on; that the proposed bride does not know anything about it; and that the proposed bride is the person who finds out last. There was a flavour of paranoia in some of the pursuer's evidence.

[64] The pursuer might genuinely believe that her parents would drag her back to India if she did not speak to them on the telephone while she was studying abroad but there was no foundation in fact for that belief.

[65] The pursuer had not established that the actions of the defenders had been for the purposes of forcing the pursuer into a marriage. The attempts made by the first and second named defenders, after 12 December 2014, were the actions of any concerned parents who would do all in their powers to contact their child if she were abroad in a strange country and within a psychiatric hospital. During their evidence the first and second named defenders were emotive, showing appropriate levels of emotions. They had been desperate to obtain information about their daughter after she went missing from Y University in December 2014.

[66] Against this background, if the first and second named defenders are to be believed, they love their daughter and were genuinely concerned for her welfare. There was nothing sinister in their attempts to contact their daughter and there was nothing sinister in their enlisting the help of other family members to ascertain her whereabouts. Whatever the court might think of the methods of the fourth named defender, the court could not infer any specific motive from same.

[67] In respect of PC S's evidence, that the pursuer appeared to be scared of the defenders, if the first and second named defenders were to be believed, the pursuer would be scared to face the first and second named defenders and to face the consequences of her actions. Until December 2014 the pursuer had been an otherwise excellent student who had made her parents proud. Within a matter of two weeks of travelling to the UK to study the pursuer had started going out clubbing, drinking alcohol and missing classes. The agent for the second named defender invited the court to find that the pursuer would have been scared to face her parents and that she would have known how worried they would have been.

[68] In respect of Dr T's evidence, all the information which Dr T had was self-reported by the pursuer. Dr T had received no information from the defenders. There were other social stressors for the pursuer and these included failures at university, her relationships with peers and mental health issues. The court did not know the whole extent of same because the pursuer had redacted the social work and police records which had been produced in these proceedings. When the court was being asked to draw a causal link between the alleged behaviour on the part of the first and second named defenders and the pursuer's mental health difficulties, the court should consider that there are other factors which might explain those difficulties. The court had also heard about a family history of mental health issues.

[69] In relation to the marriage proposal which was put to the pursuer in summer 2014, there was a clear distinction between a proposal being put (in the context of arranged marriage) and being forced into a marriage. Even if the court were to conclude that there had been some pressure applied to the pursuer or that there was a degree of expectation on the part of the first and second named defenders in respect of the pursuer entering into a marriage, this did not amount to forcing the pursuer into a marriage or an attempt to force the pursuer into a marriage.

[70] On the basis of the pursuer's evidence she could not be forced into a marriage. She had taken matters into her own hands and had taken action to ensure that no such steps could be taken. Even if the court were to accept all of the evidence of the pursuer this did not amount to an attempt on the part of the first and second named defenders to force the pursuer into marriage. There would have to have been further steps along this line. The pursuer's evidence had been that the second named defender harassed her for three days before the pursuer left India to travel to the UK for her studies. The pursuer was unclear in

her evidence if she had accepted the proposal which had been put to her. The pursuer had made assumptions about what might happen if she had returned to India in December 2014. Even if the court accepted that the second named defender had been upset and unhappy about the pursuer's rejection of the marriage proposal and had been expressing that to the pursuer, although this could fall within the definition of force in section 1(6) (a) of the 2011 Act, without further steps having been taken by the first and second named defenders the court would be in difficulty in concluding that any attempt had been made to force the pursuer into a marriage. There would have been less difficulty if the court had been hearing evidence in, or shortly after, December 2014 when the events recounted by the pursuer had been very recent. The test could not be met for the granting of the Orders sought at this time.

[71] In respect of the Article 8 rights of the first and second named defenders, the proposed Orders would be of indefinite duration. This would not be proportionate. Given the passage of time since the marriage proposal had been put to the pursuer in summer 2014 and the absence of evidence of any further proposal being tabled and the undertaking offered by the second named defender, acceptance of such an undertaking would be a more proportionate response in all the circumstances of this case than the granting of the Orders sought. The court should take into account the legislation which had been passed in the UK in respect of forced marriage and also the legislation which the first and second named defenders had said was applicable in India.

[72] In respect of the issue of whether an Order should be granted or an undertaking accepted, in either case the pursuer would have to contact a solicitor or the police to say the undertaking or the Order was about to be breached. There was no practical difference for the pursuer whether an Order was granted or whether an undertaking was accepted. The

agent for the second named defender did not accept that the actions of the police might not be as swift in respect of an allegation of breach of a court undertaking. The agent for the second named defender submitted that if the police received information that a crime was about to be committed then protective action in respect of the pursuer would be taken. The police had acted to protect the pursuer in this case by relocating her on more than one occasion.

[73] There was no suggestion that the interim Orders granted in this case had ever been breached. The first and second named defenders had given evidence that they respected the interim Orders made by the court. They would, similarly, respect any undertakings which they gave to the court. Those undertakings were still on offer by all of the remaining defenders. In the event of the court deciding not to make the Orders sought by the pursuer all of the defenders were content for the undertakings being offered to be recorded by the court.

[74] The agents for the second named defender submitted that the letter of February 2015 from the defenders to the pursuer was clearly an attempt to find out the reasons as to why the pursuer was in the situation in which she found herself. The first and second named defenders suggested in that letter that the pursuer might be worried about her studies.

[75] In respect of Dr T's evidence about the pursuer's reaction on being told that the defenders were looking for her, it was not surprising in the least that the pursuer would be fearful to face the defenders.

[76] The first named defender's position, that he still wants to speak to his daughter, is understandable. It must be horrendous not to be able to see one's child again without the opportunity to discuss the reasons for same, particularly if these are based on a misunderstanding.

[77] Both the first and second named defenders displayed genuine emotion in the course of their evidence when speaking about their daughter, the pursuer. Their evidence had been bolstered by that of Ms B who appeared to be a very straightforward witness.

[78] In respect of whether the Orders sought by the pursuer were necessary to secure the health, safety and wellbeing of the pursuer, the defenders had been told, by various third party agencies, that the pursuer has been safe and well since December 2014.

[79] The pursuer would have had a much stronger case if she had raised proceedings when she first came to the UK in September 2014 or even after she travelled to Glasgow in December 2014. The pursuer had only raised proceedings after her asylum application was rejected in the summer of 2015. The pursuer may have exaggerated what happened at home in India with a view to bolstering her efforts to remain in the UK.

[80] There had been a surprising lack of emotion from the pursuer in respect of what were highly emotive matters. There had been no hint of fear from the pursuer, despite her knowing that her parents were sitting only a few feet away, behind the screens. The agent for the second named defender described as bizarre the pursuer's explanation that she had telephoned her parents from Glasgow on 12 December 2014 and had expected an apology from them and that she had ended the telephone call when no such apology had been given. The pursuer had sounded confused and upset at the time which would be consistent with her alleged mental health issues around that time.

[81] In respect of any risk of the pursuer being forced into marriage at this time, this was unlikely, particularly in view of the pursuer's inability to complete her university degree. The pursuer had given evidence that you could not "really get married without a university degree" in her culture.

*Submissions for the fourth named defender*

[82] The agent for the fourth named defender endorsed and supported the submissions made on behalf of the first and second named defenders. There had been little evidence of any conspiracy to force the pursuer into a marriage. There had been discussion in respect of a possible arranged marriage but the matter went no further than that. Everything else that had been alleged by the pursuer arose from her state of mind.

[83] The fourth named defender had been contacted by relatives and had been asked for her assistance in respect of the communication received from Y University relative to the pursuer's belongings which had been left in her student accommodation. The first and second named defenders had spoken to the fourth named defender. The evidence of the fourth named defender as to why she had become involved at that time should be accepted. She had made a number of efforts to trace the pursuer's whereabouts and to make contact with the pursuer.

[84] The fourth named defender had been successful in obtaining an address from the authorities for the pursuer and had attended at that address with the first named defender in an effort to try to trace the pursuer but without success.

[85] The fourth named defender had left her name and contact telephone number with various authorities with whom she made contact. She had made no attempt to conspire with anyone or to carry out her enquiries in an underhand way. Perhaps she could be criticised for being "a pest" by continuing to make enquiries, despite being told that no information would be given. She did not think she had been doing anything illegal. She had only been assisting the pursuer's parents who thought they did not have all the necessary information about the pursuer's health, safety and wellbeing.

[86] The fourth named defender had repeatedly offered an undertaking in the terms set out in the joint minute. She was a professional person who lived in England. She had obtempered the terms of the interim order granted in this case. She would make no future efforts to contact the pursuer in terms of the undertaking offered.

[87] The case against the fourth named defender hinged on whether there had been an attempt to force the pursuer into marriage and on whether there had been any conspiracy relative thereto in which the fourth named defender had been involved. Even if the court were to find that there had been an attempt to force the pursuer into a marriage the court could still find that there was an innocent explanation in respect of the fourth named defender's involvement in this matter, based on her evidence. The fourth named defender gave evidence that she had been given no information in respect of marriage proposals. She had only attempted to assist the first and second named defenders in making contact with their daughter. She had only attempted to obtain information for the first and second named defenders.

[88] The fourth named defender had not fully understood the data protection issues to which reference was made in her evidence.

[89] The action should be dismissed *quoad* the fourth named defender.

### **Pursuer's response**

[90] In respect of the submission that the first and second named defenders reside in India rather than in the UK so there are limited actions which they could take, the first named defender had said in his evidence that he travels extensively for business purposes, including to European destinations. The 2011 Act allows the court to make orders in relation to conduct outwith (as well as, or instead of, conduct within) Scotland. The Orders

sought would also require the first and second named defenders to refrain from enlisting the help of other people for the purpose of forcing the pursuer into a marriage. In the event of such Orders being granted and in the event of such Orders being breached outwith the United Kingdom, police forces within the UK would have power to detain the first and second named defenders upon their entry to the UK if it were to be alleged that they had breached any such Orders. This would have more force than any undertaking offered by the defenders.

[91] In respect of the existence of a marriage proposal, the pursuer's agent referred to paragraph 82 of the *City of Edinburgh Council v S* case, *supra*. There did not require to be an actual marriage planned in order to conclude that the application should be granted.

Otherwise, the purpose of the legislation would be thwarted. There had been a specific marriage proposal in this case. It was unlikely that said proposal remained on the table. Nonetheless, if the court accepted the pursuer's evidence in respect of what the first and second named defenders had tried to do in respect of that proposal, the Orders sought would be required for the pursuer's protection. It was likely that further proposals would be put to the pursuer in future and that there would be further attempts to force her into a marriage.

[92] In respect of the pursuer's lack of emotion while giving her evidence, it was not unheard of for those affected by abuse not to show emotion but to appear detached and to detach themselves when being asked to describe what was a difficult background to the case.

[93] In respect of the contents of the bag packed by the pursuer prior to her departure from Y, her mind might not have been as logical as it might otherwise have been when she was packing her bag for the purpose of leaving Y to travel north to commit suicide.