Neutral Citation Number: [2015] EWHC 3651 (Fam)

Case numbers omitted

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Civil and Family Justice Centre
Vernon Street
Liverpool

Date: 16 December 2015

Before :

SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

- -

In the matter of X (Children) (No 3)

- -
- -

Mr Simon J G Crabtree (instructed by the local authority) for local authority A
Mr Karl Rowley QC (instructed by Stephensons Solicitors LLP) for MX (mother of X1, X2. X3, X4)
Miss Ayeisha Khandia (of Fountain Solicitors) for FX (father of X1, X2, X3, X4)
Miss Linda Sweeney (instructed by AFG Law) for GX (the children's guardian of X1, X2, X3, X4)

Hearing dates: 20-23 October 2015

- -

Approved Judgment

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

.....

SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

This judgment was handed down in open court

Sir James Munby, President of the Family Division :

1. This is the judgment following a finding of fact hearing in a case in which I have already given two judgments, the first on 30 July 2015 and the second on 4 August 2015: *Re X (Children), Re Y (Children)* [2015] EWHC 2265 (Fam); *Re X (Children), Re Y (Children) (No 2)* [2015] EWHC 2358 (Fam).

Background

2. I set out the background and the history of the litigation down to that point in my first judgment: *Re X (Children), Re Y (Children)* [2015] EWHC 2265 (Fam), paras 2-17. I need not set it all out again and take my earlier judgment as read.

3. For present purposes I need only quote what I said in that judgment (para 2):

> "This case involves four children: X1, a boy born in July 2002, X2, a girl born in September 2008, X3, a girl born in August 2010, and X4 a boy born in March 2012. I shall refer to their parents, who are now separated, as MX (the mother) and FX (the father)."

I went on (para 3):

> "On 2 March 2015, the mother and the four children, together with the maternal uncle and maternal grandmother, were detained at an airport in this country as they were about to board a flight to Turkey. The three adults were arrested by the police (they have since been released)."

4. On 6 March 2015 the local authority (which I have referred to as local authority A) applied for, and was granted, emergency protection orders in relation to all four children. The children were placed with foster carers, together, where they remained until I returned them to their mother's care in August 2015: *Re X (Children), Re Y (Children) (No 2)* [2015] EWHC 2358 (Fam). In relation to those hearings, the local authority explicitly disavowed any reliance on a risk of radicalisation for the purposes of determining the interim placement of the children.

Threshold

5. The local authority's initial threshold statement dated 11 March 2015 listed a variety of concerns. In due course, and in accordance with orders made by Peter Jackson J, its case was set out in a Scott Schedule, which I summarised as follows in my first judgment (para 10):

> "The Scott Schedule was set out in 72 numbered paragraphs. Many of these contained what was described as an "agreed context". Paragraphs 13-24, 27, 29, 31-33, 35-45, 48, 51-59, 61, 63-65, 67, 69 and 71-72 contained the findings sought by the local authority which were disputed. The core allegations, set out in paragraphs 53-55, 65, were that MX had no intention of staying in Turkey; that she intended to travel from Istanbul

> to the Turkish border with Syria with the children; that once she had crossed the border into Syria she intended to join up with ISIS militants and to supply them with items of use to the group's combative activities; and that her sole purpose and intention was to take up arms with ISIS militants and/or live for the foreseeable future in the Islamic caliphate ISIS claims to have established in the region. It was said (paragraphs 57-58) that, in essence, MX's plan was to take the children to a war zone, and that she knowingly and intended to place the children at risk of significant harm. It was further alleged (paragraph 69) that "The mother is a radical fundamentalist with links and contacts with ISIS militants and those who seek to recruit others to their cause.""

6. The final version of the Scott Schedule is dated 17 October 2015. Expanded in response to the mother's revised case (see paragraph 10 below) it now runs to 80 numbered paragraphs.

The mother's case

7. An order made by Peter Jackson J on 22 April 2015 recorded the mother's position as follows:

> "The mother disputes that the threshold criteria is crossed. She says that she was intending to travel to Turkey with the children for the purposes of a legitimate family holiday. She says that although she understands why the Local Authority has intervened, her wish is for the children to be returned to her care as quickly as possible or for them to be placed with a member of their family. Once the children have settled in their current placement, she would also like to have increased contact with them so that this takes place more than twice per week."

8. The mother disputed the local authority's case as set out in the original Scott Schedule. Her position, as encapsulated in her response to the local authority's allegation in paragraph 69 (paragraph 78 in the final Scott Schedule), was that "I am a practising Muslim. I do not regard myself as a radical fundamentalist and have no links or contacts with ISIS militants."

9. The finding of fact hearing was at that stage listed to start before me on 29 June 2015. Shortly before, the mother's counsel, Mr Karl Rowley QC, circulated a position statement on her behalf. This set out her position in relation to the findings sought by the local authority as being that:

> "she does not seek to oppose the making of a finding that she was intending to attempt to enter Syria and live in territory governed by the Islamic State. That is not to say that she accepts the truth of the allegations but she does not wish to resist the making of findings on the balance of probability. In these circumstances she does not require cross examination of

> the local authority witnesses and does not wish to give evidence herself."

10. That radical shift in her position gave rise to a certain amount of discussion in court when the hearing began on 29 June 2015. It was left that she would prepare and file a statement. The statement was circulated the next day, 30 June 2015. It represented another radical shift in her position. She acknowledged that she had not been fully open with the court and professionals. Her case now, in short, was (judgment, para 13) that:

> "she had travelled to Turkey to meet up again with, and possibly marry, a man" – I shall refer to him as H – "she had met in this country collecting money for Syrian refugees and whom she understood to be a doctor in Turkey. She denied any intention of travelling to Syria and said "I do not agree with or support or favour anything ISIS do … and have no wish to be involved with ISIS in any way.""

11. That remains her stance.

The local authority's case

12. As I have mentioned, the final version of the Scott Schedule is dated 17 October 2015 and now runs to 80 numbered paragraphs. Much of this sets out the "agreed context". Paragraphs 13, 16-20, 22, 24-27, 32, 34b, 36-37, 39-44, 46-48, 51-53, 55, 57-76 and 78-80 contained the findings sought by the local authority which were disputed by the mother. In his final submissions, Mr Simon Crabtree on behalf of the local authority made clear that it no longer sought findings in relation to paragraphs 13-18.

13. The local authority's case has seven strands, which can be summarised as follows. In support of its overarching case, the local authority relies upon what it asserts were:

    i) The mother's acquaintanceship with various individuals who, it is alleged, had travelled via Turkey to Syria in 2014 to take up arms with ISIS militants (paragraphs 19-27).

    ii) Lies the mother told the children's schools on 27 February 2015 about the reasons for their forthcoming absence from school (paragraphs 28-33).

    iii) The fact that when stopped at the airport on 2 March 2015 the mother gave a false address (paragraphs 36-37).

    iv) The fact that the family's luggage, when searched at the airport, was found to contain a number of suspect items (paragraphs 39-48); as it is put (paragraph 39), "a large number of items[1] not normally associated with any family

[1] Including, it is alleged, 9 battery powered or other powered torches, 4 hand-wound torches, 3 solar charger units or power-packs, 4 emergency blankets, 3 new and 2 used rucksacks, 5 mobile phones in excess of the 3 mobile phones chargers carried by the group as a whole, unused computer equipment comprising 6 machines (including 3 identical Samsung devices) and 5 chargers, 3 unused sim cards, 5 Multi-tools devices and power converters etc, what is described as "a large quantity of substantially if not entirely new size 'large' and 'extra-large' outdoor clothing including coats, waterproof bottoms, breathable t-shirts, gloves and so on",

holiday."[2] It is asserted (paragraph 48) that "There is a striking similarity between the items contained in the … luggage and a list of items a known ISIS operative asked a British recruit to bring to Syria with him (and in connection with the same the said recruit was found guilty of possessing items of use to terrorists)."

v) The fact that, when her house was searched, the items found included (paragraphs 76-77) "ISIS flags" and 'to do' lists, written by the mother, "which indicated that the writer of the list was moving and not intending to return."

vi) The fact that the mother lied to the police when being asked the purpose of their trip (paragraphs 49-55). She described (paragraph 51) "a multi-faceted trip involving a combination of an adventure holiday, culture, sight-seeing and relaxation."[3]

vii) The fact that the mother's most recent account, as I have summarised it in paragraph 10 above, is a lie (paragraphs 56-65).

14. This last part of the local authority's case is further elaborated as follows:

i) It is said that she met no man in the circumstances she described or at all (paragraph 62). She has (paragraph 63) "manifestly failed to provide any tangible evidence as to his existence and cannot even produce a photograph of him, any contact details or even one of the electronic communications which she claims passed between them." Furthermore (paragraph 64), "In so far as that man is not a point of contact she had in Turkey for another reason, he is a figment of her imagination."

ii) As a separate point, it is said (paragraph 59) that, if her account was true, "it would reveal a mother who was unable to place her children's needs before her own and that she was prepared to sacrifice her children's stability, all they knew and their relationship with their father so that she could fulfil her own desire for a relationship with a man she hardly knew." Furthermore (paragraph 60), if it was true "the extent of her intended folly is revealed by the fact that this man has literally disappeared without trace and left the mother unsupported at a time she needed it most."

---

what is described as "a large amount of medication and panty-liners and tampons", and "telephone numbers, e-mail addresses and passwords … found on pieces of paper secreted in the children's underwear in one of the suitcases."

[2] It is further said (paragraph 42) that "By contrast, the luggage did not contain outdoor clothing of a sort which might have been associated with an adventure or camping holiday for (amongst others) 4 children", (paragraph 43) that "Although there was a large quantity of large and extra-large outdoor clothing there was bar one piece, an absence of such clothing in sizes that would fit any of the children and in particular, X1", and (paragraph 44) that "Those and most of the other supposedly camping equipment was or appears to be completely new."

[3] It is said (paragraph 52b) that this was "a lie which the mother maintained from February until the end of June 2015" and (paragraph 55) that in the light of the events as I have described them in paragraphs 9-10 above, "It inevitably follows that for several months she lied to the police, to the local authority, to the children's guardian, to the court and to FX in what she claimed was true."

iii) It is alleged (paragraph 65) that "She has in essence, weaved this account around the notes secreted in the children's underwear to try to explain away the manifest inherent improbabilities in her first version of events at the eleventh hour and in the face of a growing realisation that no Judge would on the totality of the evidence believe that first account."

15. The local authority's case is summarised as follows (paragraphs 66-74):

> "The reality is, the mother, her own mother and her brother had no intentions of remaining in Turkey.
>
> They intended to travel with the children from Istanbul to the Turkish border with Syria.
>
> Once they crossed the border into Syria, they intended to join up with ISIS militants and to supply them with items of use to the group's combative activities.
>
> In all probability, they also intended to meet up with those … who had already travelled … to Syria via Turkey.
>
> In essence, the mother's plan was to take these children to a war zone.
>
> As such, she knowingly and intended to place the children at risk of significant harm.
>
> The sole purpose and intention was … to cross the border into Syria and take up arms with ISIS militants and/or live in the Islamic caliphate ISIS claims to have established in the region for the foreseeable future.
>
> [Neither] she nor [her brother] had any intention of returning to [her house].
>
> That is why she suddenly found the money to buy the above electronic equipment which with one exception she financed on credit in February 2015 and why [her brother] paid for the trip using a £12,000.00 loan."

16. In conclusion, the local authority asserts (paragraphs 78-80) that:

> "In short, the mother is a radical fundamentalist with links and contacts with ISIS militants and those who seek to recruit others to their cause.
>
> Although she is arguably entitled to have whatever view she chooses, she is not however entitled to place her children at risk of significant harm or even death in furtherance of such a cause.

> In furtherance of her aims and objectives, [she] is and was prepared so to do and to lie with impunity to conceal her real intentions and motives."

The hearing

17. The finding of fact hearing began on 20 October 2015. As I have mentioned, the local authority was represented by Mr Simon Crabtree and the mother by Mr Karl Rowley QC. The father was represented by Miss Ayeisha Khandia and the children's guardian by Miss Linda Sweeney.

18. I heard oral evidence from (in this order) five police officers, DS AH, DC IW, DS SH, DC DR and DI CC, and then the mother. I watched DVD recordings the mother said she had made of the contents of her luggage after it had been returned to her by the police. The hearing concluded on 23 October 2015. I reserved judgment.

19. On 30 November 2015 I sent the following communication to the parties:

> "Work on the judgment has progressed to the point where I can, and therefore should, communicate my decision to the parties.
>
> The local authority has NOT persuaded me of the central core of its case against the mother. Specifically, and focusing for the time being only on the following paragraphs in the local authority's Amended Schedule of Disputed Findings, I do NOT make any of the findings as sought in paragraphs 66-73, 78 and 80.
>
> The parties will obviously need to consider the implications of my decision."

The law

20. There is no doubt or dispute about the law. The principles are conveniently set out in the judgment of Baker J in *Re L and M (Children)* [2013] EWHC 1569 (Fam), to which I was taken. So far as material for present purposes what Baker J said (and I respectfully agree) was this:

> "First, the burden of proof lies at all times with the local authority.
>
> Secondly, the standard of proof is the balance of probabilities.
>
> Third, findings of fact in these cases must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation …
>
> Fourthly, when considering cases of suspected child abuse the court must take into account all the evidence and furthermore consider each piece of evidence in the context of all the other evidence. The court invariably surveys a wide canvas. A judge

> in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof.
>
> Fifthly, … Whilst appropriate attention must be paid to the opinion of … experts, those opinions need to be considered in the context of all the other evidence. It is important to remember that the roles of the court and the expert are distinct and it is the court that is in the position to weigh up the expert evidence against its findings on the other evidence. It is the judge who makes the final decision.
>
> Sixth, … The court must be careful to ensure that each expert keeps within the bounds of their own expertise and defers, where appropriate, to the expertise of others.
>
> Seventh, the evidence of the parents and any other carers is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability.
>
> Eighth, it is common for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress, and the fact that a witness has lied about some matters does not mean that he or she has lied about everything (see *R v Lucas* [1981] QB 720)."

In the present case, this last point is of particular importance.

21. To this admirable summary I add three further points.

22. First, that the legal concept of proof on a balance of probabilities "must be applied with common sense", as Lord Brandon of Oakbrook said in *The Popi M, Rhesa Shipping Co SA v Edmunds, Rhesa Shipping Co SA v Fenton Insurance Co Ltd* [1985] 1 WLR 948, 956.

23. Secondly, that the court can have regard to the inherent probabilities: see Lady Hale in *In re B (Children) (Care Proceedings: Standard of Proof) (CAFCASS intervening)* [2008] UKHL 35, [2009] 1 AC 11, para 31. But this does *not* affect the legal standard of proof, as Lord Hoffmann emphasised in the same case (para 15):

> "There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities. If a child alleges sexual abuse by a parent, it is common sense to start with the assumption that most parents do not abuse their children. But this assumption

> may be swiftly dispelled by other compelling evidence of the relationship between parent and child or parent and other children. It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to have occurred. In many cases, the other evidence will show that it was all too likely."

24. Thirdly, that the fact, if fact it be, that the respondent (here, the mother) fails to prove on a balance of probabilities an affirmative case that she has chosen to set up by way of defence, does *not* of itself establish the local authority's case. As His Honour Judge Clifford Bellamy recently said in *Re FM (A Child: fractures: bone density)* [2015] EWFC B26, para 122, and I respectfully agree:

> "It is the local authority that seeks a finding that FM's injuries are non-accidental. It is for the local authority to prove its case. It is not for the mother to disprove it. In particular it is not for the mother to disprove it by proving how the injuries were in fact sustained. Neither is it for the court to determine how the injuries were sustained. The court's task is to determine whether the local authority has proved its case on the balance of probability. Where, as here, there is a degree of medical uncertainty and credible evidence of a possible alternative explanation to that contended for by the local authority, the question for the court is not 'has that possible alternative explanation been proved' but rather it should ask itself, 'in the light of that possible alternative explanation can the court be satisfied that the local authority has proved its case on the simple balance of probability'."

The issue and the forensic context in that case differ from what confront me in the present case, but the point identified by Judge Bellamy is quite general, as exemplified, for example, by what Lord Brandon said in *The Popi M*, 951:

> "… the burden of proving, on a balance of probabilities, that the ship was lost by perils of the sea, is and remains throughout on the shipowners. Although it is open to underwriters to suggest and seek to prove some other cause of loss, against which the ship was not insured, there is no obligation on them to do so. Moreover, if they chose to do so, there is no obligation on them to prove, even on a balance of probabilities, the truth of their alternative case."

Submissions on behalf of the local authority

25. At the outset, Mr Crabtree raises the fundamental question of the mother's credibility, reminding me that, having been given the clearest possible warning about the consequences of not telling the truth, she insisted that she was now being "completely open, honest and frank".

26. Mr Crabtree poses this question: "Whether there is a man who according to the mother is or goes by the name H and if so, did the mother intend to meet with him in

Turkey and if so to do or achieve precisely what?" He poses a further question: "What then is more probable? Was he a possible future husband whom she might marry (then or in the future) or was he (in essence) a facilitator who would potentially bring to fruition a much darker side to this 'family holiday'?"

27. Mr Crabtree correctly observes that, save for one vital piece of paper, the court has little to go on save for the mother's word to suggest that H is anything but a figment of her imagination. However, he submits that it is precisely because of this piece of paper that I can be satisfied that someone whom the mother knew or referred to (or chose to refer to) as "H" probably existed. She did not dispute that it was she who wrote down contact details for "H" by way of a Turkish telephone number and a Kik address or addresses (together with an address which she would use to contact him or someone who could make contact with him). Mr Crabtree submits that the only logical reason why the mother would write down those details was because she needed the information. On that basis, he submits, that, on a balance of probabilities, (a) there is a person who according to the mother is or goes by the name H and (b) that this person lives or has lived or has connections with Turkey. Why else, he asks rhetorically, would a Turkish telephone number be associated with that person?

28. To this extent, Mr Crabtree says, the cases of the mother and of the local authority converge. However, he submits, this marks the boundary at which the mother's case wanders off into what he calls a flight of fantasy. He submits that, if the mother did meet H, as she probably did, I can safely find that this was *not* in the circumstances she has described.

29. Mr Crabtree's submissions in support of that proposition have a number of strands.

30. First, he summarises the mother's case that she had only one telephone number for H, which he had given her when they were speaking in the street on the occasion when they first met. But if this is so, he asks, why did she need to scribble the number down subsequently on a piece of paper (a written document which is securely dated some two months later) and when, on her evidence, they had already been communicating electronically for some time by that stage? Alternatively, if her explanation is that it was scribbled down the night before she travelled, when she first unpacked and charged her new Samsung phone, why was it on this piece of paper rather than one of the others? (Mr Crabtree also analyses what he says is the improbability of the mother's explanations for how and why all this information came to be written down as it was, rather than being loaded on to the new phone, and as to how and why it came to be put in the suitcase. I need not rehearse his arguments but I have them very well in mind.)

31. Next he analyses the mother's evidence that: "After exchanging numbers I bought a 'pay as you go' Lyca sim card to contact him." He submits that, if there was some exchange of numbers she must have had some record of H's number elsewhere which she could have referred to at a later stage when she called him using the Lyca Sim card and, equally, H must have had a second number for her. Hence, the alleged loss of the Lyca sim card was not fatal to future attempts by them to contact each other.

32. Mr Crabtree also submits to critical analysis the mother's explanation for the loss of the Lyca sim card number, namely that she left it at home after she discovered it did

not fit into her new Samsung telephone the night before she was due to travel but that when she returned home it was not there. As he points out, the only intervening events were the police search and access to the property by people known to her. He suggests that if it really was there, it is strange that the police did not find it, given it was precisely the sort of thing they were interested in. Had it been left in an obvious place, he submits that it is pretty inconceivable that they would not find it. Alternatively, if it had been secreted away, although it is possible the police may have missed it, the mother would have been able to find it when she returned. If someone close to the mother had decided to remove it, it is, he says, unlikely that they would not have either returned it or spoken to her about it following her release. He adds that the sim card was clearly important to her, for it was the only means (supposedly) by which H could contact her. Why, then, not take the original telephone with her in which it did work?

33. In relation to this, Mr Crabtree questions the mother's account of a broken iPhone which was replaced with a Nokia before she upgraded to the Samsung and which has subsequently disappeared. He submits that, wherever the truth lies as to some Nokia device, the simple fact is that, just like the Lyca sim card disappeared, so too did the iPhone on which all those electronic messages to H would have been backed up. He also points to the curious fact, clearly established in evidence, that the iPhone was last used, in another town, the day after the mother's arrest but has not been used since. He submits that this is all consistent with the sim card and iPhone having been 'made' to vanish rather than the one vanishing and the other mysteriously finding its way to another town without the intervention of the mother's family or friends.

34. Secondly, Mr Crabtree submits that it is inherently improbable that H was, as the mother asserts, a potential suitor. According to her, this was no more than a five minute meeting on a street with a man collecting money for Syrian refugees. Such a brief meeting, he suggests, was exceedingly unlikely to lead on to a discussion about their marital statuses and his career and background, and a mutual exchange of telephone numbers. It was, moreover, he says, alien and at odds with the modest approach the mother claims to have adopted towards contacting H since she supposedly abandoned or, as she would have it, was wrongly forced to abandon her ambitions to marry him.

35. Thirdly, though it is the mother's case that between October 2014 and February 2015 they communicated regularly and that she, "wanted to get to know H more", this produced nothing tangible which goes to establish his existence. Mr Crabtree points in this respect to the dearth of information about H she was able to supply in answer to the questions posed to her both by the local authority and by the police.

36. The mother's case, that she was frightened and scared when arrested and, rather than simply tell the truth, calculated what it was best to say and best to avoid saying, because she did not wish to have others wrongly dragged into the police's concerns, makes no sense, he says. Those closest to her had already been dragged into it.

37. The mother's attempt to explain her reticence to the police as being driven by DS SH's hostility to her is unconvincing, given the comparatively few dealings he had with her before she was handed over to other officers and the conclusions which, Mr Crabtree says, I can properly draw about DS SH from having seen and heard him give

evidence. He submits that what the mother suggests, both on this and on other points (her denial that she gave a false address in an attempt to mislead the police as to where she lived – a finding which Mr Crabtree invites me to make – and her suggestion that the otherwise unexplained Air France ticket had somehow been planted in her luggage) is out of kilter with the evidence and the demeanour of both DS SH and DI CC and the other officers and reveals a good deal more about her and her disparaging attitude towards the police than anything else. And in any event, as Mr Crabtree points out, none of what the mother says about the police, can begin to explain her subsequent failure to give a supposedly full, open and honest account to the local authority, to the guardian and to the court.

38. Fourthly, Mr Crabtree says, it is a very striking fact that although, on her own account, the mother had told her mother and brother about her possible marriage plans, not one of them mentioned this to the police when questioned, while being kept incommunicado, though all three mentioned a holiday involving outdoor pursuits.

39. Fifthly, Mr Crabtree says, the mother's failure to mention anything about H is even more surprising given that she must have realised as long ago as May 2015, as she eventually admitted, that he had information which could resolve this sad state of affairs which had led to her children – her world – being removed from her.

40. Sixthly, Mr Crabtree says that, equally revealing, is the fact that, according to the mother, the man who had asked her to be his wife and whom she had agreed to at least explore the issue with further, with a visit following months of electronic communication, did nothing to ascertain her whereabouts or safety when unexpectedly and without notice she failed to arrive in Turkey as they had discussed and agreed. Whatever the mother's explanations, based on an allegedly missing sim card, there were surely, says Mr Crabtree, other ways in which he could have contacted her (for example, via the contacts he must have had in this country to be supposedly collecting on the street, via extended family networks or social media or by coming to this country and visiting her).

41. Finally, he submits, it is no answer for the mother to say she never contacted H as no-one asked her to. The suggestion, Mr Crabtree says, is with respect nonsense, given what she says she knew about the importance of making contact with him – she eventually admitted that she realised the importance of this back in May 2015 –, what she says her brother supposedly did and what any reasonable parent would have done in her situation.

42. As a separate point, Mr Crabtree asks rhetorically why the mother should have asked her brother to contact H and what exactly he was being asked to do for her. He also raises an intriguing question as to how her brother, having telephoned this Turkish number, could know that the automated message told him the number was no longer in use, when there is no suggestion that he speaks Turkish.

43. Mr Crabtree makes clear that the local authority's primary case is that there never was any attempt by the mother or her brother to contact H. He points out that the first time anyone heard the assertion that her brother had tried to telephone H was when the mother was in the witness box and, indeed, several minutes into cross-examination. She had had every opportunity to make this part of her case clear long before. Why

did she not do? Because, he submits, it was a lie told out of desperation, when the obvious defect in her account was put to her, to plug a gap in a story which was at that point on the brink of total collapse.

44. Mr Crabtree accordingly submits that:

i) Neither the mother, nor her brother nor H did any of the things the mother asserts. Her story about how she and H met and what was intended is simply false.

ii) I can and ought to find that, although the mother knows someone called H who has at least some Turkish contact details (a) he is not the person she has said and has described as being H, (b) they were not in some long distance relationship as she claims, and (c) he was simply a contact she had in Turkey and with whom she intended to make contact when she arrived there.

iii) As such, the fundamental foundation on which the mother's case is built has collapsed.

iv) The mother is now in a bind, because it is, he says, not now open to her to revert to her first account of a simple holiday, for that would be the equivalent of her saying, 'When I told you I lied, I lied because what I said was a lie is actually the truth.'

45. Mr Crabtree next moves to consider the implications of this for the other matters the local authority seeks to rely upon.

46. First, the equipment found in the luggage. Mr Crabtree submits that the only potentially legitimate reason the mother advanced for having a number of items in her luggage – expensive solar chargers, an array of torches, a survival bag, an emergency blanket, two of the three rucksacks, multi-tools, the larger of the two first aid kits and so forth – was that H had asked her to bring them for his charitable works. But that falls away if her story as to her relationship with H falls away, as, he says, it has. Thus, Mr Crabtree submits, the inevitable conclusion to be drawn is that the mother had those items for some other reason which has not been prepared to share and which, he further submits, fits 'tradecraft' as described by the police officers in their evidence.

47. Having got thus far in his analysis, Mr Crabtree submits that all this sets the scene for how I should evaluate and view each of the following:

i) The numerous electronic devices with chargers, either new or wiped clean proximate to the trip, and the substantial amount of new outdoor clothing in size large and extra-large, found in the luggage. Mr Crabtree submits that this fits the 'tradecraft' pattern. He points out that much of this was purchased on credit which was not repayable until long after the trip had commenced and draws attention to the absence of suitable clothing of that nature for X1 (if they were both intending to participate in adventure sports and the like, he needed but did not have what his uncle needed and had).

ii) The pieces of paper with notes of numbers, Kik, WhatsApp and email log on and password details. This again, he says, follows known 'tradecraft' and guidance issued in the e-book, *Hijrah to the Islamic State*, and comes against a backdrop of implausible explanations from the mother as to how and why she had these.

iii) The false address the mother provided when first asked for her details by DS SH.

iv) The false notes containing her reasons why the older children would not be at school in those crucial three days on 2, 3 and 4 March. Those notes also set the scene of the mother fabricating – as she admits – stories to conceal her true intentions. Mr Crabtree adds that there is simply no logic in the mother's explanation that this was a story to avoid a fine for taking her children out of school in term time for the purpose of a holiday, given she says she intended to tell all when they returned. If anything, she says, what she supposedly says she planned to do would (if true) make things worse not better.

v) X2's disclosure to her foster carer that she was going to a secret place before she whispered Syria. Mr Crabtree says this sets the scene in which I can and ought to view X1's intervention at this point and X2's distress immediately following his intervention.

vi) The vast array of medication. On the one hand, Mr Crabtree says, the mother was described by herself and her mother as extremely unwell and dependent on medication but there are, he says, clear discrepancies between what the mother now says about her health and what she had previously said in response to the threshold document and the subsequent Scott Schedule.

vii) The mother's claim that one of the large new rucksacks was for her. How, Mr Crabtree asks, was she going to carry that on her back with such an array of problems which meant pain radiated through her entire body to the extent that she was part dependent on X1 to wake her and the father to take the children to school at times?

viii) The creation of the DVDs. Mr Crabtree accepts that they may be genuine but says that the local authority knows not, given they cannot be authenticated. The mother attempts to do so but, he submits, she has no credibility. The grandmother might do so but the mother has not called her to give evidence (just as she has not called her brother on the supposed phone calls to Turkey).

ix) The presence of items for which there is no cogent explanation in suitcases packed by the mother, who told the court she was conscious of weight restrictions, yet the absence of even the most basic of equipment connected with rock climbing.

x) The flags and other things found when the mother's home was searched – though he submits that, in reality, the local authority's case can be and is made out without reference to them.

48. Finally, Mr Crabtree submits, all this is the prism through which I can view the disappearance of the mother's other relatives and associates. And that helps considerably, he says, to explain why there was a wedding dress or some item of clothing in the mother's luggage which could double up as a wedding dress, given the engagement of a cousin now believed to be in Syria and her brother in relation to whom, he submits, there is ample evidence he was on his way to Syria. Therefore, Mr Crabtree says, the local authority continues to seek the findings in this respect set out in paragraphs 19, 20, 22 and 24-27 of the Scott Schedule.

49. For all these reasons, and against this background, Mr Crabtree submits that I can and ought to make the findings set out in paragraphs 63 and 65-74 of the Scott Schedule. Given all that, and the mother's supposed acceptance of what life is like in ISIS territory, he invites me to find that the threshold is crossed as set out in paragraphs 78-80 of the Scott Schedule. Because of the mother's intentions, he submits, it is reasonable to conclude that she has and follows some radical ideology and that, in furtherance of her aims and objectives, she was prepared to place her children in harm's way and expose them to a risk of death, lying with impunity to conceal her real intentions and motives.

Submissions on behalf of the mother

50. Mr Rowley submits, correctly, that it is for the local authority to prove its case; it is not for the mother to prove that she was not intending to travel to Syria or to establish some other explanation for what she was doing.

51. In assessing the inherent probabilities of the mother having acted as the local authority asserts, and in evaluating her evidence, Mr Rowley draws attention to a number of important factors.

52. First, he asks rhetorically whether this is a mother who would expose her children to the risk of harm which relocation to Syria might represent. He submits that her obvious love for them, demonstrated, he says, in her evidence, cannot be doubted. The evidence, he says, supports the view that her relationship with the father was abusive, that she fled and sought advice from the police and the health visitor, and that what he calls her extrication of them from the toxic atmosphere of her relationship with the father was an act of protecting them. Mr Rowley has to accept, of course, that her love for her children and her instinct to protect them does not eliminate the possibility that she would move them to a war zone. But it does, he submits, substantially reduce the likelihood of that.

53. Secondly, he points to the absence of any evidence that the mother is a radical Islamist. On the contrary, he submits, the evidence points in the opposite direction. As he puts it, though she is observant, dressing modestly and regarding Islam as the mainspring of her and the children's lives, the mother does not evince an extremist interpretation of her faith. Though she covers her head and wears black outer garments, she wears Western clothes beneath, included heeled shoes. She wears makeup, four bags of which were recovered from her luggage, which, as DS AH accepted, is frowned upon by ISIS. As shown by what could be seen on the DVDs – and there was no suggestion that these items were *not* included in the items returned to the mother by the police after her luggage was searched – her children dress

colourfully: witness the pink tutu dresses and a Spiderman onesie. They watch Disney films and sing popular Western songs. None of this, says Mr Rowley, is consistent with an Islamic extremist; none is consistent with someone who would wish to live under what he calls the medieval strictures of the so-called Caliphate.[4]

54. Thirdly, he submits that the local authority has failed to show that the material recovered from the mother's home was indicative of her holding such views or being sympathetic to ISIS. The flag is one that has been adopted by ISIS, but it contains the *shahada* and seal of the Prophet Mohammed, both of which, he says, are important symbols which all Muslims share. The local authority, he correctly points out, has failed to adduce any evidence to disprove the proposition that the flag predated the al-Baghdadi Caliphate, and the mother's case that she received it from a bookshop some 12 years ago as a gift has not been seriously challenged. Similarly, he says, in relation to a list of CDs containing material produced by al-Awlaki, none of which, as he correctly observes, has been demonstrated to be evidence of extremism. Accepting, as he does, that al-Awlaki's material has been found in the possession of those prosecuted in connection with terrorism offences, possession of it, he says, is not *in se* demonstrative of radicalisation. Al-Awlaki, he says, without challenge, produced a great volume of material prior to his death, some controversial, some not. As he points out, none of the police witnesses demonstrated knowledge of the content or significance of the al-Awlaki material[5] referred to, nor, I might add, did anyone else. It cannot, therefore, he submits be evidence of the mother's radicalisation.

55. Fourthly, he submits that, as the evidence establishes, the mother suffers from a number of medical conditions which, to various degrees, are debilitating: fibromyalgia; bronchiectasis; and PTSD. She is dependent on medication, principally Tramadol and Amitriptyline. The quantity of both recovered from her luggage was, he says, consistent with usage over a few weeks, not months or years. Without the medication her mobility is restricted and her health compromised. The idea that she would relocate to a war-torn region with no obvious means of securing the medication necessary to enable her to function is, he submits, intrinsically unlikely.

56. Summarising this part of his case, Mr Rowley submits that the preponderance of likelihood is that this mother, a devoted parent anxious to secure and safeguard her children's welfare, simply would not wish to place them in danger by travelling to Syria to join ISIS. She is not, he says, blind to the dangers associated with that region. He submits that the only thing which could conceivably overbear her instincts and reason to such an extent that she would think that joining the Islamic State was in her children's interests would be religious imperative. She has maintained throughout that she is not radicalised and does not recognise the legitimacy of the al-Baghdadi Caliphate. There is, he says, no evidence that this part of her evidence is false. The evidence taken in the round, he submits, is that her children are not withdrawn from the Western world and that she does not abjure those things which a radical Islamist

---

[4] Mr Crabtree draws attention to the suggestion in some of the police evidence, based on 'tradecraft', that some of the luggage might be abandoned at or before crossing the border into Syria. But that, even if a well-founded general speculation, does not meet the points Mr Rowley is making as I have summarised them in paragraphs 51 and 53.

[5] I make clear for the avoidance of doubt that this observation relates *only* to the police evidence in relation to the al-Awlaki material. There was much police evidence, which I have had very much in mind, relating to the significance of the contents of the family's luggage and, more generally, in relation to 'tradecraft'.

would regard as *haram*. Moreover, neither she nor her mother could realistically function in ISIS-controlled regions given their medical conditions.

57. Mr Rowley then moves to counter the evidence which the local authority relies upon.

58. First, he analyses the evidence of what is relied upon in support of the case based on 'tradecraft', focused in particular on the contents of the family's luggage when they were stopped. This analysis proceeds in five stages.

59. (1) Contrary to the local authority's case, there was in fact, as DC DR conceded, no disparity between the number of chargers and electronic devices. And the evidence indicated that there was only one sim card which was not in a device (and that was in the possession of the maternal grandmother, not the mother).

60. (2) The police witnesses conceded that the tampons and panty liners were explicable in the context of the mother's condition, thus drawing back from their original hypothesis that these were for improvised use as field dressings.

61. (3) DI CC's belief that the number of mobile telephones and tablets was disproportionate to the number within the group, does not, he says, stand up to analysis: three adults and four children having five telephones is in no way anomalous, nor can it be said that six tablets is excessive given the ubiquity of such devices nowadays. Moreover, he says, they were not 'wiped' – they were new and therefore contained little or no data.

62. (4) Much of what is advised in the e-book to be taken to Syria was absent: no external hard drive; no hair clipper; no portable wifi modem; no headlamp; no hardcover notebooks and pens; no knee-protection and elbow protectors; no camelback water reservoir; no measuring tape; no sleeping bags; no camping utensils. The police have in effect, says Mr Rowley, concentrated on what they see as parallels, rather than looking at the overall picture, and even those items do not wholly conform to what was advised. Thus, although the police point to T-shirts in 'combat colours', there were also blue ones, and all the Karrimor products carry the Union flag, hardly, says Mr Rowley, a welcome sight to jihadists.[6]

63. (5) The family failed to follow the advice in the e-book, current at the time of the journey, to travel to a second country before then travelling to Turkey. If the mother wanted to create a 'legend' that provided a cover for her plan to relocate to Syria, Mr Rowley points out that she and her group failed to follow 'tradecraft' advice. Whilst the family have given accounts of a holiday with outdoor elements they had not carried with them guidebooks and they had not booked hotels. This, he submits, is inconsistent with a carefully-staged cover-story; indeed, it is, he suggests, consistent with the rather more ad hoc approach to a holiday which might be subject to variation depending upon what occurred with the mother's relationship with H.

64. In relation to 'tradecraft', Mr Rowley therefore submits that there is no 'striking similarity' between the advice given in the e-book and other sources and the conduct of the mother. Indeed, he says, the police's analysis of the parallels as initially

[6] Mr Crabtree's riposte to this particular point directs attention to the evidence of DS AH, expressing the view that displaying the Union flag might be seen as a badge of honour.

adopted by the local authority has been shown to be wanting in several important respects.

65. Secondly, Mr Rowley points to the weaknesses in the local authority's thesis based upon the mother's acquaintanceship with the individuals, members of the mother's wider family, who are alleged to have travelled to Syria in 2014. He accepts that the mother had an association with some of those persons, but submits that a direct relationship with all of them has not been proved. She did not know Z and F very well. She had been close to S (S had been a source of support to her following the breakdown of the mother's marriage) and was in regular communication with her until August 2014; there is, he says, no evidence of any contact between them since. The mother asserts that S said nothing to her indicating sympathy with ISIS or an intention to travel to Syria, which, as Mr Rowley points out, would accord with the advice in the e-book. Mr Rowley submits that the finding the local authority seeks that these individuals travelled to Turkey to join ISIS is based only on the police's conclusion. There is, he says, no evidence of it. It is no more than a weak inference from an absence of evidence beyond the fact of their disappearance. In any event, he submits, a conclusion that the mother knew of such a plan is not justified, nor can it be regarded as the basis for a finding that the mother is herself sympathetic to ISIS or was intending to join her family.

66. Thirdly, he challenges the local authority's assertion that the evidence demonstrates the mother's intention to abandon life in this country. Had she had a settled intention not to return, then, he says, evidence of abandonment of her life here would be expected. Nothing discovered from the search of her home, he submits, points in that direction. It is not said, for instance, to be a home which has been left in a state indicative of permanent flight, instead of a holiday. The *only* evidence the local authority has, he says, is the 'to do' list and the letters to the schools. The 'to do' list, he says, shows an inveterate list maker in action; it does not show, on its face, evidence which contradicts the mother's account of it being compiled months before the holiday. And there is no evidence, for example, of the mother terminating the tenancy or changing direct debits. He characterises the letters to the schools as being "ill-advised and something the mother regrets" but submits that they do not support the notion of emigration. After all, if she wished to throw the authorities off her trail as she travelled to Syria, why would she excuse only three days of the children's school attendance?

67. Fourthly, he submits that what he says is the mother's habit of writing things on paper which is to hand explains the inclusion of the email addresses, Kik and telephone numbers on the pieces of paper found in her luggage. Her explanation was that because of the last-minute charging of her telephone she was unable to transpose them to her telephone prior to the trip. The paper, she says, was stuffed into the luggage; 'secreted', Mr Rowley says, is no more than a description arising from a conclusion as to her overall intent.

68. Fifthly, he says, the question of what address was given by the mother to DS SH at the airport "is a small piece of the sky." The mother disputes the officer's account and maintains that she never gave a false address, her brother's. It would, says Mr Rowley, have been a curious step for her to do so, given that he was also being detained. Also, and within an hour, when being interviewed again, she gave her own

address. Mr Rowley invites me to question what the benefit to her of giving the wrong address would have been, only a short while later to give her real address. He also points out that in the event, as he would have it, nothing of significance was recovered as a result of the house search.

69. Finally, he says, it would be unsafe to ascribe any weight to X2's comments to the foster carer. The children had by then had the experience of being detained, along with their mother, at the airport. The mother knew that she was suspected of travelling to Syria. DS SH suggested to her, while the children were present, that he did not believe her account of a family holiday. There is, Mr Rowley suggests, every possibility that the children overheard something; X1 knows what the allegation was; it would be natural for the children to talk amongst themselves; they were distressed and confused. It is, he says, all but impossible to isolate the comment from the children's recent life experiences and understanding. Importantly, as he points out, neither X2 nor X1 was ABE interviewed. We simply do not know, he says, of the circumstances leading up to the statement.

70. Summarising this part of his case, Mr Rowley submits that the question of the mother's motivation to make the journey to join ISIS is crucially important to a determination of whether that was her ultimate goal or whether she was, as she says, travelling to Turkey for a holiday, with the associated intention of meeting H. There is an absence of evidence, he says, substantiating an assertion that she is a radical Islamist, and that her belief system is concordant with that of ISIS. The absence of evidence of radicalisation, and indeed evidence pointing in the other direction, deprives the local authority's case, he submits, of a coherent thesis of her motivation to live in ISIS controlled territory. Moreover, he submits, questions over the adequacy of her explanation for the trip and the presence of materials which are said to be consistent with 'tradecraft' cannot fill that critical lacuna and tip the balance of probability in favour of a finding that she was taking her children to live in Syria.

71. Finally, Mr Rowley turns to the mother's own case.

72. In relation to H, M Rowley urges me to consider the context in assessing the credibility of the mother's account. She had had, he says, a difficult, at times abusive, relationship with the father. Her flight from him, her illness, the disappearance of S, her discovery that the father was having another child by another woman, and other events had a significant impact upon her and, he suggests, disordered her reason to some extent. In addition there is what Mr Rowley calls the cultural/religious aspect of her association with H, which may not be readily understood by some professionals. He points to her explanation in her statement and in the witness box as showing that, for someone of faith, trusting in Providence is reasonable. Dating, he points out, was not in truth a viable option. She had satisfied herself through her contact with him that H might be a suitable suitor; events in Turkey were to be the proof.

73. Mr Rowley recognises that, understandably, there has been much focus on the mother's communications with H, both before and after the trip, and that I may be tempted to draw adverse inferences from her failure to contact H following her detention. Mr Rowley urges caution. His argument proceeds as follows. H's number was in the hands of the police from the moment the mother's luggage was searched; her access to it in the immediate aftermath was therefore denied; once she was able to

see the document with it written on she asked her brother to contact H but that proved fruitless; and when she finally gave her account in June 2015 of H and who he was, she was presented with lengthy interrogatories the purpose of which was to enable the *police* to track him down; *she* was not asked to make contact with H (blame for this, says Mr Rowley lies with him, not the mother). Indeed, Mr Rowley questions the propriety of attempting to make contact with H in those circumstances.

74. Mr Rowley is realistic: obviously, he says, this account causes the court concern. However, he asks, why would the mother fabricate such an elaborate account, which has served only to render her all the more exposed to attack? If she had a clear intent to live in Syria with the children, a cover story of a family holiday with outdoor elements would, he suggests, suffice; the introduction of a foreign suitor serves only to complicate the account. He submits that, notwithstanding her inability to produce *any* independent evidence of H's existence, the most likely explanation for the narrative is therefore its essential truth.

75. Mr Rowley submits that the mother has given a plausible explanation for the presence of the solar chargers, tools, torches, binoculars, rucksacks and emergency blankets: H had requested them. The number of emergency blankets did not equate to the members of the group, being therefore inconsistent with the notion that all were travelling to Syria. The same, he says, can be said for the absence, with few exceptions, of outdoor or cold-weather clothing for the children. There can, he submits, be no safe inference that the mother and children envisaged living in deprived circumstances in a war-torn country, given that the majority of the children's clothing was colourful and fitted for a temperate climate. Mr Rowley adds that, even if I was to conclude that H was asking for material which may have been intended for use by those in Syria (which, he says, is not the mother's belief) it does not follow that the mother knew or should have suspected that.

76. Mr Rowley submits that the mother has presented a truthful account. If, however, I was to conclude that she has not been honest in some of her evidence, he submits that I must carefully assess the significance of that fact. As he correctly reminds me, a conclusion that a person is lying about X does not mean that she is lying about Y. There may be many reasons why a person might not tell the truth in a forensic setting, even where the future of their children is at stake. He invites me to accept the mother's evidence that she is a very private person who regrets much of her decision-making in and around the subject matter of the case and who feels responsible for dragging members of her family into what he says is a nightmare of police investigation which is ongoing and the end of which is not in sight. He submits that it is intrinsically unlikely that this intelligent, loving mother is lying about her own actual intentions when she knows that so much is at stake, even though I may doubt aspects of her account.

77. In conclusion Mr Rowley submits that, although there are aspects of the evidence which may cause me unease in accepting the mother's account, the case presented by the local authority is inherently less likely.

78. Accordingly, he invites to reject the central proposition that she was intending to join ISIS with her children. Her plan, he says, may have been naive, and might itself possibly have exposed the children to harm in separation from their father had she

settled with H, but even if that is so he questions whether her actions were such as to satisfy the requirements of section 31(2) of the Children Act 1989.

Submissions on behalf of the father

79. Miss Khandia points out that, on the mother's own case, she was planning to take the children out of the jurisdiction without consulting father, without even informing him and possibly permanently. That, as she rightly observes, must be concerning for a father who, it is accepted, has a good relationship with his children and who have a good relationship with him. In the circumstances she submits that the mother should give assurances or be subject to orders that will prevent the removal of the children from the jurisdiction without the father's permission.

80. Even if the facts are as alleged by the local authority, the father makes clear, as he has throughout, that he would not wish the children to be removed from their mother. His belief is that any risk of flight was already minimised when the mother and the children gave up their passports and were the subject of prohibited steps orders. He thinks that the children should have been returned to the mother at an earlier stage, as the continued separation, in his opinion, was not justified and caused irreparable harm. He is increasingly concerned about X1's emotional wellbeing and whether the continued involvement of the local authority and the worry of being removed from his mother as a result of her travel plans are causing him further harm.

81. The father remains concerned at the labelling of his children, particularly X1 as being involved in terrorism or at risk of radicalisation and is concerned at the level of scrutiny at school and the referral to Channel.

Submissions on behalf of the children's guardian

82. Miss Sweeney correctly observes that it is not the role of the children's guardian to reach factual conclusions but urges me, in the interests of the children, to be as clear as possible in relation to my findings of fact. In particular, she submits that, for the sake of the children, their life story and history, and for the sake of the assessments to come, I should be clear, if finding that the mother *was* intending to permanently relocate the children to Syria, what the evidence is which leads me to that view.

83. Miss Sweeney helpfully draws attention to various features of the mother's case.

84. First, the guardian does not dispute that the mother is, in many respects, a loving and capable parent who is also highly intelligent and articulate. *But*, between March 2015 and June 2015 she provided an account of the family trip to Turkey which she now admits was false – an account which was provided to a variety of professionals including the guardian. The mother has been unable to provide any corroborating evidence for her new account, for reasons that are of concern to the guardian. It was, in the guardian's view, striking that the mother apparently asked her brother to make an attempt to contact H in May 2015, though this was only mentioned for the first time during the mother's oral evidence on 21 October 2015. The police and the local authority have been unable to obtain any further information about H, the *only* available information about him having been provided by the mother in her statement and oral evidence. There is, as the mother accepts, no evidence of his existence from any other source.

85. Secondly, I have not been invited by the mother to find that it was her brother who was going to Syria. The mother, Miss Sweeney says, accepts that she has been palpably dishonest throughout this process, to her children's detriment, but she has not sought to persuade the court that it was her brother who was intent upon travel to a war zone, even though, as Miss Sweeney points out, the clothes were his size and shape, and even though it is strongly suspected by the police that his fiancé had already made that journey.

86. Thirdly, there has been no statement filed by the mother from her brother or her mother. Neither of these two family members has been brought forward to assist the court or, perhaps more importantly, to assist the mother in corroborating her evidence.

87. The salient parts of the police evidence, in the view of the guardian, are as follows: (a) The mother was released without charge by the police, on whom the local authority relies heavily. (b) The items found were not consistent with merely a walking holiday. (c) The police rely on the e-book to show similarities between what this family did and advice given to those planning to travel to join ISIS. (d) No one piece of evidence taken in isolation would be sufficient. The police have considered the totality of the evidence. (e) DS AH said there was not evidence to suggest that the family might split and go different ways, but he was unable to tell the court what such evidence might be which would support such a conclusion. (f) DS AH does not put much weight on the issue of tampons and panty liners. This evidence proved to be different from what had been anticipated. (g) No police officer expressed the view that the items seen on the mother's DVDs were not those which had been returned to mother. (h) The police suggest that the mother was evasive or untruthful and delaying in relation to her address given at the airport. Can the court make the leap to say that this was because she was intending to permanently relocate to Syria? The mother has conceded that she was lying throughout the interview process, but her reasons for so doing are difficult to untangle. Her evidence is that she "closed down" whilst speaking to the police, and that her fear of repercussions from the father was the most prominent reason for not speaking the truth. (i) No inferences are drawn by the police about there being the same number of chargers as there were devices. (j) The police agree (DC DR) that all non-pertinent items could be associated with a normal family holiday. (k) The mother was in custody for 5 days, and her children were placed into foster care. The police question, as indeed does the guardian, why the mother, who says that her children are her world and beyond, would not give the history about H at the time she was interviewed or swiftly, during these proceedings, to the court.

88. The guardian's overall perception of the evidence of the mother is summarised by Miss Sweeney as follows:

    i) The guardian, having listened carefully to the mother's oral evidence on 21 October 2015 and read the notes of her oral evidence on 22 October 2015, remains concerned at the conclusion of that evidence by the mother's explanation for the purpose of the trip.

    ii) He remains concerned by the mother's explanations for the presence of items in the family's luggage that were not consistent with a family holiday.

iii) He continues to be very concerned about the mother's lack of openness and honesty with professionals.

Miss Sweeney adds that, should I make the findings of fact sought by the local authority in relation to the mother's actions as a parent in March 2015, such findings would raise serious questions about her ability to care for her children safely, despite her evident qualities as a parent.

Discussion

89. I have deliberately set out counsel's very helpful submissions at some length and in great detail. I do so for two reasons. First, because they revealingly illuminate a forensic landscape which is most unusual, indeed probably unprecedented. Secondly, because the great care and skill with which these submissions have been prepared, and the meticulous analysis of the evidence they contain, demonstrate, particularly in the case of Mr Crabtree's and Mr Rowley's submissions, not merely the complexity of the issues which confront me but, most of all, both the strengths *and the weaknesses* of each of the opposing cases, that put forward by the local authority and that put forward by the mother, and the reality, that the ultimate conclusions to be drawn from all this material are far from obvious.

90. I start with the mother.

91. The first point to be made is that, on her own admission, she is, even if she cavilled at the appropriateness of the label, a liar. The contrast between her original case, as I have summarised it in paragraph 7 above, and her revised case, set out in paragraph 10 above is obvious. If elements of her first story have been carried forward into the second, the two are nonetheless so fundamentally different that one or other must be essentially untrue. This is not mere *suggestio falsi et suppressio veri*; it is simply the telling of untruths, in plain terms lying. The notes to the schools were, on any basis, and wherever the ultimate truth in relation to the trip may lie, false to the mother's knowledge. Mr Rowley characterises them (paragraph 66) as "ill-advised". I cannot, with respect, agree. They involved the deliberate uttering of falsehoods. I am also satisfied, and find as a fact, that the mother did indeed give a false address when questioned by DS SH. And the allegations she made in the witness-box against the police were, in my judgment, and I so find, utterly groundless. On matters of *fact* I accept the evidence of each of the police officers. I cannot accept Mr Rowley's submissions on the point (paragraph 68).

92. As we have seen, the mother put herself forward at the hearing as now being completely open, honest and frank. Was she? I am not satisfied that she was. I am unable to accept what she is now saying merely because she is saying it. Some of it may be true. About much of it I am very suspicious. Some of it may well be, in some cases probably is, untrue. But the fact that I am not satisfied that the mother was telling the truth, the fact that I am very suspicious, does not mean that I find everything she said to be a lie. And, as I have already explained, the fact, to the extent it is a fact, that the mother has in the past told, and is still telling, lies, does not of itself mean that the local authority has proved its case.

93. Be all that as it may, the plain fact is that the mother has not, in the past, been frank and honest either with the local authority, the guardian or the court and I am not satisfied that she is being now.

94. In relation to her qualities as a parent, the mother starts with this, that there is no suggestion, apart from the alleged journeys to Syria, that there is any basis for complaint about any aspect of her basic care for the children. It is accepted that she is, in other respects, a good parent who is bringing up her children lovingly and well. But this encomium must be qualified in two respects.

95. First, as has been pointed out, and this is so whichever version of her story is true, the mother, by going to Turkey, was potentially willing to sacrifice her children's relationship with their father to her own plans, and to do so without even informing, let alone consulting, him.

96. Secondly, the mother's qualities as a parent are not, of themselves, any assurance that she would not have acted in the way alleged by the local authority. I cannot blind myself to the reality that not every parent is necessarily as steeped in the values and belief-systems of a post-Enlightenment Europe as we might like to imagine. People may be otherwise very good parents (in the sense in which society generally would use the phrase) while yet being driven by fanaticism, whether religious or political, to expose their children to what most would think to be plain, obvious and very great significant harm. There are, after all, well-attested cases of seemingly good parents exposing their children to ISIS-related materials or even taking their children to ISIS-controlled Syria.

97. Perhaps unsurprisingly, Mr Crabtree and Mr Rowley focus on rather different things in their final submissions. Mr Crabtree devotes considerable attention to a largely successful demolition of the mother's case in relation to H. Mr Rowley devotes considerable attention to a largely successful analysis of what he calls the inherent improbabilities of the mother having acted as the local authority asserts and to an attack, successful in part though not, I emphasise, in whole, on the local authority's case insofar as it is based on 'tradecraft.'

98. In relation to H, I find Mr Crabtree's analysis convincing, so far as it goes, both in relation to what one might call the 'big picture' points (see, for example, paragraphs 34, 35, 38, 39 and 40 above) and also in relation to his more detailed points (paragraphs 30-33, 36-37, 41-42). To much of this, the mother had no convincing answer, either in evidence or, through Mr Rowley, by way of submissions (paragraphs 72-74 above).

99. I agree with Mr Crabtree, for the reasons he gives (see, in particular, paragraph 27 above), and I so find, that H (if that is his true name) is someone known to the mother and who has some connection with Turkey. The mother has wholly failed to persuade me, however, either that she met H in the circumstances she describes, or that their relationship was as she asserts, or that the role (if any) he was to play in Turkey was as she says. The whole of her evidence on the matter is, in effect, uncorroborated. I am unable to accept her as being either a reliable or indeed a truthful witness. The mother, in my judgment, has not proved her case in relation to H. That carries Mr Crabtree part of the way, but not necessarily all the way he would have me go. He

submits, as we have seen, that the fundamental foundation on which the mother's case is built has collapsed. So it has, *in the sense, but only in the sense, that she has not proved her case*. It does not mean either that her case is false or, even if it is, that the local authority has thereby established the case which it has to prove.

100. It is convenient next to consider Mr Rowley's submissions in relation to what he calls the inherent improbabilities. For reasons I have already touched on I can attach little weight to the point made by Mr Rowley as I have summarised it in paragraph 52 above. His other points have much more substance. His arguments (paragraphs 53-54, 56) as to the absence of any evidence that the mother is a radical Islamist, and as to where that leaves the local authority (paragraph 70), are compelling, and Mr Crabtree was able to say very little by way of any convincing response. (In relation to the DVDs I prefer Mr Rowley's submission to that of Mr Crabtree.) The fact is, I find, that the mother is an observant Muslim, but the local authority has been unable to prove either that the materials found at her home have the significance which was suggested or, more generally, that she is a radical or extremist. I accept Mr Rowley's characterisation (paragraph 55) of the mother's medical conditions and the inferences he seeks to draw, though inclined to think, for the reasons given by Mr Crabtree (paragraphs 47(vi)-47(vii)), that there may have been some degree of exaggeration in her descriptions of her disability.

101. I turn next to consider a central question, the inferences properly to be drawn from the contents of the luggage examined by the police and more generally in relation to 'tradecraft'. In relation to this, both Mr Rowley and Mr Crabtree succeed in some of the points they make. I can summarise my conclusions as follows:

i) I accept the various points made by Mr Rowley as summarised in paragraphs 59-64 above *so far as they go*.

ii) As against that, there remains the fact, which Mr Rowley (see paragraph 75) was, in my judgment, unable effectively to challenge, that the luggage did contain a significant number of items which, as Mr Crabtree correctly submitted (paragraphs 46, 47(i), 47(ix)), cry out for explanation in circumstances where the only explanation proffered by the mother is tied to her story about H which, as I have already explained, I am unable to accept.

So, Mr Rowley has not succeeded in destroying the local authority's case on 'tradecraft', but it is much shakier than first appeared.

102. What else is there?

103. First, the pieces of paper in the mother's handwriting found in the luggage. I accept Mr Crabtree's characterisation (paragraph 47(ii)) of the mother's explanations as implausible, a label which, with all respect to Mr Rowley, I would also attach to his submission on the point (paragraph 67). I am suspicious but that is as far as I can properly go.

104. Secondly, the suggestion that the mother abandoned her home. On this, Mr Rowley's submissions (paragraph 66) are convincing. Again, there may be suspicion, but, in my judgment, nothing more.

105. Thirdly, the case as set out in paragraphs 19-27 of the Scott Schedule. Again, there is force in Mr Rowley's submission (paragraph 65 above). Mr Crabtree's case (paragraph 48) is, in large measure, surmise, speculation and assertion. The local authority has not proved its case.

106. Finally, the incident involving X1 and X2. This is suggestive but, for the reasons give by Mr Rowley (paragraph 69), not in my judgment probative of anything in issue before me.

107. I make clear that in evaluating the evidence on each of these matters I have taken into account and carefully considered all the evidence and each piece of evidence in the context of all the other evidence.

108. So where, at the end of the day, am I left? There are four key matters, in my judgment, which preponderate when everything is weighed in the balance, as it must be:

i) The mother is a proven liar. The mother has not, in the past, been frank and honest either with the local authority, the guardian or the court and I not satisfied that she is being now.

ii) H (if that is his true name) is someone known to the mother and who has some connection with Turkey. The mother has wholly failed to persuade me, however, either that she met H in the circumstances she describes, or that their relationship was as she asserts, or that the role (if any) he was to play in Turkey was as she says. I am unable to accept her as being either a reliable or indeed a truthful witness. The mother, in my judgment, has not proved her case in relation to H.

iii) The mother is an observant Muslim, but the local authority has been unable to prove either that the materials found at her home have the significance which was suggested or, more generally, that she is a radical or extremist.

iv) The luggage contained a significant number of items which cry out for explanation in circumstances where the only explanation proffered by the mother is tied to her story about H which, as I have already explained, I am unable to accept.

109. It is for the local authority to prove its case. The fact that the mother has failed to persuade me of the truth of her case, in particular in relation to H, does not, as I have already explained, absolve the local authority of the requirement that it prove its case. And, for reasons I have explained and which Mr Rowley appropriately relied on, I must be careful to remember the *Lucas* point when I come to consider the inferences I can properly draw from the fact, to the extent I have found as a fact, that the mother has lied. The fact, to the extent it is a fact, that the mother has in the past told, and is still telling, lies, does not of itself mean that the local authority has proved its case.

110. There are, as I have noted, many matters on which I am suspicious, but suspicion is not enough, nor is surmise, speculation or assertion. At the end of the day the question is whether in relation to each discrete part of its case, the local authority has

established on a balance of probabilities, applying that concept with common sense, the proposition for which it contends.

111. Standing back from all the detail, and all the arguments, there are, at the end of the day, two factors of particular importance and which, unhappily, point in opposite directions. The mother, for her part, has not proved her case in relation to H, with the consequence that the only explanation she has proffered for the presence of various significant items in her luggage falls away. The local authority, for its part, has not proved either that the materials found at her home have the significance which was suggested or, more generally, that she is a radical or extremist. Weighing these and all the other matters I have referred to in the balance, I am left suspicious of what the mother was really up to but I am unable to conclude that the local authority has proved any part of its case as set out in paragraphs 66-73 and 78-80 of the Scott Schedule.

112. Having received this judgment in draft, Mr Crabtree sought clarification of certain passages. The judgment as handed down incorporates such clarifications as seemed to me to be appropriate. Mr Crabtree has helpfully confirmed, having seen what I was proposing, that he seeks no further clarification.

Postscript (17 December 2015)

113. After I had handed down judgment, Mr Crabtree made two applications, the first for permission to appeal and the other to continue the wardship.

Permission to appeal

114. Mr Crabtree had not formulated any written grounds of appeal. As I understood his submissions, he identifies three grounds.

115. First, he submitted that the Court of Appeal ought to consider the principles going to the question of whether recourse should more appropriately be had in cases of this type to care proceedings or to wardship, a matter on which, he suggested, different approaches can be discerned in the case law. I refuse permission on this ground for two quite separate reasons.

    i) First, the point simply does not arise in the present case. I explained in my first judgment (*Re X (Children), Re Y (Children)* [2015] EWHC 2265 (Fam), paras 49, 100) why a time came when the interim care orders were replaced with interim protective orders in wardship, including, I might add, orders that could only be made by the High Court. There was no challenge at the time to my order. This judgment relates to a finding of fact hearing. Although I accept that a local authority's formulation of the facts which it invites the court to find may differ depending upon whether it is pursuing one kind of proceedings rather than another (though that is not the case here, where the local authority's Scott Schedule was formulated in terms of 'threshold'), the forensic process when the court is conducting a finding of fact hearing is precisely the same whether the finding of fact hearing is part of care proceedings, part of wardship proceedings, part of private law proceedings, or indeed part of any other kind of family proceedings. So the dichotomy between care proceedings

and wardship proceedings, as Mr Crabtree refers to it, has nothing whatever to do with the judgment which he seeks to challenge.

ii) Secondly, I do not see what formulation of principles or guidance from the Court of Appeal Mr Crabtree can have in mind. Cases of this kind inevitably vary. Sometimes recourse to the inherent jurisdiction will be necessary, for example if the court is to be invited to make orders directed to the return to this jurisdiction of children who are abroad. The present is an example of a different set of circumstances where recourse to wardship was appropriate. In other cases, it will be neither necessary nor appropriate to invoke the inherent jurisdiction, care proceedings being appropriate and enabling the court to make whatever orders are required. The present case, in my judgment, is simply not an appropriate vehicle for debating largely abstract questions which do not in fact arise and which are thus both hypothetical and academic.

116. Secondly, Mr Crabtree seeks to challenge my failure to find that the local authority had established its case where, he says, the evidence was very strong, the mother's decisions and intentions were, on my findings, unexplained, and there was an absence of any rational explanation for the mother's acts, other than that contended for by the local authority. He wishes to invite the Court of Appeal to make the findings which, after hearing all the evidence, I declined to make. If this is simply a challenge to my findings then, as Mr Crabtree readily accepted, he has a very steep hill to climb. Mr Rowley submitted that it amounted, in effect, to a complaint that my findings were perverse. Be that as it may, I am entirely unpersuaded by Mr Crabtree that he has any realistic prospect of succeeding in circumstances where he does not allege any error of law. At times I had the impression that Mr Crabtree was suggesting that I had erred in my approach, particularly in not accepting where the absence of any other rational explanation should have taken me. In relation to that, I do not accept the underlying premise that there is no rational explanation for the mother's acts other than that contended for by the local authority. That is not a finding I have made, nor, in my judgment, does it follow from the findings I have made. Furthermore, the argument came far too close at times to arguments rejected by Lord Brandon in *The Popi M* (see at 955-956). Insofar as Mr Crabtree is alleging some error of approach or error of principle I am unable to accept that his arguments have any realistic prospect of success.

117. Thirdly, Mr Crabtree submits that I was too cautious in not drawing the proper inferences, not least having regard to the various serious findings, adverse to the mother, which I did make. As with his previous ground of challenge, this is a challenge to findings of fact which Mr Crabtree does not persuade me has any realistic prospect of success.

118. Accordingly, I refuse permission to appeal.

119. Mr Crabtree invites me to stay my order, and maintain the protective regime in place, at least until he has had time to apply to the Court of Appeal. Otherwise, he fears, any appeal might be stultified by the disappearance of the mother and the children. Despite Mr Rowley's protests that a stay is neither necessary nor appropriate, I am prepared to grant a stay, but only for a very short period. I will stay my order until 12 noon on Friday 18 December. If by that time the local authority has filed with the

Court of Appeal an appellant's notice and grounds of appeal, together with an application for a further stay, then the stay I have granted will automatically be extended until 4.30 pm on Monday 21 December 2015. If there is to be any stay thereafter, it will have to be granted by the Court of Appeal.

Continuation of the wardship

120. Mr Crabtree accepts, in the light of my findings, that absent successful challenge in the Court of Appeal, he cannot pursue the care proceedings any further and that they must be dismissed. That must be right. I shall accordingly dismiss the care proceedings.

121. However, he submits, the wardship proceedings can and should be allowed to continue, and the protective measures maintained in place (either in whole or in part), at least for the time being and until the local authority has been able to explore matters further with the mother. He asserts that, despite my findings, there remains a distinct possibility that the children are at risk of harm from the mother, whose behaviour he characterises as unfathomable, and says that the local authority in those circumstances wishes, through work with her, to gain a greater understanding than it has at present of what the mother was doing and proposing to do when stopped at the airport.

122. Mr Rowley denounces the local authority's approach as unprincipled and wrong in law. In truth, he submits, Mr Crabtree is seeking to achieve by entry through the back door what he has failed to achieve through the front door. He asks rhetorically why, if Mr Crabtree's approach is legitimate, it will not be possible for every local authority which fails to prove 'threshold' at a finding of fact hearing in care proceedings simply to carry on by invoking the wardship jurisdiction. That, he submits, cannot be right.

123. I agree with Mr Rowley. There are at least two difficulties in Mr Crabtree's way. First, given my findings, his assertion that there remains a possibility of harm sits most uncomfortably with the 'binary' principle explained by Lord Hoffmann in *In re B.* Secondly, and this is the basis upon which I decide the matter, there is the obstacle presented by section 100 of the Children Act 1989.

124. Section 100(3) provides that:

> "No application for any exercise of the court's inherent jurisdiction with respect to children may be made by a local authority unless the authority have obtained the leave of the court."

Section 100(4) provides that:

> "The court may only grant leave if it is satisfied that –
>
> (a) the result which the authority wish to achieve could not be achieved through the making of any order of a kind to which subsection (5) applies; and

> (b) there is reasonable cause to believe that if the court's inherent jurisdiction is not exercised with respect to the child he is likely to suffer significant harm."

Section 100(5) provides that:

> "This subsection applies to any order –
>
> (a) made otherwise than in the exercise of the court's inherent jurisdiction; and
>
> (b) which the local authority is entitled to apply for (assuming, in the case of any application which may only be made with leave, that leave is granted)."

125. These provisions present Mr Crabtree with two difficulties. First, it is not at all clear that the application is not blocked by the combined effect of sections 100(4)(a) and 100(5)(b). The relief which Mr Crabtree seeks could in principle be achieved through the mechanism of care proceedings. Secondly, and this in my judgment is decisive, is the effect of section 100(4)(b). How, given my findings at the end of this elaborate finding of fact hearing, can it still be asserted that there is *reason to believe* that the children are *likely* to suffer *significant* harm?

126. In my judgment, it follows from the outcome of the finding of fact hearing that, just as the care proceedings must be dismissed, so too must the wardship proceedings. The wardships and the wardship orders must be discharged.