Neutral Citation Number: [2019] EWCOP 58

Case No: 13423553

IN THE COURT OF PROTECTION AT
IN THE MATTER OF THE MENTAL CAPACITY ACT 2005

AND IN THE MATTER OF VT

Birmingham Civil Justice Centre

Date: 13th September 2019

Before :

HHJ Clayton

- -

Between :

TQ **Applicant**
- and -
(1)VT (By his litigation friend, the Official Solicitor)

(2)BIRMINGHAM CHILDREN'S TRUST

(3)NHS BIRMINGHAM AND SOLIHULL CLINICAL COMMISSIONING GROUP **Respondents**

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VT – Mr Joseph O'Brien (instructed by MJC Law, Solicitors, Nottingham)
Mr Malcolm Chisholm – (instructed by solicitor Birmingham Children's Trust)
Mr Mark Bradshaw – (instructed by NHS Birmingham and Solihull Clinical Commissioning Group)
TQ – In person

Hearing dates:10,12,13 September 2019

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JUDGMENT

The Application.

1. This is an application by TQ, dated 26th March 2019, for her to be made a health and welfare deputy (PWD) under section 16 of the Mental Capacity Act 2005, in relation to VT (P). TQ has represented herself throughout the proceedings. P is represented by the OS and I have been assisted by continuity of representation by her counsel, Mr O'Brien. The second respondent is the Birmingham Children's Trust (BCT/Trust) and the third respondent is NHS Birmingham and Solihull Clinical Commissioning Group (CCG). Both have been represented by counsel.

The Background.

2. The application concerns VT (P) who has a life long diagnosis of Lennox-Gastaut Syndrome, a severe form of epilepsy. He has severe global delay. He is reported to be unable to verbally communicate and cannot walk. P requires 24 hour care. He is dependent upon carers to ensure the safe delivery of his care package. His global learning difficulties may well have been contributed to by neonatal drug addiction. I have visited P in his placement with a representative for the OS and TQ.

3. P's family circumstances are very sad. P's mother was unable to care for him. She died in 2015. It is reported that P never knew his mother. His father is unknown. P was looked after from birth by his aunt, AF. P's aunt died in January 2013 when P was 12. In 2014, BCT sought and obtained a care order under section 31 of the Children Act 1989. P was initially accommodated in a residential care home, ER, where his key worker was TQ. She paid special attention to him, took him on outings, including a holiday to Disneyland, Paris with other staff members. It is clear she cares greatly for him and so offers him something which no one else does in his life.

4. P has no relationship with any member of his family. His siblings were either adopted or placed under a special guardianship order.

5. When P turned 18 a plan was made for him to move to other accommodation. This plan crystallised on the 22 February 2019 when Placement 1 was identified as the placement to which P should move. P moved to Placement 1 on the 26 March 2019.

6. TQ, prior to P's move, raised the issue of her having contact with P after his move from Edgewood Road and also raised her wish to be appointed as the personal welfare deputy (PWD) for P. She was concerned about who would look out for him once he was an adult in view of his lack of family. She was very fond of him and wanted to continue to do her best by him. Following P's move to Placement 1 , TQ's contact with P ceased from 5 April 2019 until shortly after the 28 June 2019. This was the date of the hearing at which the Court directed the parties to make enquiries of Placement 1 in relation to ascertaining whether, in the event that TQ's contact with P was commenced, Placement 1 would seek to terminate P's placement. Placement 1 confirmed that it would not and accordingly the Court made an order pursuant to section 48 of the MCA 2005 that there was reason to believe that P lacked capacity to make decisions about the contact he had with others and made a best interests declaration and ordered that P should have contact with TQ at reasonable hours of the day. TQ was to have contact at

reasonable hours of the day upon TQ giving one hour's notice of her attending. The requirement for her to give notice was to lapse at midnight on the 27 July 2019 unless, by that date, an application was made to maintain or vary the requirement.

7. On 27 June 2019 the Court directed:

> "By 4pm on the 31 July 2019 the Trust and the CCG shall both file and serve statements responding to TQ's deputyship application setting out (a) whether the application is opposed; (b) any evidence they rely in opposing the application; (c) a reasoned best interest analysis on whether the applicant should be appointed as P's deputy for health and welfare; and (d) details of any decisions about P's health and welfare, taken since his 18th birthday, which the agency is aware of, setting out the nature of each decision, the basis on which it was taken, and the person consulted in respect of each decision."

8. Much of the written evidence was of poor quality, at times, as in the statement of Helen Corish, in bullet form. It lacked the required information as to any best interest decisions and lacked detail and analysis. The OS concluded in her position statement for the final hearing that the evidence of the second and third respondents failed to meet the expectations of the court in relation to the analysis of best interests and that oral evidence would be required. The BCT and CCG agreed to TQ being appointed as PWD but with considerable restrictions upon the appointment. They no longer sought to challenge her request for contact with P, which had been an issue at the start of the proceedings. Evidence was heard over three days with BCT relying on the evidence of Ms Pamela Williams, personal advisor from the 18+ leading Care Service at the Trust, and the CCG, upon the evidence of Helen Corish, transition nurse lead. The Court heard, too, from Theresa Fairgrieve, Manager at Placement 1 .

9. At the conclusion of the evidence of those three witnesses and without TQ being required to give oral evidence, BCT and CCG withdrew their opposition to TQ's application and it was supported in full by the OS. The legal framework for the continuation of the proceedings was agreed as was set out in the order of 13th September. The OS made an oral application for costs against the BCT and CCG. The OS subsequently filed further written submissions as to findings she expected the Court to make following the hearing, and supportive of the application for costs. The BCT and CCG filed written submissions in response. The Court has been asked to deliver a judgment only as to findings made following the evidence, in view of the serious concerns which have arisen, notwithstanding the ultimate agreement of the parties on all issues save for costs. In those circumstances I have not set out the legal principles which were agreed.

Was there a pursuit of a flawed policy?

10. The OS, in her written submissions, asserts :

> "*12. A common concern throughout the evidence of all these witnesses was a lack of understanding of the principles of the MCA 2005 and the need for proper person centered decision-making in relation to P. In addition, the Official Solicitor makes two specific criticisms of Ms Williams and Ms Fairgrieve. Ms Williams made an unsubstantiated accusation that TQ had failed to promote P's*

best interests and had sought to conceal evidence for the purposes of supporting her case. In addition, in her witness evidence at paragraphs 31 and 32 [G68-G69] Ms Williams highlighted contact that had taken place between TQ and P. In her description of TQ's contact with P, Ms Williams sought to paint a picture that TQ's contact with P had no positive benefit. Staff at Placement 1 had asserted that there was no distinct change in P's expressions on either contact session. Deploying this evidence in the manner it was done in paragraphs 31 and 32 was as unfair to TQ, as it was to P, because Ms Williams did not highlight that it was a noticeable feature of P's presentation not to show any emotion. The fact that there was no distinct change in P's expression was irrelevant to whether he was enjoying contact.

13. Ms Fairgrieve made an unsubstantiated accusation that TQ had made the PWD application in order to gain some form of financial advantage. The background to this allegation is that there has been no transfer to Placement 1 of P's financial arrangements and his benefits continued to be paid to ER. Ms Fairgrieve asserted, without any foundation, that the failure to transfer management to Placement 1 was
related to the action or inaction of TQ. In fact, TQ had no involvement in the arrangements for P's financial affairs nor did she have any power vested in her to make changes so that Placement 1 could manage his affairs. This was entirely within the remit of the statutory bodies who did not make an application to the Court of Protection for appointment of a property and affairs deputy and allowed considerable drift in making arrangements for the appointment of an appointee.

14. Ms Fairgrieve's written evidence also contained this statement [G54]:

> *"The current home decided that it would be in the best interest of the defended to end carer relationships with the former child placement and start adapting to his adult life. The defended had to adjust to his surroundings, new staff voices, new smells and new touch or feel.*
>
> *Introducing an old voice without the other senses will slow down the progress the defended is making in his life as an adult to adjust to his current and indefinite home. The defended will be confused as to why I don't hear that voice so often and why in a different environment."*

15. In exchanges between counsel for the Official Solicitor and the Judge, the Judge described this evidence as "chilling". The Official Solicitor agrees. Yet Ms Fairgrieve's approach was consistent with that of the Trust. In Ms Williams' first statement [G37] she stated:

> *"Staff at ER (including TQ) were involved solely in a professional relationship with P. It is our expectation that professional relationships are time bound, have a distinct role and purpose and have some structure. The transition and handover of P's care went smoothly. The professional relationship with staff at ER has therefore come to an end. P has settled well into his new home and has started to adapt to his adult life and new surroundings."*

16. In summary, the evidence of both Ms Williams and Ms Fairgrieve was that there was a need to bring the relationship between TQ and P to an end for no

other reason than the pursuit of a "policy" that professional relationships are time bound.

17. The CCG clearly knew of this decision. In the statement of Helen Corish dated 20 June 2019 (but signed by Helen Jenkinson) she states:

> *"2. Placement 1 staff have decided that it would be in the best interests of P to end carer relationships at the former child placement and start adapting to his adult life. P needs to adjust to his surroundings and new carers. It was agreed that contact with previous carers may slow down his progress in adjusting to his new life in his current home. This was the Placement 1 following his move. Transition plan was for staff from ER to be involved in the transition from ER to Placement 1. No plan in place following his move."*

18. The CCG, as the relevant commissioner of the placement, should not have allowed this decision to stand unchallenged. As a public body it was there to promote P's ECHR Article 8 rights and also to promote his best interests. Even if it is correct that the decision was made by Placement 1,, the failure of the CCG to challenge this decision represents, at the very least, acquiescence with it.

19. The pursuit of this policy was a fundamental flaw. It infected the decision making of Trust, the CCG and Placement 1 . The pursuit of the policy resulted in the requirements of section 4 of the MCA being ignored. The policy was the only relevant factor that appears to have been considered in determining TQ's relationship and role in P's life following the move to Placement 1 . It is generous to describe the pursuit of this policy as the magnetic factor as this suggests that other factors were in fact weighed in the balance. The policy became the only factor in determining P's best interests on issues surrounding his ongoing relationship with TQ.

20. The pursuit of the policy by Trust and the CCG resulted in the section 4 assessment of best interests being closed to other compelling factors. One such factor was the assessment of TQ and her motives. There was no suggestion in the written evidence filed by the Trust and the CCG that TQ had ever acted contrary to P's best interests. However, as already highlighted, during the course of the evidence, TQ was
subjected to accusations that she had not acted in P's best interests and that she was motivated by desire for financial gain, and not by his best interests. These were unsubstantiated accusations. They provoked no response of open outrage from TQ. She was able to show a level of calmness to rebut the allegations and in so doing, remained focused on P's best interests.

21. This application, of itself, shows TQ's ability to act in P's best interests. In making the application to be appointed PWD TQ has opened up for scrutiny by the court a number of matters which directly related to P's best interests, his health and welfare. P has no family, no effective advocate, and no one to argue his "corner". Despite the undoubted pressure that TQ must have felt when told that because her professional relationship had ended she could have no further contact or interest in P's welfare, she persevered with this application. She has filled the role of his advocate champion with focus, determination and dignity.

22. As his key worker, TQ had the knowledge and insight of knowing P's moods. For someone so profoundly disabled, his ability (however limited) to communicate with someone else is likely to have enhanced his life and possibly alleviated his frustrations. It appears somewhat cruel to him, given the quality of the relationship between TQ and P and her willingness to continue with that relationship, that these characteristics of the relationship formed no part of the process of best interest decision making.

23. If BCT, the CCG and Placement 1 had followed good practice and the spirit of the MCA 2005 (i.e. placing P's needs at the centre of best interest decision-making), all the positive factors above would have been obvious to them. The evidence is clear that all were blinded to these qualities in order to pursue a policy which was entirely closed to the other factors relevant to P's best interests."

11. The BCT suggest the reservations held about TQ becoming PWD had its basis in the fact that she had been P's link worker and remains an employee of BCT. They were concerned about the blurring of professional boundaries and that led to the conclusion her care giving role ought to come to an end. They suggest it "probably overstates things to describe the reservations about TQ's role as being referable to a 'policy' on the part of BCT" but was instead a reaction to a specific set of circumstances it had not encountered before. With hindsight they say they recognise there could and should have been greater recognition of TQ's role and what she had to offer P in terms of companionship and friendship. They acknowledge a broader analysis of section 4 considerations would have led to a greater degree of involvement on TQ's part, during transition and beyond, especially in the absence of family members of P's own. They also accept a tighter focus should have been applied to the best interests decision-making process in this case, in conjunction with the CCG and Placement 1 . They have rather minimized the complete absence of records of best interests decisions by reference to the amount of other recordings which were made.

12. The BCT does not accept the written evidence of Ms Williams was wholly inadequate and suggests in her oral evidence Ms Williams demonstrated conscientious practice.

13. The CCG agree with BCT that there are lessons to be learned from this case by the professional bodies involved in P's care. They note there were similarities in the evidence of Ms Williams and Ms Fairgrieve of Placement 1 as to the apparent pursuit of a flawed view that professional carers should not be involved in the care of those for whom their employed role has ended. There was no clear reasoning given for this stance and it did not take proper account of P's best interests that someone such as TQ, who clearly cares deeply for P, should remain a part of his life as the nearest person he has to family. Added to the unsubstantiated questions raised over TQ's motive by Ms Fairgrieve, this led to a clearly unsatisfactory decision on contact. They submit that it was solely the decision of the provider, Placement 1, on contact. Therefore it is not accepted the CCG operated the same flawed policy as BCT and Placement 1 as to the reasoning for the denial of contact. They do accept they should have taken a more robust approach to seek to influence the decision of Placement 1 as one of the bodies involved in the decision making under the MCA once aware after 11 June 2019. It accepts a best interests

meeting on contact should have taken place in light of the decision to stop contact and all three bodies were responsible for arranging such a meeting.

14. The CCG accepts there was no evidence that a capacity assessment and best interests meeting had formally taken place prior to P's move to Placement 1. This failing is deeply concerning to the Court. The Court notes , with approval, the assurances of the CCG that "A piece of work has been commenced by senior members of the quality team at the CCG to put in place robust assurance processes in relation to new placements and the requirements of the MCA. Consideration is also being given to training needs of those individuals involved in commissioning packages of care on the requirements of the MCA and a training programme will be put in place once these have been identified. It is anticipated that this will help to ensure that a person-centred approach to decision-making is ensured, having full regard to section 4 MCA, in a way which, very regrettably, appears to have been lacking in this case, both during transition and as to contact."

15. The CCG accept the written evidence of Ms Corish was not of good quality and that it did not address in sufficient depth the issues required by the directions of the order of 27th June 2019.

16. The Court had concerns about the evidence filed in this case from an early stage. The statement filed by Placement 1 initially was entirely anonymous, unsigned and undated. Its tone and language provided no comfort to the Court that P was being considered as a person with feelings and his own personality. He was referred to throughout as "the defended" or "defendant". There was no evidence of a balanced analysis of the factors of which the home took account to come to the conclusion it would be in P's interest to end the carer relationships with the former child placement and start adapting to his adult life which led, very dramatically, to the exclusion of TQ from his life. This concern prompted the directions set out in the order of 27th June 2019.

17. The first statement of Ms Williams dated 13th June 2019 failed to provide detail as to capacity assessments, best interests decisions and detail as to consideration of TQ's role in P's life once he had moved to Placement 1 . It failed to identify the lack of family for P and almost arrogantly stated, "Staff at ER (including TQ) were involved solely in a professional relationship with P. It is our expectation that professional relationships are time bound, have a distinct role and purpose and have some structure". Her second statement provided information as to P's background in care and lack of family. Her descriptions of P's contacts with P in June and July were intended, clearly, to insinuate there was no relationship between P and TQ and no recognition on his part, failing to identify that it is a character of P that he never shows a change in his facial features as a response to anyone nor any situation. The Court was not reassured by her oral evidence. She presented as rigid in her thought process, guided entirely by her belief that it was inappropriate to blur the boundaries of professional carer and friend in any circumstances, referring to TQ as "holding all the power and P as not any", despite agreeing TQ had never misused that power. She referred to her as being very close to P which "is endearing but hope all his relationships will be". Even when prompted under cross- examination she did not think it was appropriate for TQ to be part of any best interests decision process. She was quick to draw negative conclusions about TQ without being open minded to other possibilities. I agree entirely with the submissions made by the OS as to her evidence. Without

any basis she had concluded TQ might be storing up information to use in the proceedings. She stated, "we found it inappropriate for you to take (P's) shoes off", not enquiring why she had done that and TQ only being given the chance to explain within the hearing that she had done so as her way of communicating with and showing affection to P, stroking his bare feet. She agreed she had not asked if P was enjoying it.

18. Sadly, I found her to be driven by a policy decision that TQ should play no part in P's adult life as she had cared for him professionally in the past, to the exclusion of all else. Once following that policy it seemed that evidence was presented in such a way as to support that policy rather than presented in an informative, and fair minded way. She appeared not to take on board many thoughtful suggestions which were put to her, offering an alternative view from Ps perspective. Neither, did she readily acknowledge deficiencies in her approach, despite the fact those deficiencies were in part responsible for the failure to put P's best interests at the centre of the decision making of the Trust and CCG.

19. The oral evidence of Ms Corish revealed a clear view that contact with TQ was in P's best interest with no concern as to any risk posed by TQ. She was unaware of the decision taken to prevent TQ's contact until 8th July when she prepared a capacity assessment on contact. This was 3 months after a supposed best interests decision as to contact had taken place, albeit not minuted. She agreed she had failed to provide the information directed by the Court in preparing her statement and that there was a distinct lack of appropriate recordings in respect of decisions on residence, contact, that she was unsure about the deprivation of liberty process and was unaware an application could be made in advance of a placement move. She acknowledged that there were many outstanding issues relating to P, matters which had been brought to the Court's attention by TQ, funding not approved to replace broken drawers in P's room, to replace a faulty sling and information about how P should be monitored at night to keep him safe from seizures. She was fair- minded in her approach to giving evidence but a clear need for further training was identified as was a need for CCG and BCT to have clear processes as to communication between those involved in best interests decisions and the responsibility for holding meetings, gathering information, recording discussions and following up concerns to list but a few. The Court has already noted the work currently being undertaken by CCG in this regard and awaits information from BCT by way of a further statement as to how it proposes to remedy deficiencies in its approach to the MCA and ensure adequate steps are taken in future to ensure authorization of deprivation of liberty is put in place in a timely manner.

20. I have already expressed deep concern about the written evidence of Ms Fairgrieve. Her oral evidence showed the same reliance on a policy decision as Ms Williams. Despite admitting there had been no assessment of capacity in respect of contact she said her Operations Manager, Samantha Kilia, made the decision that as TQ's role as a carer had come to an end and she was not a relative it was "a nonsense to say she could visit". She supported her manager's decision. She was asked how that policy decision placed P at the centre of a best interests decision and responded it was a safeguarding risk. She said she and her manager assessed her as being a risk "because she is not a relative". Although she was aware TQ had taken him on holiday she did not regard that as altering the fact her role was professional and had come to an end.

21. It was disappointing how disingenuous she was when describing how they had not seen a difference in P when TQ visited which would show she had enhanced his time. She said one would expect him to show facial interest if seeing his mum or a family member. When the follow up question was put as to whether he could show facial expressions, she stated that he could not. She went on to suggest she doubted TQ's motives, that TQ has another agenda and linked that to a concern P's finances had not been transferred to their home, despite her having no evidence of the same and the Court having clear evidence TQ was not responsible for the failure to transfer his accounts to his new home. I found her manner to be aloof, that she lacked a fair minded approach to best interests decisions, and to failed to put P at the centre of those decisions. Hence, her oral evidence confirmed the fears which were held by the Court when reading her written evidence. It is not a surprise to this Court that a number of issues were identified for follow-up at a quality assurance visit at Placement 1 on 23rd September 2019 and the Court will expect to receive further detailed information about this at the next hearing.

22. Hence, having considered the entirety of the evidence and the written submissions, I conclude there was a pursuit of a flawed policy by both BCT and the management at Placement 1 and that the CCG, in failing to challenge the decisions taken acquiesced in them. The pursuit of this policy was a fundamental flaw. It infected the decision making of BCT, the CCG and Placement 1. The pursuit of the policy resulted in the requirements of section 4 of the MCA being ignored. The policy became the only factor in determining P's best interests on issues surrounding his ongoing relationship with TQ. To fail to consider the benefit to P of TQ spending time with him, helping to stimulate him, feed him, talk to him and to show her genuine care of him, when he had no other single person in his life who was willing to do that, outside of a professional relationship which had commenced in 2018 or 2019, was bewildering and shocking. The very fact that P is quiet and shows little reaction to those around him highlights the importance of him being afforded quality time by someone who cares for him when his needs might otherwise be overlooked in an environment where others might demand more attention by being more vocal. I have set out the submissions made by the OS in this regard in full as I accept them in their entirety. Each point is well made and accords with the view of the Court.

23. TQ's application highlighted serious flaws in the procedures and practice of the CCG, BCT and Placement 1 in complying with the MCA 2005. Only if there is good practice can we trust our agencies and professionals working within them to deliver satisfactory standards of care to some of the most vulnerable people in our society and to protect their human rights. The extent of the failings in this case were clear only once the witnesses had been cross-examined by the OS and TQ due to the poor quality of the written evidence and the absence of rigorous assessment of decisions taken and the procedures adopted prior to the final hearing. Had TQ not made her application the plight of P in so many respects might still have gone unnoticed or unchallenged, if decision-making in respect of him had proceeded in the same fashion as hitherto. There was a failure to carry out capacity assessments in a timely manner, and or at all, and a failure to record them in writing. The capacity assessment as to contact took place 3 months after the best interests decision was taken to prevent TQ having contact with P. The quality of the best interests decision making was poor as has been canvassed already within this Judgment. The identity of those involved was not even clear to those participating, nor to the Court. Ms Williams referred to Ms Corish being

involved in decisions regarding contact. Ms Corish disputed that but accepted she should have challenged the decision about which she later learned. There was no oversight by the CCG of that decision. Ms Williams struggled to recall the third person involved in the decision making process. She shared the same flawed view as Placement 1 as to TQ's role in P's life and her opinion appeared to be the extent of the BCT's oversight of the decision. There was confusion as to how decisions in respect of education have been made.

24. The Mental Capacity Act Code of Practice sets out precisely what should be recorded by those professionals involved in the care of a person who lacks capacity when working out the best interests of that person for each relevant decision. Records should be made of how the decisions were reached, why the decisions have been taken, who participated and what particular factors were taken into account. The record should remain upon the person's file.

25. The failure to comply with the MCA 2005 was not a technicality. It led to a wholesale failure of best interest decisions in respect of P as to his contact with TQ; a failure to include TQ, as a person important to P, in the decision making process; a lack of structure in any decision making as to whether TQ should be appointed as P's PWD; failure to make timely decisions as to repair of damage furniture in P's bedroom, to order a new hoist sling to replace the damaged one being used, to agree funding for his sleep system which he had been assessed to need; failure to apply for authorization of his deprivation of liberty under schedule A1 MCA 2005 prior to his move to Placement 1 so that he was unlawfully deprived of his liberty and without the protection of the Deprivation of Liberty Safeguards for a period of time.

26. It was no surprise once the extent of the failings became clear that the BCT and CCG withdrew their opposition to TQ being made PWD without limit save for medical issues. The benefit to P of her being appointed PWD is obvious following the failings of the BCT and CCG as I have described. It is clear, too, that she has demonstrated an unwavering commitment to P and his right to have his voice heard. Without her application it is a voice that would continue to have been lost. I cannot praise her highly enough for her quiet, selfless and dignified determination. I have no hesitation in appointing her PWD.

27. The extent of the failings only became known following the vigorous cross-examination of the OS and TQ. It was these failings that, substantially, led the OS and the Court to the conclusion that TQ should be appointed PWD with wide powers. With respect to counsel for BCT it defies logic to suggest the written evidence was not sub-standard as it enabled the OS to reach a provisional view. It was insufficient to enable the OS to form a properly reasoned view based on full and correct information. It was insufficient for BCT and the CCG to arrive at a considered position. Had the information been set out appropriately in written evidence it is likely all would have realized prior to the commencement of the hearing that this case did fall into those unusual circumstances where there is a real need for P to have a PWD to ensure he is at the centre of best interests decisions in the future and that TQ is the ideal person to take on that role for P. This is all the more evident from the fact she was never required to give oral evidence.

28. The OS's application for costs against the BCT and the CCG is made in the context of these significant failings. The CCG submit that the OS would need to have been involved at least up until the commencement of the final hearing in view of the complexity surrounding the court's decision in any case as to whether a personal welfare deputy should be appointed. Certainly, I have had to consider carefully the decision of the Honourable Mr Justice Hayden in Mottram, Lawson and Hopton (Re: Appointment of Welfare Deputies) [2019] EWCOP 22 but I cannot escape the inevitable conclusion that this application was only made by TQ as a result of P's rights being violated and her despair at the failings of the system, of which she knows a great deal, as a professional carer for P previously and a continued professional carer for other young people lacking capacity. I have considered Part 19(5) of the COP Rules and noted that I may depart from the general rule that there is usually no costs ordered in welfare decisions when taking account of certain factors. I have described in detail the failings before and during the proceedings. I have taken account of the change in position by the parties without the requirement for TQ to give evidence, with only their own evidence causing the BCT and the CCG to decide TQ's application should not be opposed. I have come to the conclusion that the costs of the OS should be born in full by the BCT and CCG in equal shares.