



Neutral Citation Number: [2021] EWCOP 54

Case No: COP 13603831

IN THE COURT OF PROTECTION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/09/2021

Before :

THE HONOURABLE MRS JUSTICE ROBERTS DBE

Between :

WU

Applicant

- and -

**(1) BU (by her litigation friend, the Official
Solicitor)**

Respondents

(2) NC

(3) A COUNCIL

Parishil Patel QC and Ian Brownhill (instructed by Ashfords Solicitors) for the Applicant

Bridget Dolan QC (instructed by Odonells Solicitors) for the First Respondent

NC appeared as a litigant in person

Laura Twist (instructed by the Council's Legal Department) for the Council

Hearing dates: 6, 7 and 8 July 2021

APPROVED JUDGMENT

Mrs Justice Roberts :

1. These proceedings concern BU, a 70 year-old woman who has a diagnosis of vascular dementia¹. In July this year, I dealt with an attended hearing in the Royal Courts of Justice during the course of which I had the pleasure and privilege of meeting BU and speaking to her privately, albeit that our meeting had to be conducted remotely over a video platform. The issues before the court on that occasion concerned the extent to which BU should be prevented from having contact with NC, the second respondent in these proceedings. NC and BU have formed a relationship which has become, for BU, a central and crucially important part of her life and, as she sees it, pivotal to her emotional wellbeing and happiness. These proceedings have been brought by her daughter as a representative of her wider family members because of their increasing concerns about the extent to which she is vulnerable to harm as a consequence of that relationship. Those concerns flow from their observations, confirmed by the expert evidence in this case, that the relationship which BU has with NC is characterised as one of coercive control exerted by him in several aspects of her day-to-day life and in particular in relation to the management of her financial affairs. BU's diagnosis of vascular dementia makes her vulnerable to that alleged control in that she does not recognise it to be an aspect of her relationship with NC. NC denies he has acted in any way to harm BU or expose her to detriment, financial or otherwise. He believes that this court has no role to play in relation to her decision-making since he maintains that she is capacitous in her own right and able to make choices and decisions for herself.
2. Whilst there are several legal issues which fall for determination in this judgment, what lies at the heart of this case is the happiness and wellbeing of a much-loved mother and daughter. BU said to me at the end of our meeting that I held her life within my hands. That is the extent to which she perceives her future happiness to be bound up in her relationship with NC. She cannot presently countenance an existence where he is not an integral part of her life. She maintains that strength of conviction despite the fact that, as a result of earlier court injunctions, she has had no contact with NC for over a year. In circumstances where personal autonomy and life choices are a central aspect of the human rights which this court is bound to uphold and respect, it is only in limited circumstances where it can or should intervene.
3. It is the applicant's case that her mother's relationship with NC has caused a complete breakdown in family relationships. WU and her sister are now all but estranged from their mother despite the concerns which they have for her wellbeing. BU now has a very strained relationship with her 95 year-old recently widowed father. She is no longer enjoying the company of her young grandchildren who no doubt miss her very much. WU, and the wider family, wish to be reunited with BU in the absence of NC's influence. It is their case that the evidence which is now before the court demonstrates that NC is a

¹ I deal further with this diagnosis in para 44 of this judgment.

serial offender who has a history of targeting the vulnerable for financial gain and that BU is simply his latest victim. For his part, NC alleges that he has not exerted any control over BU. He maintains that whatever choices she has made about various personal or financial transactions have been her own. He presents himself as a victim of the wider family's hostility and prejudice. He maintains that BU's daughters have financial reasons of their own which are driving their wish to marginalise him as an important person in their mother's life. He views his relationship with BU as a romantic, albeit platonic, bond which he hopes will be given legal status in due course through a civil partnership. Part of that 'contract' between them will recognise his ability to form sexual relationships outside that relationship if he chooses.

4. Since these proceedings were commenced in May 2020, the court has already made a final declaration under the Mental Capacity Act 2005 that BU lacks capacity to make decisions in relation to her property and financial affairs. On 24 November 2020, HHJ Marston made an order appointing a deputy for BU's property and financial affairs. WU now invites this court to put in place further orders for her mother's protection. She seeks:-
 - (i) a declaration pursuant to section 15 MCA 2005 that BU lacks capacity to make decisions about her contact with others, including NC;
 - (ii) an order pursuant to section 16 MCA 2005 which prevents NC from having any further contact with BU (including the continuation of the existing injunction which currently remains in place to this effect); and
 - (iii) an order under the court's inherent jurisdiction which prevents a marriage or civil partnership between NC and BU or, alternatively, an order pursuant to section 63A of the Family Law Act 1996 (a forced marriage protection order).

The Issues

5. On behalf of WU, Mr Patel QC and Mr Brownhill have defined the issues to be determined in this case as these:
 - a. Should NC be allowed to reopen the orders made by HHJ Marston in November 2020 in respect of the management of BU's financial affairs ?
 - b. Does BU lack capacity to make decisions in relation to her contact with others, including NC ?
 - c. If so, what orders should be made ?
 - d. Is BU subject to coercive control by NC ?
 - e. If so, what orders should be made ?

6. As the Official Solicitor acknowledges, BU has struggled to assert herself throughout her adult life. What is being proposed in the context of these proceedings is what she perceives to be a serious and fundamental overriding of her wish to maintain a relationship with NC and to enter into a civil partnership with him so as to formalise legal relations between them. Her rights to a family life under Article 8 and her rights to marry a person of her choosing under Article 12 are fully engaged in this instance. I need no persuasion that such a profound interference as that sought would be a very significant step which would require compelling justification if it were to be regarded as both reasonable and proportionate and thus a lawful intervention. In this context, the role of the Official Solicitor as BU's litigation friend is crucial. I have in the material before the court several lengthy attendance notes of conversations which BU's solicitor, instructed by the Official Solicitor, has had with BU. They are meticulously recorded and reveal in detail the importance which she attaches to the preservation of her relationship with NC. These wishes and feelings are a very important part of the balancing exercise which this court must perform and I bear well in mind the potential emotional consequences for BU of any order which continues the enforced separation between them.

The Background

7. BU lives at a property which she owns. That property is mortgage-free. It has been her home for the last twelve years. She and her former husband had two daughters whilst they were married. Their marriage ended when the two children were very young and BU has effectively raised her family on her own and without any effective support from her former husband. The collapse of her marriage was plainly a traumatic event for BU. She told me something about the emotional pain which the separation had caused and the keen sense of loss which she felt when the children's father left their family home. She has not had any meaningful adult relationship with another since that marriage ended.
8. BU has always benefitted from a measure of financial support from her own parents, each of whom enjoyed successful professional careers of their own. Her mother died in 2019 but she had practised as a consultant anaesthetist prior to her retirement. Her father is now in his mid-nineties. He had a successful career as a partner with a leading international management consultancy. He lives in his own home in Surrey albeit that he now needs help with his care. As a result of the financial support which BU received over the years from her family, she was able to devote her time and energies to her role as the children's mother without needing to work outside the home. By all accounts, they were a close-knit unit. WU's written evidence reflects the extent to which both she and her sister remained in close touch with their mother after they had left home to begin independent family lives of their own. Both daughters live in different parts of the country with their partners. WU's sister is married and has two children of her own. Prior to their mother's relationship with NC, both were in regular contact with their mother and each was involved in the day-to-day aspects of her life. It appears to have been a close, loving and committed extended family relationship.

9. At the time these proceedings were commenced, BU had significant financial resources at her disposal. She and her father used the same firm of stockbrokers to manage their respective investment portfolios. She relied on her father and her professional advisers for assistance in managing her finances. At the time of her appointment as BU's financial deputy, KE estimated the value of BU's assets to be c. £1.3 million. It appears that some of those funds are now unaccounted for; other assets have been realised to fund the cost of acquiring a boat, a caravan, a pick-up truck and a van. These assets were purchased in her name but appear to have been used by NC in part in the course of his activities as a self-employed builder. BU does not drive and has no driving licence. In addition, NC has received various sums in cash from BU estimated by the police to be approximately £80,000.
10. NC is significantly younger than BU. He has been married and divorced twice. He was in his mid- to late forties when they met and he is now 53. He appears to have had a somewhat chequered background in terms of employment which has been punctuated by periods of imprisonment. He has described in his written evidence working as a private investigator, a personal carer, an art gallery owner and a self-employed builder. During the later stages of his relationship with BU he claims that he set up a partnership or company in which BU was to have an interest. No documents have been produced to explain the legal status of this entity and there remains uncertainty as to quite what this business does and/or who controls it. It seems clear from what NC has said in his various written statements that his is the controlling hand although the court has no relevant, far less current, information about its current financial status. There is certainly no evidence before the court to suggest that NC's business activities were profitable and/or that they enabled him to sustain any measure of financial independence without needing to rely on others.
11. He has most recently described his work as "a builder with other tasks such as landscaper and decorator". He employs "four young workers" whom he is training on an ad hoc basis. The national pandemic and the restrictions which it brought interrupted his work. When those restrictions were eased and the demand for building work started once again, he describes how BU's 'hands on' involvement in his business resumed. She apparently underwrote the entire wages bill and paid for materials, equipment and the hire costs. In return, NC's case is that she received payments from their customers. He maintains that she now has a 35% interest in a new business called 'MS'. He maintains that one of the vehicles which she purchased for him to drive (an SUV truck) was "gifted as a thank you for looking after her" and as a means of "showing a good face of my business".
12. In a statement (Appendix C(b) entitled "*What's it Really about ?*"), NC has set out his case that the driving force for these proceedings is the fact that BU's two daughters dislike the fact that their mother has changed the terms of her Will so as to postpone their interests in her house after her death for a period of seven years. During that period they will be entitled to the rent which it generates but they will have no direct access to capital. The value of their mother's estate outside the equity in the house (including a

fairly substantial inheritance she received following her mother's death in 2019) has been left to the grandchildren. As he puts it, *"The girls want the money ... not the house"*.

13. Within the material which has been placed before the court is a record of NC's antecedent history. As at November 2020, police records show that he has been convicted of twelve fraud and related offences (between 1985 and 1991), fourteen theft and related offences (1981 to 2002), and one firearms offence involving a shotgun (1991). He received custodial sentences in 1990 (theft and obtaining property by deception) and in 1991 (theft and dishonesty). In 1997 he was imprisoned for three and a half years for two offences of blackmail. In October 2002 he was sentenced to 9 years imprisonment for a further offence of theft and blackmail. Whilst it appears that NC appealed that conviction and sentence, his appeal was dismissed in 2004.
14. Throughout these proceedings, NC has been keen to exculpate himself from this pattern of offending. As the litigation has progressed, he has filed hundreds of pages of written evidence explaining, in terms, how he has at times been treated unfairly and offering context and explanation for his antecedent history. At other times he has referred to some form of conspiracy whereby various individuals have determined to discredit him. By the time he came to make his final submissions at the conclusion of the evidence, he appeared to accept the recorded convictions although he continues to deny his guilt in relation to the offence of dishonesty and blackmail for which he received a 9-year custodial sentence. As I explained to him, I am bound to treat these convictions as established facts. In one of his statements filed in March this year, NC has addressed his offending history in some detail. He says,

"Though I have been arrested for numerous very serious allegations, after investigation, they remained as allegations."
15. In this context, he has dealt with two allegations of rape and one allegation of sexual assault which are alleged to have occurred in different parts of the country with three different women. In each case, the police decided to take no further action.
16. The police have disclosed intelligence in respect of further allegations against NC which have not been pursued. These include an allegation made by a woman in 2015. She claims that NC befriended her whilst she was working in a local shop. She was then 19 years old (according to NC) and had come to this country from Romania. NC represented that he owned a business which was concerned with covert private investigations. He offered her training in these skills. Within the material before the court is a statement which this woman made to the police in October 2015 having been referred to them as a vulnerable adult. Having moved in with him despite a 28 year age difference, she told police that NC had shown her how to use knives and insisted that she carried a lock knife with her at all times. Of the nature of her relationship with NC, she told the police that he would regularly massage her and draw symbols on her naked body. If she made a mistake whilst learning what he taught, she described how she was made by NC to strip off and masturbate whilst he watched her reciting the phonetic alphabet. NC has denied

any manipulation or coercion of this woman although he accepts that he trained her to use a two-way radio in the context of surveillance activities in her assignments which included “matrimonial and preventing child abduction to foreign lands”. He characterises their relationship as benign. He maintains that she called him “PaPa” and claims he was a supportive father figure to this woman. NC was not convicted of any offence as a result of these allegations but this woman’s written statement remains on file with the police.

17. On behalf of BU, the Official Solicitor has no doubt about where this evidence takes the court in terms of the factual matrix in this case. At paragraph 8 of her position statement, she has said this:-

“The Official Solicitor acknowledges that the evidence overwhelmingly supports the view that [NC] is a confidence trickster whose long-term lifestyle appears to have involved repeatedly inveigling money from vulnerable people through coercive control and, at least on three occasions, blackmail.”

For these purposes, she has adopted in full the submissions made by Mr Patel QC and Mr Brownhill in support of the applicant. As the proceedings commenced, she reserved her position in relation to the full extent of the relief sought by WU until conclusion of the oral evidence.

18. The local authority is represented in these proceedings by Ms Laura Twist. A care needs assessment was undertaken by the local authority in October 2020. That assessment concluded that BU’s care needs were being met albeit that it identified risks of financial abuse and a relationship of coercion and control in the relationship between NC and BU. Given the formal appointment of a financial deputy to look after BU’s financial affairs and the restrictions placed by the court on contact between them, Ms Twist’s client takes the view that there are no safeguarding routes which would justify further intervention at this stage by the local authority. It accepts the conclusions of the two experts instructed in the case in relation to capacity to which I shall come shortly.

BU’s relationship with NC

19. The family first became aware of their mother’s relationship with NC in 2016. At that time, WU learned that her mother had approached her son-in-law to ask how a person might go about lending someone several thousands of pounds and ensure the money was repaid. She explained that she had made the acquaintance of the owner of a local art gallery from whom she had purchased two pictures and he had subsequently asked her for a loan to assist with the payment of rent on his premises. This approach prompted WU’s brother-in-law to set up a meeting with NC. There appears to have been a short and somewhat curt exchange between the two men. A short time later, WU found a handwritten note stuck to a mirror in her mother’s home on which were written the words, “*I think you’re lovely*”. BU did not deny that the note had been written by NC.

20. In 2018, the family became aware of photographs which showed a man in her garage cleaning a tent which WU had left for storage at her mother's home. BU confirmed to her daughter that this man was NC who was doing some 'odd jobs' around the home for her including cooking some of her meals. At about this time, BU's health was an increasing cause for concern amongst the family. She had been diagnosed with early stage heart failure. WU shared her concerns with her grandfather who confirmed that NC seemed to be present in his daughter's home whenever he called to speak to her. At a family occasion in October 2018 BU confirmed to her family that her relationship with NC had developed from one of friendship into one which involved an element of physical intimacy. When she was pressed by her daughter as to whether he was the sort of person with whom she wished to associate given his previous request for money, BU told her daughter that he was useful *"because he knows all of the burglars"* and *"you have to keep on with these people, so nothing happens to you"*.
21. By 2019, BU confirmed to her family that NC was accompanying her to medical appointments. By that stage she was exhibiting increasingly erratic behaviour. Following a suggestion at one of those appointments that she might be pre-diabetic, NC began to take control of her intake of food and the nature of the food she was eating. At a private medical appointment which WU arranged in Bristol for her mother in the summer of 2019, BU was diagnosed following a scan with "moderate small vessel disease which is in keeping with vascular dementia". After discussions with the family, BU agreed that it would be sensible to put in place a Lasting Power of Attorney and a Will. She instructed a firm of solicitors which had been recommended to her by her accountant. It appears that NC subsequently persuaded BU to visit a different solicitor for the purposes of putting a new Will in place.
22. It is clear from a series of WhatsApp text messages which I have seen, sent by NC to WU from her mother's mobile telephone, that he was taking on a more central role in relation to BU's medical appointments and acting as a conduit for the release of information to her family. By the early part of 2020 NC had moved into BU's home. From that point, the evidence which has been put before the court suggests that his control over BU's life increased. He was directing arrangements for her diet and at one point complained to her GP's surgery that his advice was being "undermined". On another occasion, WU visited her mother to find that NC was discussing funeral arrangements with her. It later transpired that BU was making regular payments to NC at the rate of £300 per week and allowing him to live on a rent-free basis in her home. NC accepts that he was paid for four weeks and that he used the majority of this money to buy shopping and run the house. He maintains that he did not pay any rent because *"it was never assumed I had too [sic] ... We lived as a couple but not intimate and we both have our own rooms"*. Whilst he professes he never acted as a carer for BU, he does state in his written evidence that *"the guidelines I set were that [BU] was to be encouraged to rest as much as possible, no lifting and no going on her knees to go into cupboards, that [she] was to be encouraged to do as much as she wanted too but to*

balance that aspect out with need to rest [sic]". He confirmed that when one of the three carers he had hired fell short of her caring obligations, he dismissed her.

23. NC appears to have been well aware of the wider family's concerns for BU. It is equally clear to me from a statement he has made dated 16 May 2020 that he was intimately involved in discussions with BU about the inheritance which she received following the death of her mother in 2019. He has explained that her family was keen to persuade her to agree to a Deed of Variation which would restrict the extent to which she would have ready access to the cash savings which had passed to her under the terms of her late mother's Will. He appears to accept that he had taken BU to a solicitor who was not previously known to BU or her family. He has confirmed in his written evidence that it was he who "*designed the will taking into account [BU's] wishes*". He confirms that he is not mentioned in that Will "*and declined the offer of being so*". When WU visited her mother at her home shortly thereafter, NC handed her a copy of the new Will to demonstrate that he was not a beneficiary. She has explained in her written evidence that NC appeared to be extremely nervous in her presence and left the house after suggesting to her that he and BU were likely to change the terms of the Will again in any event as a result of telephone conversation they had recently with her sister.
24. That appears to have been what has happened. In a statement which NC has prepared in the form of a letter written to the court and dated 4 July 2020, he has confirmed that, in contemplation of a civil partnership, he and BU have already agreed the terms of a prenuptial agreement and a codicil to BU's latest Will. He states that a draft has been prepared but not yet sent to her solicitors although they have been made aware of its terms. Under this new arrangement, NC *will* receive a direct financial benefit. In the event that he survives BU (as seems most likely given their respective ages), he will receive an income equivalent to 50% of the rental yield from the property portfolio which, on his case, is, or was, in the course of being acquired. The other 50% is to be accumulated in an income account which is to be held for the benefit of BU's grandchildren. Further, NC is to retain absolute control over decisions in relation to the properties until he reaches the age of 70 years or the grandchildren attain the age of 21. On the earliest of those two events, the properties will be passed to the grandchildren save for one which NC shall be entitled to select and retain for himself. The provision in relation to BU's present home remains the same and falls outside of the terms of this new testamentary arrangement.
25. Such was WU's concern by this stage that she contacted the local police and informed them that she was concerned that her mother might become a victim of crime. She was subsequently able to establish from some internet research that NC had various criminal convictions including an offence involving blackmail. The newspaper report exhibited to her statement appears to relate to the offence for which he received a nine-year custodial sentence. It involved an attempt to extort thousands of pounds from staff at a local bank. His demands were made with a threat whereby he claimed to have a bomb strapped to his waist. At his criminal trial, NC's defence was that he had been acting under duress

having been kidnapped three days before. He represented himself at his trial and gave an account to the jurors of having been abducted by three men who took him to a country lane and strapped the device to his person. He said he was given a letter to take into the bank. He told the jury that he believed at least one of kidnappers had spent time in prison with him during a previous period of incarceration. The jury rejected his explanation in its entirety after a deliberation which was reported to have taken no longer than twenty minutes. Handing down sentence, the judge described NC as “a menace” and his offence as “a thoroughly cynical unpleasant wicked offence. It was planned, and planned carefully”.

26. WU carried out further internet research in relation to NC’s business activities during the period when he leased and ran the art gallery where he had met her mother. Through negative reviews which had been posted on the gallery’s website, she made contact with other women who claimed to have been affected by NC’s activities. Whilst some of these complaints related to a failure to pay money which was owed to various artists, others related to instances where he had obtained nude pictures of women for the purposes of offering ‘body-casting’ services which apparently never materialised. WU recounts the conversations she had with various women whom she tracked down which suggested a consistent pattern of conduct on NC’s part. She was told that having ingratiated himself and gained their confidence, he offered support in a particular direction before asking for financial help in return. When he moved on from these relationships, the money owed remained unpaid. As a result of these contacts, WU was put in touch with the female detective who had been assigned to deal with their cases. She contacted that officer at the end of January 2020 and at that point the police began their investigations borne out of a concern that BU might indeed become a victim of crime.
27. For the purposes of these proceedings, one of these women, LB, was prepared to make a witness statement in support of WU’s case in relation to the need to protect her mother from NC’s influence. Her written statement is dated 8 March 2021. She has set out in her statement how she met NC at a time of personal distress when her marriage was breaking down. They formed a romantic attachment and PC shared with him the fact that she was expecting to receive a £20,000 endowment. There followed repeated requests for money in order to buy artwork, clothes and meet his rent on the gallery. She states that he often asked for money having claimed to have been arrested by the police who had taken his mobile telephone and clothes. On one occasion when she refused one of his requests, she says that he threatened to kill himself, something which NC denies. As a result, she paid the money. In total, she believes she handed over in excess of £10,000 but nothing was ever repaid. She cut all ties with NC after being arrested in May 2016 on suspicion of money laundering from the sale of artwork. The police appear to have had details of all the sums she had passed to NC. PC was later released without charge and no further action was taken. She concludes her statement with these words:

“It is extremely difficult for me to talk about the controlling and damaging hold that [NC] had over me. Nevertheless, I am determined not to let [NC] do this to anyone else. That is why I have chosen to make this statement.”

28. I was due to hear oral evidence from PC on the second day of the hearing. I was alerted before the hearing started to the fact that PC had been in contact with WU’s solicitors to advise that she was unable to attend court because of emergency eye surgery which she was due to undergo in hospital that morning to treat a detached retina. There was no medical evidence to that effect before the court and no adjournment was sought by any of the parties to enable the court to receive PC’s oral evidence. Thus her statement has not been tested in cross-examination nor has the court been given an opportunity to assess her credibility. As Mr Patel QC accepts, the weight which I can attach to that evidence is a factor which will need to be assessed.

The course of the police investigation

29. At the end of January 2020, the police attended at BU’s home with a social worker to assess her capacity and warn her that NC was already known to the police in respect of previous criminal activity. WU was present with her mother on that occasion. They informed her that their intention was to request disclosure under the Domestic Violence Disclosure Scheme. That disclosure was subsequently presented to BU who refused to believe that NC could have committed the offences described. She was insistent that she wished him to remain living in her home.
30. At the end of April 2020, WU was informed by her grandfather that BU had liquidated an investment portfolio worth approximately £200,000 for the purposes of a property investment. On contacting her mother’s portfolio manager, WU was informed that her mother had given instructions that the manager should liaise with NC over these arrangements. He represented to that individual that he was a friend who was assisting her with the purchase. Those funds having been released into an account in BU’s name, the fund manager received an email from NC asking to cash in a further £200,000 from the remaining investments held in BU’s name. Despite sharing this information with the police, social services and the solicitors whom BU had instructed in connection with her new Will, nothing was done at that stage. Matters came to a head in early May 2020 when the police revealed that they had been contacted by a financial entity which held and managed for her mother a substantial portfolio of income bonds. She was then seeking to liquidate her entire portfolio worth a little under £700,000. The police were told that during the call which BU had made to give those instructions they could hear a man in the background giving her instructions. A recording of that telephone call was made available to the police and the transaction was stopped before the funds were released. Subsequent enquiries revealed that two other financial institutions had also reported concerns to the police in relation to similar activities on BU’s accounts.
31. On 14 May 2020 NC was arrested. These proceedings were issued within a week of his arrest. NC was subsequently released on police bail on condition that he was to have no

contact with BU nor was he permitted to attend at her home or enter the street on which she lives. He is frank in his admission to this court that he has breached those conditions by contacting BU on up to forty separate occasions. On 2 September 2020 he was rearrested for perverting the course of justice. Charging decisions in relation to the events leading to his arrest are still awaited.

32. The police search of BU's home at the time of NC's initial arrest revealed that at least five property transactions were then in progress although BU only appears to have been aware of one of these transactions. It is NC's case that each of these transactions was being undertaken with BU's full agreement and at her behest.

Capacity in the context of this litigation

33. The Mental Capacity Act 2005 sets out the statutory framework which governs the position where a person is found to lack capacity in one or more domains. Section 15 enables a court to make declarations as to whether a person has the necessary capacity to make a decision in relation to specific aspects of how he or she lives life and operates his or her financial affairs. Section 16 gives to the court the power to make orders and decisions on that person's behalf which render lawful or otherwise acts and decisions taken on behalf of that party.

34. The relevant parts of section 2 of the 2005 Act provide as follows:-

‘2. People who lack capacity

- (1) For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.
- (2) It does not matter whether the impairment or disturbance is permanent or temporary.
- (3) A lack of capacity cannot be established merely by reference to –
 - (a) a person's age or appearance, or
 - (b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about his capacity.
- (4) In proceedings under this Act or any other enactment, any question whether a person lacks capacity within the meaning of this Act must be decided on the balance of probabilities.

.....

35. Section 3 sets out the circumstances in which a person qualifies as one who is unable to make a decision for himself or herself.

‘3. Inability to make decisions

- (1) For the purposes of section 2, a person is unable to make a decision for himself if he is unable –
 - (a) to understand the information relevant to the decision,
 - (b) to retain that information,
 - (c) to use or weigh that information as part of the process of making the decision, or
 - (d) to communicate his decision (whether by talking, using sign language or any other means).
- (2) A person is not to be regarded as unable to understand the information relevant to a decision if he is able to understand an explanation of it given to him in a way that is appropriate to his circumstances (using simple language, visual aids or any other means).
- (3) The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him from being regarded as able to make the decision.
- (4) The information relevant to a decision includes information about the reasonably foreseeable consequences of –
 - (a) deciding one way or another, or
 - (b) failing to make the decision.’

36. On 15 May 2020 an independent social worker prepared a capacity report in relation to BU. That report concluded that:-

- (i) BU understood that she owned property, that she was in the process of acquiring further property and the broad nature of her financial circumstances. She was unable to understand the day-to-day operation of her finances or to use and weigh information about potential financial mismanagement and abuse. She lacked capacity to make decisions in relation to her finances and property because of the established diagnosis of vascular dementia.
- (ii) In relation to her contact with others, BU understood that NC lived with her and that she had a close relationship with him. She struggled to use and

weigh information about the risks which he presented and/or to evaluate concerns from her family and other professional bodies concerned for her welfare. She struggled to take on board the new information about his antecedent history and background because of the difficulties she had with short term memory and lacked capacity to make a decision about contact with NC because of her vascular dementia.

37. On 19 May 2020 HHJ Marston made a raft of protective injunctions on a without notice basis which:

- (i) prevented further contact between BU and NC;
- (ii) declared it to be in BU's best interests for there to be no further progression of any property transactions or withdrawals from her savings and investment accounts until further order of the court; and
- (iii) appointed a financial deputy in relation to her property and affairs.

38. Those orders were continued by further order dated 14 July 2020. The Official Solicitor was appointed to act as BU's litigation friend on that occasion. On 18 September 2020 at a further hearing, HHJ Marston confirmed the 'no contact' injunctions and authorised BU's financial deputy to deal with the vehicles, boat and caravan which had been purchased using BU's funds. On that occasion NC confirmed to the court that it remained his wish and intention, when circumstances allowed, to enter into a civil partnership with BU. Following various orders for disclosure, on 18 February this year NC applied to stay or discharge these proceedings. That application was accompanied by a witness statement which ran to 1,131 paragraphs. On 19 February 2021 at a hearing attended by all parties and their respective legal representatives, Mostyn J renewed the caveat which the local authority had entered under s. 29(1) of the Marriage Act 1949 preventing the celebration of any marriage between BU and NC. His Lordship renewed the injunctions which prevented any contact between BU and NC.

The legal framework in the context of the expert medical evidence

39. All parties in this case with the exception of NC accept the evidence of the experts instructed in this case that BU lacks capacity to make decisions as to contact with others. NC is alone in rejecting this information. It is his case that when BU does make clear her aims and wishes, the family actively works against her to prevent what she wants. He maintains that WU and the wider family members have controlled or influenced BU and in particular in relation to her financial arrangements. He asks the court to accept that their current objections to an ongoing relationship between himself and BU is an aspect of their wish to exert that control.

40. The law relating to decisions relating to a person's capacity to decide whether to maintain contact with another person (including the level of contact, or, indeed, the cessation of such contact) was considered in *LBX v K, L and M* [2013] EWHC 3230

(Fam) by Theis J and in the more recent case of *Re B* [2019] EWCOP 3 by Cobb J. In the latter case, Cobb J endorsed and applied the law as set out in the 2013 decision.

41. In the context of a person's ability to use and weigh information in relation to contact with another person and applying the principles established in *LBX v K and others*, the factors representing 'relevant information' for the purposes of section 3 of the 2005 Act include the following:-

- (i) with whom will that person be having contact ?
- (ii) the nature of the relationship between them;
- (iii) what will be the nature of the contact ? Will such contact take place in a public or private setting ? Will overnight stays be involved ? Will it involve the presence of a carer or support worker ?
- (iv) What are the positive and negative aspects of that contact ? In this context, unless demonstrably false, any assessment should include not only an individual's current experiences but also any negative or unpleasant aspects of past experiences during contact with that individual.
- (v) The assessment needs to include consideration of what constitutes a family relationship and that such relationships are different from other categories of contact.
- (vi) If the person with whom contact is under consideration has previous criminal convictions or poses any sort of risk to the protected party, the assessment must include an evaluation of present or future risk. If that risk exists, or is likely to exist in future, a decision has to be made whether it is safe to run that risk. In this context, the circumstances surrounding the conviction(s) and the protected party's ability to understand any risks or dangers to which he or she may be exposed are all relevant factors which need to be carefully weighted and understood: see *PC and NC v City of York Council* [2013] EWCA Civ 478 at para 13.

42. The independent social worker, Mark Caulfield, who prepared the initial capacity assessment of BU on 15 May 2020 reached a clear conclusion that she struggled to use and weigh the risks inherent in her relationship with NC. He was clear in that assessment that she did not have the ability properly to weigh or understand concerns expressed by her family or other agencies, including the police. She struggled to absorb new information about her situation with NC and had clear difficulties with her short-term memory. For these reasons, he was satisfied that she lacked capacity to make a decision about contact with NC because of her diagnosis of vascular dementia which provided the necessary causative nexus. In other words, this functional deficit was the direct result of her vascular dementia. Whilst recognising that BU was under stress when his assessment

was undertaken, Mr Caulfield reported that she was quite unable to identify any risks of financial abuse or exploitation.

Dr Andrew Barker, consultant psychiatrist

43. In July 2020, and pursuant to leave given by the court, the Official Solicitor led the joint instruction of a further expert and commissioned a further capacity assessment in relation to a number of different domains. For these purposes, she instructed Dr Andrew Barker, a consultant psychiatrist who specialises in dealing with patients in older age. In his first report dated 10 September 2020, he has concluded that as a result of her mental impairment:-

- (i) BU lacks capacity to conduct these proceedings;
- (ii) she lacks capacity to make decisions about contact with others, including NC;
- (iii) she lacks capacity to manage her property and affairs;
- (iv) she is vulnerable and potentially subject to coercion and control; and
- (v) she is unlikely to regain capacity to manage her financial affairs, given their relative complexity, the nature of her mental impairment and her dependence on NC for guidance in this respect;
- (vi) she is unlikely to regain capacity to make decisions about her contact with NC given her longstanding personality traits, the likely progression of her cognitive impairment, her lack of understanding about the potential risks of the relationship and the influence which NC was able to exert over her.

44. In this context, whilst Dr Barker was clear that BU suffered from “cognitive impairment at multiple levels which interferes with her ability to manage her life independently”, he was not persuaded that a diagnosis of vascular dementia was appropriate in this case. He accepted that the brain scans which he had seen were highly suggestive of the onset of vascular dementia. However, his professional view was that there was insufficient evidence of global cognitive impairment to confirm such a diagnosis. He pointed to the evidence of a long-lasting cognitive disability which was present during her childhood. On any view, his opinion was that BU was functioning at a level significantly below what one would expect from a person of the same age with normal or average intellectual functioning. He did not consider that she would have been capable of fully analysing or understanding the full extent of the information which the police had disclosed to her in relation to NC’s antecedent history or its relevance for her situation.

45. Dr Barker prepared a second report on 6 November 2020 in which he addressed BU’s capacity to make a decision as to whether or not to enter a civil partnership. He took the opportunity in that report to address a number of questions which had been put to him by

the parties arising out of his initial report. By the time he interviewed BU for the purposes of his second report, she had returned to live at her home after spending two or three weeks with WU at her home some distance away in another county. She appeared to Dr Barker to be more relaxed in her home environment. Their conversation on that occasion covered a wide range of topics, some of which were revisited from their last meeting. Dr Barker also covered quite extensively issues relating to sex, marriage and civil partnership. He asked BU questions about her new Will and the reasons behind the testamentary changes reflected within it.

46. His conclusions in relation to capacity in the various domains after that second interview remained unchanged. He reported that BU's decision-making in relation to contact was highly likely to be influenced by NC.
47. In contrast, he confirmed in his first capacity report that BU *did* have capacity to decide to enter into a marriage. The test in this domain is a low one. In *London Borough of Southwark v KA & Ors* [2016] EWCOP 20, Parker J had explained the principles in these terms²:-

“76. The test for capacity to marry is also a simple one:

- a) Marriage is status specific not person specific.
- b) The wisdom of the marriage is irrelevant.
- c) P must understand the broad nature of the marriage contract.
- d) P must understand the duties and responsibilities that normally attach to marriage, including that there may be financial consequences and that spouses have a particular status and connection with regard to each other.
- e) The essence of marriage is for two people to live together and to love one another.
- f) P must not lack capacity to enter into sexual relations.

77. The decision is about capacity and not welfare. Thus I do not take into account aspects of his decision making which affect the consequence of his decision making, so long as they do not affect the decision making process in itself.

78.

² *London Borough of Southwark v KA & Ors* was a case which involved the potential for an arranged marriage. I have omitted the references which are particular to that specific scenario.

79. It is not relevant to his understanding of marriage that he does not understand:

a)

b) How financial remedy law and procedure works and the principles are applied. The fact that he might lack litigation capacity in respect of financial remedy litigation does not mean that he lacks capacity to marry.”

48. Thus it is now clear and established law that the test for capacity to marry is neither high nor complex. The degree of understanding on the part of P in relation to the relevant information is not sophisticated and, in its component elements, is fairly rudimentary.

49. In the context of a civil partnership, the requirements are different from marriage. It is a legal process which requires a formal legal dissolution to bring it to an end. However, unlike marriage, there is no requirement for a civil partnership to be consummated in order for it to remain valid whereas a marriage can be annulled in the absence of consummation. It can be formed between individuals in a non-sexual relationship provided they do not fall within the categories of precluded relationships set out in Sch 1 to the Civil Partnership Act 2004. That schedule has no application in the present case. Unlike the position in relation to marriage, it follows that adultery is not a ground for dissolution of a civil partnership.

50. In the current case, there is a disagreement between those advising WU and the Official Solicitor as to whether the decision in relation to capacity to enter a civil partnership also includes an understanding or appreciation of the following factors:-

- (i) upon dissolution, proceedings may be brought to enable the court to make a decision as to how the assets and liabilities of the civil partnership are to be divided between them; and
- (ii) civil partnership registration will automatically revoke any Will then made or in force.

51. In his second report, Dr Barker concluded that BU was able to understand that unless a marriage was consummated, it was voidable. He also considered that she understood, and could use, weigh and retain information in relation to, sexual relationships. Whilst maintaining that she lacked capacity to manage her financial affairs generally, he concluded that she was able to understand and weigh information about the basic financial consequences of entering into a marriage. He accepted that, by analogy with other domains, there was likely to be a degree of elision or overlap in relation to BU's capacity to enter a civil partnership or marriage with NC and her capacity to make decisions about contact with him. In this context, he said this:

“4.17 My principal concern is with regard to NC's potentially negative influence on BU in matters of finance and welfare (e.g. medical care when NC

was going against the advice of healthcare staff). In other cases I have been involved with the Court has managed its need to recognise a low threshold for capacity to marry with other conflicting capacity decisions (most commonly finances though also welfare on occasions) by arranging other methods to ensure the person's welfare (through safeguarding for example)."

52. By way of conclusion in relation to BU's capacity to enter a civil partnership, Dr Barker said this:

"5.3 In my opinion BU does not lack capacity to enter a civil partnership. I apologise but I did not specifically deal with the additional information provided by WU's legal representatives, though I consider that this information, given to BU with an explanation given in a way that is appropriate to her circumstances, is not greatly different from that which needs to be understood for capacity to marry, and I understand that the law considers the capacity test to marry should not be too high".

53. In response to NC's questions, Dr Barker confirmed that his professional views and opinions in relation to BU's capacity in any of the domains had not been influenced or affected by either the ongoing police investigation or the absence of any contact between them since NC's arrest and the injunctions made in May 2020. NC's questions amounted, in effect, to a series of written interrogatories put to Dr Barker by way of challenge to his earlier conclusions. These were dealt with comprehensively by Dr Barker in his second report. In response to a series of questions about the existence of any potential safeguards which could be put in place to mitigate the perceived effects of any influence he was said to be exerting, Dr Barker remained of the view that such mitigations would not reduce the potential for risk to BU in respect of risk or influence from NC in relation to managing her finances or in relation to personal welfare.

54. He concluded his second report by confirming his professional opinion that BU was not likely to regain or develop capacity in respect of the matters in respect of which she currently lacks capacity. As to any steps which might be undertaken to address her lack of capacity, Dr Barker was concerned that BU lacked motivation because she did not recognise her own incapacity. He told me that he had no experience of a successful outcome in similar circumstances.

Professor Roderick Dubrow-Marshall, consultant psychologist

55. Professor Dubrow-Marshall was instructed on a joint basis on 10 March 2021.

56. In relation to the issue of civil partnership, the Professor was given the following information:-

"[NC] maintains that he wants to enter a civil partnership with [BU]. He has expressed that he would not marry [BU] because they have a platonic relationship. [He] states that [they] have an understanding that [NC] would have

sexual relationships with other women, although he asserts that he has not been intimate with another woman since [BU] proposed to him in April 2020. It is noted that [they] would “kiss and cuddle”, but he has other “friends with benefits”. [NC] states that [BU] is liberal in her attitude towards this. [WU] is concerned that this is not a true reflection of her mother’s attitudes and asserts that [her mother’s] marriage to [her] father broke down because of his infidelity.”

57. Professor Dubrow-Marshall was asked to advise upon the extent to which BU had been subjected by NC or her family members to any form of victimisation as a result of coercive control or undue influence. He was asked to identify risk factors, both now and in the future and steps which could be taken by way of mitigation so as to reduce or eliminate those risks. Finally, he was asked for his opinion in relation to the following:

“4) Whether, and if so, to what extent [BU’s] currently expressed wishes in the following areas represent her true wishes if unencumbered by any coercive control/undue influence -

- (i) to have social contact with [NC]
- (ii) to enter into a civil partnership with [NC]
- (iii) to provide her money to him and
- (iv) to invest in his business dealings.”

58. Professor Dubrow-Mitchell’s expertise in this area is informed by over twenty years’ professional experience assisting families affected by coercive control. He has written extensively on the subject and its psychological causes and effects and has delivered many training and education programmes for professionals working in the field. For the purposes of compiling his very detailed report, he spoke at length on two occasions to BU. For the purposes of the report which he produced on 22 June 2021 he interviewed BU’s immediate family members³ and NC.

59. He has confirmed that his conclusions in relation to BU’s capacity in the various domains are consistent with those provided by the ISW, Mark Caulfield, and Dr Barker. In the light of those assessments, it is Professor Dubrow-Marshall’s assessment that this level of capacity “leaves BU particularly vulnerable to coercive tactics and undue forms of influence”. He has identified a number of serious risk factors in relation to the potential perpetration of coercive control (including financial abuse) and undue influence. In his analysis, the Professor has referred to a “psychological enmeshment” between BU and NC which has resulted in one person in that relationship becoming completely dependent upon, and dominated psychologically, by the other such that their ability to make independent decisions is either severely limited or completely blocked

³ I understand that the Professor’s communication with BU’s father was in writing.

with all their actions supporting and reinforcing their total identification with the dominant partner.

60. At paragraphs 26 and 27 of his report, the Professor says this:

“26. In summary then it is my assessment that BU has swapped the apparent dependency on her father and family as she perceived it and/or now perceives it ... for a dependency on NC which she truly believes is liberating and emancipatory for her. It is this total faith in NC which is, however, a manifestation of an unhealthy and totalistic identity and dominating influence which, even if not intentionally coercive (on NC’s part), in practice renders BU unable to distinguish between good and bad decisions, in thrall as she is to the man that has saved her from herself and from those she blames for the lack of fulfilment in her life over the decades. When BU says that investing in properties “sparked an old flame” there is an apparent conflation or homage to times gone by with her ex-husband and a strong desire, perhaps, to revisit the halcyon days of her youth in a caravan, or perhaps this time in a speedboat. These are serious matters for BU and in presenting them in this way I am seeking to pay due respect for how deeply she may well feel about the benefits of what she has apparently agreed (and appears to believe she has freely agreed) to do.

27. Paradoxically it is that deep and almost desperate desire to break away from her ‘old life’ that leads her into perilous territory in terms of undue influence and coercion and control now. It is because BU has wholeheartedly and totally embraced NC psychologically and seems to see him as her personal saviour, that her ability to make reasonable judgements about her personal welfare and financial situation is the compromised. The undue influence and coercive control then arises from the inter-subjectivity of the relationship between BU and NC and allows for the possibility, at least, that NC is less than fully aware of just how dependent BU is on him and just how easily he can influence her. At the same time this does not mean that NC’s motives are necessarily beyond reproach ... but BU appears to present (including to him) as a willing and enthusiastic recipient of his advice and partner in his business activities. It is still incumbent on NC to make sure that BU is able to do so.... But rather like the boisterous kid in the playground who does not know his own strength (relative to others), NC apparently does not realise or fully comprehend the strength of his likely influence over BU. Psychologically injurious outcomes of this power imbalance are arguably still NC’s responsibility just as negligence is not necessarily a defence for injuries of any kind.”

61. Thus in relation to the five property transactions which appeared to be ongoing at the time of NC’s arrest in May 2020, Professor Dubrow-Marshall sees reflected in these transactions “an unthinking and uncritical reliance” on NC which he says is a hallmark of undue influence and coercive behaviour. With regard to the proposed codicil to BU’s

Will, the other financial plans involving her financial assets including the planned joint businesses and bank accounts, the Professor sees a clear pattern:

“whereby BU is almost entirely uncritical, unthinking and at times unknowing regarding the detailed plans involving her assets which NC has outlined and which are purportedly her plans, as well as his. In this context I regard it as significant that when she was asked about the plans reflected in the proposed codicil to her new Will, BU denied that there were any discussions between them about these arrangements”.

62. Professor Dubrow-Marshall regards this as an example of “clear and prima facie evidence of undue influence and a form of financial abuse as set out and defined in section 76 of the Serious Crime Act 2015 and an aspect of controlling and coercive behaviour”. It is his opinion that the more her family have challenged her relationship with NC and their future plans, the more this has brought them together in what he has described as a psychological ‘trauma bond’. As things have become more difficult for BU since NC’s arrest and their subsequent separation, this “trauma bond” has further deepened from BU’s perspective to the point where she now appears to believe that her life is totally in limbo and her “attitude to life” is gone. Significantly, Professor Dubrow-Marshall has concluded that the apparent complexity in the financial arrangements underpinning, first, BU’s new Will and, thereafter, the proposed codicil would suggest that BU did not appreciate or understand the extent to which NC would become a direct beneficiary of part of her wealth. This, he concludes, amounts to a form of financial abuse and undue influence whereby her own volition, judgement or wishes have been substituted by those of another, in this case NC.

63. By way of conclusion, in paragraphs 58 to 65 of his report, Professor Dubrow-Marshall has assessed the evidence and provided his conclusions in these terms:-

- (i) BU and NC have “a deep and enduring emotional and psychological bond ... through a very close and intimate (if not overtly sexual) relationship. BU undoubtedly feels love and affection towards NC and this clearly appears to be reciprocated”.
- (ii) He has no reason to believe that NC is not genuine in his belief that his advice and support for BU has been both beneficial and nurturing for her.
- (iii) Notwithstanding this view he detected a “clear degree of both naivety and also lack of overall reflexivity on NC’s part about the extent of his likely influence over BU”.
- (iv) BU has been, and is subject to, coercion and control from NC and that has manifested itself principally in a form of financial abuse by NC both in relation to her assets and financial and business affairs in respect of which she has lost the ability to exercise any independent judgement of her own.

- (v) The extent of NC’s influence and the trauma bond which exists between them will persist in the absence of face-to-face contact. NC is “a dominating part of BU’s psychological identity and the nature of the trauma-coerced attachment is such that this influence is likely to endure for a considerable period into the future”.
64. During the course of cross-examination, Professor Dubrow-Marshall was pressed about NC’s intentions in the context of his coercive control of BU. Having initially concluded that NC was “not necessarily consciously intending to coercively control or unduly influence BU”, he accepted that there was a clear range of possibilities along the spectrum of intent from innocence through to negligence and wilful malice. He agreed with Mr Patel QC that NC’s refusal to accept he had exerted this degree of control over BU could point to an element of wilfulness although he believed it was more likely that he does not have the insight to recognise or understand the effect of his behaviour on BU. When pressed, Professor Dubrow-Marshall accepted that NC’s refusal to acknowledge the position moved the indicator towards a negligent rather than a wilful course of conduct. He accepted that wilful ignorance might be underpinned by a malevolent intention but he maintained that there was a genuine affection between NC and BU. He was clear that, whatever the position, NC’s negligence did not absolve him of responsibility for the negative outcome experienced by BU.
65. When he was presented by Mr Patel QC with NC’s antecedent history and the clear trail of convictions for dishonesty, financial acquisition and the deliberate manipulation of previous ‘victims’, the Professor explained that he had approached his task by examining the evidence through the lens of what he saw before him in terms of clinical presentation rather than looking at how a person had behaved in the past. However, he conceded that he could not say to the court with any certainty that there was no element of malevolent intent on NC’s part. He recognised that the court would be considering a spectrum and would reach conclusions of its own. He confirmed that he had no doubt that NC was capable of manipulation and deception and that there was clear evidence of this behaviour before the court. He further accepted that NC had created a significant element of ambiguity in relation to the precise nature of his relationship with BU: that was an ambiguity which he regarded as fundamental to the nature of the “trauma bond” between them. He regarded this as potentially indicative of a state of “wilful ignorance” but maintained his position that NC genuinely wished to be helpful to BU and had real feelings of affection for her.
66. Professor Dubrow-Marshall rejected NC’s suggestion that there was any evidence of undue influence or coercive control on the part of BU’s family members and he pointed specifically to the earlier attempts made by WU to engage personally with NC.
67. In terms of whether BU might be assisted with therapeutic intervention to gain insight into the nature of her relationship with NC, Professor Dubrow-Marshall was keen to emphasise to me what he described as “the Herculean task” of BU achieving the necessary, or any, degree of insight. He gave me the analogy of having to take apart a

house ‘brick by brick’ and reconstruct it over an extended period of time with intensive counselling and psycho-education. He saw even the initial stages of this process taking up to 6 months. Whilst the prospects of ‘rebuilding’ were low, he did not see them as negligible. He told me that much work would need to be undertaken with BU before any such intervention could proceed to establish whether or not she was prepared to understand why such intervention was necessary. The level of distress she was exhibiting around the subject of her relationship with NC would make this process extremely difficult and might well do no more than reinforce the “trauma bond” between them. Her cognitive deficiencies would make it difficult, and distressing, for her to understand the proposed therapy and the reasons for it. If the court were to direct that there should be no further contact, the Professor envisaged she could very well feel trapped in this position with no comprehension as to why such a course had been considered to be in her best interests. He remained pessimistic about the prospects of a successful therapeutic intervention but he told me that he could see some utility if that intervention was focussed on helping BU to understand why she found herself in this situation and NC’s part in it. Because he had not finally reached a clear view as to whether there had been a conscious attempt to coerce and manipulate in this case, he remained concerned about NC’s willingness to engage fully in that process. If there were to be any prospect of BU appreciating in future the extent to which she had been manipulated by NC, there needed to be the option, at least, of some form of contact at the end of the process. His view was that such an expectation, however unreal on her part, might well assist in a later understanding and the consequent ability to move forward with her life. There was also likely to be the collateral benefit of gaining an understanding into the extent to which this was deliberate or malicious coercion on the part of NC.

Other evidence

68. Having concluded the expert medical evidence, I heard from KE and WU.
69. KE’s evidence was clear. Having conducted a thorough investigation of BU’s financial affairs since her formal appointment as financial deputy, she has significant concerns about the circumstances in which various transactions were effected. She told me that she believed these to have been influenced by NC for his own financial gain and that her view was based upon her analysis of those transactions and the wider investigations she had undertaken. Her statement sworn in April 2021 sets out a number of concerns about BU’s financial situation. Foremost amongst these was the nature of BU’s relationship with NC and the representations which were made to professionals at the time about the nature of their relationship. KE accepted in response to questions put to her by NC that she had not found any evidence that he had given instructions for any of BU’s funds to be sent offshore as was at one time being alleged.
70. WU attended court via a video link in order to respond to questions about the three statements she has made in these proceedings. I sensed the ordeal which that appearance presented for her. That she loves her mother dearly, I am in no doubt at all. The sense of

loss which she felt as a result of the current estrangement between them was palpable throughout the course of her oral evidence. Given the information which her enquiries about NC had unearthed, it is difficult to understand on any objective view how she could not have pursued those matters. Her early years of life with her mother and sister following their parents' divorce had plainly forged a close bond between these siblings and their mother. WU was only four years old when her parents separated. Her sister, A, has filed her own statement which endorses her sister's position entirely.

71. The extent to which that relationship, and the wider family dynamics, have been affected by NC's arrival in their mother's life is demonstrated by the evidence of the social worker, HW. She spoke of family relationships having been "destroyed" as a result of BU's inability to comprehend that her family was trying to protect her. HW had been alerted to these concerns by a referral raised by WU through a local councillor in BU's area. HW was not required to attend court but one particular paragraph of her written statement struck me. She said this:

"I put to BU that while she clearly loves, respects and trusts NC, her family feel differently. I asked how she would feel if she married NC, then he took all of her money from her. BU stated that she has to go through the process to know how she would feel. BU made the comparison of going on a ride, stating that you can't come away from a theme park and regret not going on a ride, you have to experience it first. BU went on to say, 'everyone needs a companion and I thought I had found mine, everything was sorted and then my family got involved and ruined everything'.

72. That paragraph had a resonance for me for two reasons. First, my personal conversation with BU left me in no doubt that she had experienced intense loneliness for a significant period, and probably through most of her adult life, after her marriage to the children's father failed. She spoke to me about a sense of intense loss which had persisted until her relationship with NC developed. At one stage she told me that "it could have been any man" although she went on to let me know that NC was now special to her.

73. It is important for the purposes of this judgment to record what she told me about her daughters and about WU, in particular, since it is she who has instigated these proceedings on behalf of the wider family. I asked BU why she thought her daughter might be worried about her contact with NC. She told me that she was not blaming her daughter at all. BU recognises that WU is "in the seat for other people", as she put it to me. She left me in no doubt that she loved both her daughters: that impression was not diminished at all by the overlay of her obsession with her ongoing relationship with NC. Our conversation cannot stand as formal evidence. It was never intended as such but it did provide me with a valuable opportunity to spend time with, and understand something about the woman who stands at the centre of these proceedings.

74. The other aspect which struck me about what the social worker said in her evidence was its correlation with a very long and rambling opening statement which NC made to me

before I had my initial meeting with BU. He read from a prepared statement (for which I do not criticise him at all). However, the content of that statement was puzzling. NC has been keen to impress upon this court that he is an intelligent man and that he had used periods of his incarceration to study law in order that he could represent not only himself but also his fellow inmates in various aspects of their legal proceedings. He has a superficial confidence which may be borne of arrogance or an element of narcissism. He used his opening statement to tell me, and everyone else sitting in court, that I should see this case as analogous to the experience which BU would be having were she to be embarking on a roller coaster ride at a theme park where she moved from that ride to the ‘Princess Teacup’ ride. He spoke in his statement of the removal of her autonomous decision-making and the need to protect her from interventions which were both unjustified and unwarranted. He dismissed the unanimous opinions of the experts instructed in this case as plainly wrong. He seeks to persuade me that he knows BU better than anyone else and that she is fully capacitous in relation to the financial and other decisions which she has made, although he accepts that she needs support in some of those decisions. He believes that she should be free to make her own decisions about any ongoing contact with him. He persists in his wish to enter into a civil partnership with BU and sees the combined family opposition as an attempt to marginalise him in BU’s life.

75. He continues to reject in its entirety the expert view shared by Dr Barker and Professor Dubrow-Marshall that he has exercised coercion and control over BU. He denies that he has had any financial motivation for pursuing a relationship. He put it to me in these terms:

“I have had no negative influence on her. I have merely been in the chain of information with other people. She knows and sees a successful builder and says [to herself], *‘I want to be a part of that’.*”

Far from having a negative influence on any aspect of BU’s life, NC sees his involvement in her life as “entirely positive”. He regards WU’s intervention through these current proceedings as entirely unwarranted and a blatant attempt to secure access to her mother’s money and control of BU. Whilst he recognised that the appointment of KE as financial deputy was designed to put in place a measure of protection, he saw that protection as illusory in circumstances where the family could apply to change that appointment or substitute a different financial deputy.

76. When his criminal antecedent history was put to him, NC denied being responsible for most, if not all, of the charges laid against him. He denied he was guilty of the offence which led to his incarceration for a period of nine years. Of what Mr Patel QC referred to as “the pattern of approaching vulnerable individuals for financial gain”, he denied that he had committed any offences and maintained that many of these matters had been lying dormant on police files for a number of years. Of the complaints made by the four different women who had been traced through his gallery by WU, he said these allegations were false and that LB had originally volunteered to appear as a defence

witness for him in an earlier criminal trial. He accepted that he had moved into PC's flat at about the same time as she had cashed in a substantial endowment policy. He also accepted that PC agreed to lend him money at a time when his brother was buying out NC's share of his late mother's inheritance. He told me that one of the other women who had made allegations of sexual assault against him was concocting a case against him in order to secure the flat he was living in. In his own words, "*God, yes, there was a conspiracy to get me*".

77. When NC was challenged about the many breaches of his police bail conditions and the injunctions made by this court, he admitted that he had indeed made contact with BU on some forty occasions over a four-week period. He said he had done so because he had become aware of how unhappy she was living away from her home within the close environs of her daughter's home. He said he was concerned that her stress might exacerbate her condition and lead to the onset of early Alzheimer's disease. When it was put to him that he had shown complete contempt for court orders which had been put in place for BU's protection, he agreed that he had taken a deliberate decision to disobey those orders: "*Women crying is a big thing for me. I decided to risk my liberty by contacting [BU]*". He accepted that his actions were intentional and that he was aware of the consequences. He insisted that BU was but one of six individuals whom he approached with a view to borrowing money for his gallery when they met and that the only reason he was living under her roof was because of the restrictions imposed by the Government in the circumstances of the Covid-19 pandemic. In terms of his proposal for a civil partnership with BU, he maintains he has no interest in money and had not known anything about the extent of her wealth until some six years into their relationship. In relation to the five property transactions, he denied being the instigator of those transactions and sought to convince me that BU was "*a tough cookie*" who knew her own mind. When challenged about his attempts to persuade her to liquidate some £900,000 of her savings, he sought to persuade me that the key driver for this decision was a report which BU heard on the national news suggesting that the stock market was no longer a safe investment vehicle for people's savings. He maintains that her family took deliberate steps to ensure he was arrested so as to prevent this withdrawal and furthermore that they took those steps so as to justify the issue of these proceedings.
78. NC was asked by Ms Dolan QC on behalf of the Official Solicitor whether he would support BU receiving counselling to assist her understanding of her current position. He agreed that he would not seek to restore contact between them unless and until such an assessment had concluded that to be appropriate.
79. I asked NC to tell me how he saw his relationship with BU. He described it as a "*great friendship, a deep bond*". I asked him why he was proposing a civil partnership and whether he saw marriage as an option in the future to which he replied, "*Gosh, yes*".

The parties' final submissions at the conclusion of the evidence

80. On behalf of WU, Mr Patel QC and Mr Brownhill submit that there is ample evidence before the court that the relationship between NC and BU was one of coercive control and that such control was deliberate on the part of NC and driven by his wish to benefit financially from that relationship. On behalf of WU, they seek orders (i) confirming the final financial deputyship order made by HHJ Marston on 24 November 2020; (ii) continuing the injunction which prevents contact between NC and BU; and (iii) making a forced marriage protection order under section 63A of the Family Law Act 1996.
81. NC persists in his submissions that BU has always exercised her own free will in all her dealings with him. He maintains that the bond between them is stronger now than before having been “tested in adversity”. He describes BU as “hurt but not fallen” although he accepts that she is in an extremely vulnerable position. He maintains that she *chose* to separate her life with him from life with her extended family. He does not recognise the existence of the “trauma bond” described by Professor Dubrow-Marshall. He insists that BU understands the meaning of coercive control and undue influence and that neither has any traction on the relationship they have shared.
82. He seeks a further capacity assessment of BU on the basis that Dr Barker’s evidence to the court is unreliable based, as it is, upon an assessment carried out at a time when BU was in a state of acute stress. He wishes to resume contact with BU but suggests that “she and I will need to talk” before that contact resumes and that initially it should be supervised. He agrees that the current caveat against any marriage between them should be left in place “until it is deemed that [BU] is ready for marriage”.
83. On behalf of the local authority, Ms Twist acknowledges that her client has a limited role in these proceedings. In the absence of any challenge to the authority’s assessment that BU’s care needs are currently being met, and on the basis that protection is now in place through the appointment of a financial deputy and the injunction preventing contact with NC, she submits there is no further role for her client. The local authority accepts the evidence of Professor Dubrow-Marshall in relation to the nature of the controlling relationship between NC and BU and it sees no need for further assessment of BU in terms of capacity. It adopts a position of neutrality in respect of contact in the future but puts down a clear marker that it does not have the professional expertise or the financial resources to supervise any future contact which the court may decide to order.
84. Ms Dolan QC, on behalf of the Official Solicitor, adopts Mr Patel QC’s analysis of the facts and the evidence. She accepts that BU lacks capacity to make decisions in relation to social contact. Whilst the Official Solicitor recognises the strength of BU’s wishes to be reunited with NC, she accepts that it can never be in any person’s best interests for his or her will to be totally subordinated and controlled by another. She does support a position whereby attempts are made to construct a raft of potentially protective measures to shield BU from further abuse.

85. The Official Solicitor accepts the evidence of Professor Dubrow-Marshall and his recommendation that BU might benefit from a course of psychotherapy and psycho-education. She does so from the foot of an acknowledgement that the greatest risk to BU lies in being prevented from moving forward with her life towards an acceptance of what has happened. If future contact with NC is to be barred without any prospect whatsoever of its revival in whatever form in the future, the opportunity of engaging BU in this kind of therapy may be remote, if not non-existent. Accordingly, the Official Solicitor supports the imposition of an injunction barring contact between them but on the basis that the situation should be reviewed at a later stage following therapy. She accepts that in the face of the unwillingness / inability of the local authority to provide such therapy, the court can at this stage do no more than record that it is in BU's best interests to be offered such therapy.
86. In terms of orders under the 1996 Act, the Official Solicitor is not satisfied that a further injunction without more would protect BU from further contact with NC and/or from entering a civil partnership. In relation to a forced marriage protection order and in circumstances where BU has been found capacitous in terms of a decision to marry, the view of the Official Solicitor is that this step would only be justified in circumstances where the court is satisfied that her exercise of that capacity is being overborne by another person.
87. In this context, the Official Solicitor relies on the decision of the Court of Appeal in *Re K (Secretary of State for Justice and another intervening)* [2020] EWCA Civ 190, [2020] 2 WLR 1279. In that case Sir Andrew McFarlane P made it clear that if a court is to override the capacitous wishes of a capable person who chooses to marry, it must be satisfied that there is a real and immediate risk of the subject of the application suffering inhuman or degrading treatment so as to engage his or her Article 3 Convention rights. Having reviewed all of the evidence which has been put before the court, the Official Solicitor would now support the making of a forced marriage protection order but on the basis that it was reviewed after twelve months. She does not support any ongoing contact between NC and BU unless and until there has been positive input from a treating psychologist who recommends further contact.

My conclusions

88. This has been a difficult case. It concerns the future of a woman who has made it very plain to the court that she wishes that future to include a particular individual whom she regards as being the only person at the present time who can offer her the prospect of happiness and companionship as she moves into the latter years of her life. Deprived of that opportunity, she sees her future as empty, bleak and devoid of all that she presently craves. I have no doubt that she regards NC's opposition to the orders which are being sought by, or on behalf of, her family to be part of the united front which they together are presenting to the court in order to enjoy that future together. WU, who brings these proceedings, perceives the risks for her mother to be overwhelming, both in personal and financial terms, if NC is permitted to continue to exercise influence over her. It is

abundantly clear from the expert evidence which I have heard that, if the court accedes to the current application, BU is unlikely to understand why she has been denied the happiness which she seeks and which she believes she deserves. There is thus a heavy responsibility on the court to ensure insofar as it can that the outcome of this application, and the reasons for the decision, are laid out in clear and simple terms. I would want BU to know that she has been at the forefront of my thoughts and my approach to this application throughout.

Capacity and contact with NC

89. In my judgment the expert and other evidence in this case supports overwhelmingly the conclusion that BU currently lacks capacity to decide whether to maintain contact with NC. There is no evidence at all to suggest that she presently wishes to reduce or eliminate her contact with him (indeed, the evidence points to the contrary). I consider nevertheless that she lacks capacity generally in relation to her contact with NC. The expert evidence, which I accept, is clear. Because of the corrosive and coercive nature of the control which I find NC to have exercised over her, BU has been deprived of autonomous decision-making in this context. Put simply, she no longer has the ability to exercise her individual free will in the context of any ongoing relationship with NC. The degenerative vascular changes in her brain have resulted in a global cognitive impairment which has impacted upon her ability to weigh and use information to the extent that a person with full capacity could. I am not persuaded that she truly understands the nature of their relationship or what a future with NC would hold in terms of an ongoing relationship. I am entirely persuaded that she craves his companionship which she perceives as relieving the intense loneliness and isolation which she has obviously felt outside the loving relationships she previously had with her extended family. She now perceives those family bonds to have been broken as a result of the family's collective hostility towards NC. I am quite sure that the love which BU has for each of her two daughters remains but it has been subsumed for the time being by the intense need which she perceives to preserve what is in essence her complete dependency on NC. I am satisfied that that dependency shapes more or less all aspects of her life at the present time despite the fact that they have been prevented from having contact with one another for a significant period of time. I suspect that these proceedings have themselves been an important means for BU of preserving that nexus with NC. They will inevitably have reinforced what Professor Dubrow-Marshall has described as the "trauma bond" which binds them together even in absentia.

90. I have no doubt that there have been aspects of her previous contact with NC which have given BU pleasure and a sense of happiness and wellbeing. That said, it is clear that she has closed her mind to the possibility of his motives in that relationship being anything other than benign. Even when presented with clear and overwhelming evidence of NC's antecedent history and his willingness to coerce, intimidate and blackmail others for his own personal benefit and financial gain, she has been quite unable to weigh and balance those factors in her decision-making. She is blind to future risk as she has been to past

risk. She has found herself caught up in the excitement of sharing in NC's own future plans for property investment (for such I find them to be) without any understanding of the financial risks to which she might be exposed as a result of her financial involvement. She was plainly willing to liquidate a very significant part of her investment portfolio (and thus risk her future financial security) without being afforded an opportunity to evaluate any future risk. I am left in no doubt whatsoever that her decisions in this context were guided and led by NC. He chose to instruct a solicitor to process those financial property transactions who was not previously known to BU. Whilst there is no evidence to suggest that the solicitor fell short of the professional obligations which were owed to BU as a client, it was, in my judgment, a significant example of NC's ongoing attempts to marginalise her from the ongoing influence of her family.

91. Having listened carefully to all the evidence, I find him to have engaged on a deliberate and calculated attempt to subvert any independent decision-making on BU's part. The picture which emerges from the individual pieces of evidence is compelling. From the very outset, their relationship was characterised by financial motive. One of the first conversations they had involved a request by NC for a loan to assist in meeting his rent on the gallery premises he was then renting. Through a series of apparently inconsequential actions after that meeting, NC assumed a degree of incremental control over BU's affairs which was wholly inappropriate and which I find to have gone far beyond the actions of a friend who was trying to assist or offer kind support. He had access to her mobile phone and text messages which he read and to which he would often respond on her behalf. He sought to put distance between BU and her family including during periods when she was plainly unwell. He sought to intervene in the professional arrangements which she had with her accountants. He became pivotal in the discussions regarding the new arrangements for her Will and was responsible for ensuring that those arrangements were overseen by a firm of solicitors with whom she had had no previous dealings. He shared discussions with her in relation to his business affairs, such as they were, such that she was persuaded to take over responsibility for meeting the wages of the people he employed as casual labour. Whilst NC maintains that this arrangement was formalised in some form of contractual arrangement between them in return for a share in the business, no such document appears to exist. If it does, it has never been produced in these proceedings or made available to the financial deputy who has asked to see it.
92. I am wholly persuaded that BU's grasp of the various property purchases which NC instigated was extremely limited. I reject entirely his suggestion that these transactions were initiated by her or at her request and with her full understanding and co-operation. There was not the slightest prospect that NC could have undertaken these transactions on his own account since he did not have the financial means to buy any property at all. He appears to have been without any secure income stream or the means to satisfy a commercial lender that he would have been entitled to a mortgage. It appears that both his and BU's household at the relevant time was being run on an almost entirely 'cash basis'. This was totally out of character in terms of the way in which BU had dealt with her finances before her acquaintance with NC. I was struck by the evidence of her

daughter, WU, who told me that her mother would meticulously conserve all her credit card and other receipts in her wallet in order to reconcile them with the monthly statements she received. That, in my judgment, is one small vignette in the wider picture which emerges of the extent to which that financial control was being eroded by the actions of NC as time went on.

93. That control extended to her personal wellbeing, including arrangements for her medical care and her diet. There is evidence that he prepared her meal plans and took full charge of the arrangements for employing her carers. He himself accepts that he dismissed one of the carers whose work he felt was not up to standard. In a different context, these actions might be seen as those of someone who had a genuine investment in those care arrangements for someone to whom he was close. Professor Dubrow-Marshall observed a genuine bond of mutual affection between NC and BU. I do not discount that evidence. It may well be that, as time went on, NC did develop feelings of affection for BU. Once he had moved into her home, they were clearly sharing a life together and it was a life which was providing NC with most of his daily needs and requirements as well as facilitating the aspirations he held for acquiring an interest in a valuable property portfolio. He would have been very well aware of the emotional investment which BU had made in their relationship and I can see no evidence of any attempt on his part to provide any check or balance in relation to the psychological impact on BU of her increasing reliance upon him. On the contrary, all the evidence points to his wish to eliminate those checks and balances through the ongoing estrangement which I find him to have procured in relation to the progressive disintegration of her relationship with her family members. In my judgment, there was no sound or rational basis for his assertions that her daughters were only interested in her money. If that was an understanding which he promoted or encouraged in BU's mind, it was as misleading as it was unkind. Each of BU's daughters had already been assisted to acquire properties of their own. They had financial independence through career and marriage. Having heard WU give evidence at some length, I am wholly persuaded that her issues with NC flow not from any personal financial motivation but from her concerns for a mother whom she plainly loves and whom she wishes to protect. WU's sister, A, has filed a statement in these proceedings. Although I did not have a similar opportunity to see her in the witness box, there is no evidence to suggest that she has supported this application out of anything other than a wish to protect her parent.
94. I accept that in reaching these conclusions I am departing from aspects of the evidence which I heard from Professor Dubrow-Marshall. I do so to this limited extent because of the following factors. As the Professor himself accepted, there is scope for a spectrum of opinion as to NC's motivation. The Professor recognised that he could not discount the possibility that NC's course of conduct and his exercise of coercive control over BU was deliberate and motivated primarily by financial considerations. As he told me, he conducted his interview with NC with his focus on the immediate situation which was presented to him. He told me that his views had been expressed primarily from the foot of an examination of the direct evidence before him rather than looking at NC's prior

behaviour. In the context of this hearing, I have been afforded a different opportunity. Against the wide canvas of all the written evidence, including material generated as a result of the ongoing police involvement in this case and the statement from LW which was written at the request of NC, I have been able to listen to, and assess the credibility of, several witnesses including WU and NC himself. I have taken into account the fact that some of those who submitted written statements have not given oral evidence at this hearing and thus the weight I can attach to that evidence is not as significant as it would have been if that evidence had been tested in cross-examination.

95. Furthermore, I did not find NC to be a credible or reliable witness in a number of aspects of his evidence. I have already referred to my impression of him as arrogant and narcissistic. Mr Patel QC referred to him as ‘a fantasist’. He has certainly manipulated facts to shape the case which he seeks to run before this court. In particular, I find that he has deliberately obfuscated the nature of his relationship with BU in some of the representations he has made to others. He attended the hearing on 19 February 2021. During that hearing he represented to the court that he had no interest in BU’s finances nor did he wish to benefit from her estate in the event of her death. In the context of his proposals for a pre-nuptial agreement, he maintained that he was willing to waive any financial claims which he might have in the event of a marriage or civil partnership. Given the absence of any evidence to suggest that he was financially independent during this relationship, it is highly likely that he would have been in a position to establish a potential entitlement against BU’s estate should he have survived her as either a former spouse or civil partner. Whilst professing a willingness to waive those potential claims, that is not what he did. The new testamentary provisions which were drawn up made specific provision for him to inherit an interest in part of any property portfolio which was acquired. I am in no doubt at all that those terms were included at NC’s behest. Even if I am wrong in reaching that conclusion, he took no steps to inform the solicitors or BU that this was not what had been agreed and that he did not wish to benefit financially. I do not regard the so-called ‘quid pro quo’ of giving her / her grandchildren a share in his business to neutralise that volte-face. NC’s financial track record to date does not suggest to me that he has ever enjoyed success in his business endeavours. He appears to have lived a precarious financial existence which has been characterised by debt and the need to secure loans from others whom he has identified as having the means to pay. This appears to have been a consistent *modus operandi*. I am wholly persuaded by the evidence that he saw BU’s wealth as the means by which he could achieve not only financial stability for himself during her lifetime but also financial benefit after her death. He was well aware of the age difference between them and of her particular vulnerabilities in terms of her health.

96. In this context I have borne carefully in mind the observations made by Peter Jackson LJ when he remitted to Hayden J a case which involved similar fact evidence in family proceedings which involved the alleged perpetrator of coercive and controlling behaviour. It is reported as *F v M* [2021] EWFC 4 (Fam). In that case, Hayden J set out the law as stated by the House of Lords in *O’Brien v Chief Constable of South Wales*

Police [2005] UKHL 26, [2005] 2 AC 534. The issue which arose in that case was the admissibility of similar fact evidence in civil cases. In other words, where it is contended that an individual's behaviour in other situations demonstrates a propensity to behave in a particular way, how far is it acceptable, and thus lawful, to rely on that behaviour to find that it is more likely to have behaved in a similar way in the present situation? In this context, two questions must be addressed. First, is the evidence relevant as potentially making the matter requiring proof more or less probable? If so, the evidence will be admissible. Secondly, is it in the interests of justice for the evidence to be admitted? The court's conclusion on this second point is likely to be informed by a number of factors including the need to ensure that the right result is reached and the need to protect the vulnerable from further wrongdoing. Against that has to be weighed the potential prejudice to the individual whose interests may be damaged by the admission of such evidence.

97. In this case, no one, including NC, has sought to exclude evidence which may be characterised as evidence which is designed to demonstrate a propensity on NC's part to behave in a certain way. Furthermore, as I have already said, his previous convictions for offences involving dishonesty, fraud and obtaining property by deception are matters of public record and facts upon which this court is entitled to rely. In relation to his relationship with BU, I have the clearest possible evidence from the expert psychologist instructed in this case that NC exercised both coercion and control over BU throughout the entire course of their relationship which spanned a number of years. To the extent that others have provided the court and/or the police with evidence and information that they have been victims of a similar course of conduct, I take the view that this is both relevant and admissible in the context of assisting me to reach my conclusions in the present case. There is a coalescence of factors in this case which persuades me that BU has indeed been manipulated by NC with deliberate intent to secure for himself a financial benefit.
98. In these circumstances it is agreed that the options for the court in relation to contact between BU and NC are binary: either it will sanction ongoing contact or it will not. There is no option or facility for supervised contact at this stage. Taking into account all the relevant circumstances in section 4(2) and BU's expressed wishes and feelings as I am obliged to do pursuant to section 4(6) of the 2005 Act, I am in no doubt at all that it is not in her best interests to be exposed to further risk of financial abuse and/or the risk of future manipulation by NC through the control he has exerted through his behaviour to date. I regard it as essential that steps are taken at the earliest opportunity to address and reverse the current estrangement between BU and her family and this is unlikely to happen whilst NC's corrosive influence over her persists. The immediate need is for BU to receive therapeutic assistance in coming to terms with the loss of this relationship and the reasons why that step through court intervention has been necessary. If a view is subsequently taken that this position needs to be reviewed at a later stage once BU has had an opportunity to engage in therapy, the court can look again at the matter. It will remain to be seen whether NC remains interested in contact with her at that stage and/or

whether he will be prepared at that stage to undertake whatever therapy or other work is required of him in order to address his own behaviour.

99. I cannot provide in my order for the provision of such therapy since I have no evidence as to what is needed or who might provide it. I propose nevertheless to include in my order a recital by way of declaration that it is in BU's best interests for such therapy to be offered to her with a view to helping her to make informed and capacitous decisions about any future contact with NC.

100. Thus the orders which I propose to make in this context is that there will be a final order providing that there will be no contact between NC and BU. The existing injunction will be replaced with a fresh order which will be expressed to continue until further order but subject to any review which may become necessary at a later stage. I propose to attach a penal notice to that order. NC must be quite clear that any breach or attempted breach of that order may expose him to severe consequences if he is found to be in contempt of court and that may include a period of imprisonment. I am concerned about what appears to be his complete contempt for orders made by the court in these proceedings and I propose to reserve to myself any future proceedings involving an allegation that my orders have been breached. BU should be reassured that, whilst expressed as a final order, this is not a 'forever' order. If the position changes in the future, this order can and, if necessary, will be reviewed. What is required at this stage is a period of respite during which she will have the opportunity to engage with those who can help her to understand how NC's influence has impacted on her life and the risks which his behaviour has created. I do not delude myself that my decision will do anything other than cause significant distress to BU. That has never been my intention and I continue to hope that in time, with appropriate help, she will come to understand the reasons why this step was necessary to secure her safety and wellbeing.

Forced marriage protection order

101. In the light of what I have said about NC's attitude to court orders, I share the views expressed by Mr Patel QC and Ms Dolan QC that a further injunctive order alone would not sufficiently protect BU from entering into a marriage or civil partnership as a result of NC's undue influence. I understand that NC may well seek to argue that such additional protection is unnecessary in circumstances where the court has made orders preventing further contact between them. I do not share that view. NC has demonstrated by his past actions that he is perfectly capable of breaching clear mandatory injunctions made by the court on numerous occasions. He offered the court no apology for doing so but instead sought to justify his actions on the basis of his better view of BU's best interests. Whilst I recognise that the making of a forced marriage protection order is a very significant step to take in circumstances where BU has been found to have capacity to enter into a marriage, I am persuaded for all the reasons I have explained that she would not be giving a valid consent to such a marriage or civil partnership.

102. The provisions of ss. 63A and 63B of the Family Law Act apply to ‘marriage’. Section 63S of that Act provides that ‘marriage’ for these purposes means any religious or civil ceremony of marriage (whether or not legally binding). Even without this statutory definition, this court has an inherent jurisdiction to protect a vulnerable party in relation to perceived harm. I accept that, in principle, the embargo on future contact should preclude the celebration of a civil partnership. However, in this case where I have already emphasised the risks flowing from the ambiguous nature of NC’s relationship with BU and his intentions for the future, I propose to make a separate and specific injunction which prevents NC from entering, or attempting to enter, a civil partnership with BU without first obtaining specific permission from this court. I do not regard it as necessary for the purposes of this case to resolve the remaining issues in relation to the breadth of the test for capacity in the specific domain of capacity to enter a civil partnership: see paragraph 50 above. I did not hear specific argument on these issues. It was not necessary on one view since all parties except for NC accept that the court can, in appropriate circumstances, engage its inherent jurisdiction for the protection of a vulnerable adult even in circumstances where that individual has capacity to make an independent decision.
103. In relation to marriage, NC told me that he had certainly not ruled out the possibility of a future marriage with BU. It is his case that it was she who originally proposed marriage to him. I do not know whether BU currently understands the full legal implications which flow from a civil partnership as opposed to a marriage. I tend to agree with the view expressed by Dr Barker that, with an explanation given in a way which is appropriate to her circumstances, she may well be assisted to understand the differences. I am wholly persuaded that NC understands those differences and, in particular, the fact that any sexual relationships which he formed outside his relationship with BU would not as a matter of law and without more provide grounds for a legal dissolution of that partnership.
104. In terms of marriage and the ‘routemap to judgment’ recommended by the President in *Re K*, I have already set out my findings in relation to the underlying facts which I have found to be proved on the basis of the civil standard of proof, i.e. the balance of probabilities. With that first stage completed, I turn to stage 2 which is to decide whether or not the purpose identified in section 63A(1) of the FLA 1996 is established. In this case I am entirely persuaded from the foot of those facts that BU requires the protection of the court from any attempt to be forced or coerced into a marriage with NC. As to the balancing exercise required by stage 3, I am acutely conscious that there is a high hurdle to be passed before I should take any steps to override BU’s clearly expressed wishes in this context. Here, I am dealing with the wishes and the future of a woman who has completely lost her personal autonomy as a result of the total subordination of her free will. In these circumstances there are no sufficiently protective factors which could be put in place to reduce or eliminate the potential risks of a forced marriage. BU would have no comprehension that she was not freely consenting to such a marriage and thus the court must take steps to prevent the possibility of that happening. I propose to reflect

in that balance a limit on the duration of the order which I propose to make under the 1996 Act and in relation to the prohibition of a civil partnership. Those orders will represent an interim holding position for a period of twelve months whilst further work is undertaken to assist BU in whatever therapy can be arranged. I regard this as an appropriate accommodation between the need to protect BU from the inhuman and degrading treatment which is captured by Article 3 of the Convention and the respect which this court must maintain for any autonomous decision-making of which she becomes capable in the future. In this way I propose to intrude on her right to a private family life to the minimum extent which I regard as necessary to meet the duty under Article 3, but no more. Depending on where we are at that point in time, I would regard it as a sensible precaution to list the matter for review before the expiry of that order.

The appointment of a financial deputy as ordered by HHJ Marston on 24 November 2020

105. I see no basis for permitting NC to reopen the order made by HHJ Marston on 24 November 2020. The reasons for that view will be readily apparent from the conclusions I have expressed earlier in this judgment. KE's appointment as financial deputy will continue without the need for any further order of this court save to provide that the property and affairs deputyship will be transferred from her former firm of solicitors to her sole name in accordance with the application she has made.

106. For the avoidance of doubt, I reject NC's application for a further capacity assessment of BU.

Other issues

107. I will leave it to counsel to make whatever amendments may be necessary to the draft orders already before the court. Provision needs to be made for the payment of Dr Barker's professional costs if this has not already been addressed.

108. I propose to make a continuing reporting restrictions order along the lines of the interim order which was agreed between the parties at the conclusion of the hearing. In this context I indicated that I would address the submissions which I heard from two of the individuals who attended the hearing. Professor Kitzinger is a co-director of the Open Justice Court of Protection Project. In that capacity she has a particular interest in the workings of the court and publishes a regular blog on the subject. Polly Rippon is a freelance journalist and university lecturer on the subject of media law and court reporting. Each was served with a copy of an amended reporting restriction order which was circulated at the conclusion of the first day of the hearing. That order prevented the reporting of some of the detail of the evidence which was before the court on that day in order to protect BU's privacy and avoid any possible identification of her as the individual at the centre of these proceedings. That order included a prohibition on any reference to BU's age and the value of her financial estate. It subsequently transpired that the order which I approved at the end of the first day of the hearing prohibited the

publication of certain information which had already been revealed in the contemporaneous blog which Professor Kitinger had published. It is important to stress in this context that there was no prohibition on that detail (which included reference to BU's age and the value of her financial estate) in the original order which related to an earlier court hearing before a different judge which had been circulated and sent to Professor Kitinger. There was thus no question of any breach on her part.

109. Having heard brief submissions from counsel, I agreed to make it clear by way of footnote to this judgment that the court cannot and should not make reporting restriction orders which are retrospective in their effect. Ms Dolan QC explained that, in error, Professor Kitinger had been provided with a copy of the order which had been made remotely for the purposes of an earlier case management hearing but she had not been served with the original transparency order. When she saw that order, she revised her published blog.

110. In terms of any final reporting restrictions order which I am asked to approve at the conclusion of these proceedings, I will only reiterate that it should not be drafted so as to include any prohibition of information which is already properly and lawfully in the public domain. The reasons are so obvious that they probably do not need stating. Accredited journalists and bloggers who attend these hearings as of right cannot be put in a position where they risk being held in contempt of court for publishing information which they hear when that information falls outside any restrictions imposed by the court. In this day and age of mass media communication, information acquires a currency as soon as it is available to a wider audience outside the court room. That is part and parcel of the valuable function which the press and others perform as monitors of the court process. They act as the conduit for public dissemination of the court's working process and procedures and, as such, they fulfil a vital function in any democratic society. There is always a careful balancing act to be performed when the exercise of that function, engaged specifically by Article 10, is examined against the need to preserve the Article 8 and other Convention rights of the subject of court proceedings. In this case the balance has now been struck but, for the avoidance of any doubt, I make it plain that no reporting restriction order should operate so as to have retrospective effect.

Order accordingly