

Neutral citation number: [2022] EWCOP 27

CASE NO: 13731525

IN THE COURT OF PROTECTION SITTING AT OXFORD

HEARD ON 21st APRIL 2022

HANDED DOWN ON 19th MAY 2022

Before

HER HONOUR JUDGE OWENS

Between

READING BOROUGH COUNCIL

Applicant

- and -

P

(by her litigation friend, the Official Solicitor)

First Respondent

-and-

SS

Second Respondent

-and-

HS

Third Respondent

-and-

KS

Fourth Respondent

Representation:

For the Applicant:

Mr Leslie, Solicitor

For P, First Respondent:

Ms Kirkbride, Counsel

SS, Second Respondent:

Litigant in Person

HS, Third Respondent:

Litigant in Person

KS, Fourth Respondent:

Mr Shepherd, Counsel

1. This judgment is being handed down [in private] on 19th May 2022. It consists of 23 pages and has been signed and dated by the Judge. The Judge has given permission for the judgment (and any of the facts and matters contained in it) to be published on condition that in any report, no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name, current address or location [including school or work place]. In particular the anonymity of P and the members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court. For the avoidance of doubt, the strict prohibition on publishing the names and current addresses of the parties will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain.
2. I am dealing with proceedings concerning P who is an 86-year-old woman. She was born in Iran and moved to the UK in 2002 to live with her family. She has two sons, HS and SS, and one daughter, KS. P suffers from Alzheimer's dementia and a number of other physical health conditions including double incontinence. She has a history of falls and injuries and requires support in all aspects of her care needs, with the assistance of two members of staff for any transfers. Although she is reported to have spoken some English in the past, having grown up speaking Farsi, as a result of her dementia it appears that she has lost the ability to communicate in English.
3. P was living with KS from 2017 until 2020. On 9th August 2020 she was admitted to hospital and underwent a number of operations on her hip. She developed an

infection on her hip and contracted Covid-19 whilst in hospital. Agreement could not be reached about her discharge from hospital. KS wanted her to return to live with her whereas HS and SS were of the view that she needed 24-hour care in a residential placement. On 6th January 2021 P was transferred to a less acute ward at a different hospital, before moving to a nursing home on 3rd February 2021 upon agreement having been reached between the local authority and the family. It is not disputed that P is deprived of her liberty in her placement.

4. The initial application was made in March 2021. P was joined a party on 26th March 2021 and the OS invited to act as Litigation Friend for her. All three of her children have since been joined as parties to the proceedings following their requests to be joined.
5. The initial proceedings commenced as section 16 welfare proceedings, with the Local Authority seeking declarations as to P's capacity and best interests in relation to where she should live and the care she should receive because of the disputes between P's children about this. Given the fact that she was subject to a standard authorisation on discharge from hospital, and there is a dispute about her long-term best interests, the proceedings were deemed to be a challenge under section 21A of the MCA 2005.
6. Upon all parties reaching agreement that it was in P's best interests to continue to reside and be cared for at the care home she had moved to on discharge from hospital, the Court was asked to approve a consent order to this effect and permit the withdrawal of the proceedings. DJ Harrison so ordered on 28th May 2021.
7. Unfortunately, on 1st July 2021 the nursing home that P had moved to on discharge from hospital served notice, it is understood that this was as a result of

allegations about difficulties arising from KS, difficulties that KS denies. KS had also made a number of safeguarding allegations against that nursing home.

8. A further application was made to the Court in respect of P's welfare under section 16 on 14th July 2021, this led to a first hearing before HHJ Owens on 25th November 2021. Prior to that hearing, P's children were again made parties at their request and the OS had accepted the invitation to act as P's Litigation Friend. By consent on 30th July 2021 the proceedings were again deemed to be brought under section 21A due to the deprivation of liberty.
9. After her first care home had served notice, discussions then took place between the parties to see if it was possible for P to remain at that placement, and an agreement was reached with the care home enabling her to remain providing certain conditions were observed by KS and pending an alternative care home being found.
10. After extensive enquiries, an alternative care home was identified for P and on 10th September 2021 an order was made by consent authorising P's transfer to that new care home. P moved there on 15th September 2021, and this is where she has remained to date. A standard authorisation of deprivation of liberty was made on 1st November 2021 for 12 months.
11. The matter came before me on 25th November 2021 and was timetabled to this final hearing with assessments of the alternative options of P moving to live with SS or KS to be completed by an OT assessor and final evidence from all about best interests being filed.
12. The issues for determination in this final hearing are whether P's current residence and care arrangements are in her best interests or whether she should move to live with KS or SS on a trial basis with a package of care and support.

13. The Local Authority, the OS, SS and HS all agree that it is in P's best interests to remain in her current placement with the current package of support. KS wants P to be placed with her in her flat, asking that this would be for a trial basis at this point. If a trial placement with a family member is considered to be in P's best interests, then SS submits that a placement with him would be better suited to P's needs than one with KS, but this is his secondary position as he thinks P should remain in her current placement.

14. In the course of this final hearing, I have read the Bundle and heard evidence from the OT assessor, the social worker, SS, HS, and KS. KS's cousin had been expected to give evidence but unfortunately became ill with Covid. No party sought an adjournment to enable her to give evidence, accepting that further delay was not in P's best interests. KS accepted that the absence of her cousin would mean that I may not be able to attach as much weight to her evidence about any matters in dispute.

15. The hearing has proceeded wholly remotely, with the consent of all concerned, given the geography of the various participants in relation to my court base.

16. Section 1(5) of the Mental Capacity Act 2005 reads:

“An act done or decision made under this Act for or on behalf of a person who lacks capacity must be done or made in his best interests.”

17. Section 4 of the Act is headed “Best interests” and section 4(1) details what the court must not rely upon, namely:

“The person’s age or appearance and a condition of his or an aspect of behaviour which might lead others to make unjustified assumptions about what might be in his best interests.”

18. However, of course, section 4(6) sets out that:

“The court must consider as far as reasonably ascertainable:

- (a) The person’s past and present wishes and feelings and in particular any relevant written statement made by him when he had capacity;
- (b) The beliefs and values that would be likely to influence his decision if he had capacity; and
- (c) The other factors that he would be likely to consider if he were able to do so.”

19. Section 4(4) states:

“He must, so far as is reasonably practicable, permit or encourage the person to participate or to improve his ability to participate as fully as possible in any act done for him or any decision affecting him.”

20. Before any decision is made on behalf of an incapacitated person, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person’s rights and freedoms of action in accordance with section 1(6). The Act requires the court to look at best interests alongside the least restrictive options. However, it is P’s best interests

which are the imperative and the least restrictive way of achieving those best interests is required.

21. The checklist of considerations for the court is set out at section 4(6) and it is not very extensive. However, it makes clear that the person's past and present wishes and feelings are as important to someone who lacks capacity as they are to anybody else. I have reminded myself of the decision of Peter Jackson, J, in *Wye Valley NHS Trust v B* [2015] EWCOP 60, where he pointed out that a finding of lack of capacity does not operate as an off switch for her rights and freedoms. P's wishes and feelings may not necessarily determine the outcome of the case but are a factor of significant importance, particularly if clearly and consistently expressed.

22. In *Aintree University Hospitals NHS Foundation Trust v James* [2013] UKSC 67 at paragraph 45 Lady Hale opined:

"Finally, insofar as Sir Alan Ward and Arden LJ were suggesting that the test of the patient's wishes and feelings was an objective one, what the reasonable patient would think, again I respectfully disagree. The purpose of the best interests test is to consider matters from the patient's point of view. That is not to say that his wishes must prevail, any more than those of a fully capable patient must prevail. We cannot always have what we want. Nor will it always be possible to ascertain what an incapable patient's wishes are. Even if it is possible to determine what his views were in the past, they might well have changed in the light of the stresses and strains of his current predicament. In this case, the highest it could

be put was, as counsel had agreed, that 'It was likely that Mr James would want treatment up to the point where it became hopeless.' But insofar as it is possible to ascertain the patient's wishes and feelings, his beliefs and values or the things which were important to him, it is those which should be taken into account because they are a component in making the choice which is right for him as an individual human being."

23. I have also considered *N v A CCG* [2017] UKSC 22 which held that:

- The jurisdiction of the Court of Protection is limited to decisions that a person is unable to take for themselves and is not to be equated with that of the Family Court under the Children Act or the wardship jurisdiction of the High Court.
- Unless the desired order clearly falls within the ambit of s.15 (ie a declaration of capacity and/or lawfulness) orders are better framed in terms of relief under s16.
- S.17 did not confer power upon the Court to decide that a named care home must accommodate P or that a person providing healthcare must provide a particular treatment to P and this is consistent with the aims of the MCA 2005 as originally intended.
- The court must therefore choose between *available* options.

24. It is not in dispute that P lacks capacity to make decisions about where she should live and the care she should receive. The medical evidence about her lack of capacity is contained in the Bundle at H9-H15 in the form of a DOLs assessment by consultant psychiatrist Dr Aslam and I accept that unchallenged evidence as demonstrating that P does not have capacity to make her own

decisions about where she should live and the care she should receive. It is not disputed that P's medical needs are such that she cannot care for herself and requires care and support including some element of professional provision of that care and support.

25. It is also not in dispute that, sadly for all concerned but particularly P, there is an acrimonious and fraught relationship between P's children in relation to where P should live and the care she should receive.

26. As noted earlier, the issue in this case is what is in P's best interests in terms of where she should live and the care she should receive. It is agreed that there are only 3 available options before me at this point – (in no particular order) P remaining in her current placement, moving to live with KS or moving to live with SS and his family (either of which would be on a trial basis). KS did appear to try to ask for other options to be considered in her written and oral evidence (D302 D359-D360), such as a more expensive package of care and support if P were to live with her or for P to move to Iran, but these are no more than suggestions from her and are not available options for me in this hearing. Even if a move to Iran were to be an available option at this point, the professional evidence in this case is very clear that P is now too frail to attempt such a move and the level of disruption that it would mean for her would be bound to be extremely harmful.

27. There is a dispute about the circumstances in which P's previous care home came to give notice, requiring her to move to her current placement. In a one-day final hearing (the time estimate having been agreed between the parties and me and with KS having the benefit of legal representation at the pre-trial review), it is not going to be possible to go into the minutiae of those allegations and all agreed that detailed fact-finding about them was not necessary or proportionate.

The Local Authority is not seeking findings about the allegations against KS. Whatever the rights and wrongs of what happened at P's previous care home, the relationship between KS and the care home broke down with allegations being made both ways as I have already noted in this judgment. As a result, conditions were attached to contact arrangements between KS and P to preserve P's placement at the previous care home whilst a replacement care home could be found. It is also not in dispute that a previous attempt to provide P with a package of professional support at KS's flat broke down within a week, with the agency alleging that this was because of KS's behaviour and KS making allegations about the care agency.

28. As the social worker told me, in her experience of KS, KS has a very difficult relationship with professionals and struggles to take on board advice from them about how to care for P. Her experience of working with KS was that she did not have a healthy dialogue with KS because KS will not listen and either told the social worker that she was lying or wrong. The social worker was clear that KS would not mean to cause P harm but may unintentionally cause her harm (albeit not significant harm) if she doesn't follow professional advice, something that KS strongly disputed. The evidence around how P was toileted in her current care home supports a finding that KS may at times fail to accept professional advice, I find. P had been hoisted frequently to use the commode, despite this not being recommended by professionals caring for her, and despite both the OT assessor and the social worker noting that hoisting appeared to cause P distress. It appears that the sole reason P was being hoisted was because of KS asking for this to be done, though again I would stress that this may not have been through

KS intending to cause P distress or harm and probably stemmed from KS's own belief that this was right for P.

29. In relation to the likelihood of a care package breaking down if P were to be placed with KS, the social worker told me that this was based on the two previous instances of care breaking down, ie once before at KS's flat within a week and with the previous care home. This was also something referred to in her final statement (D331). In the evidence filed, the initial social work statement at D9 also makes clear that concerns about KS's ability to work with professionals also arose when P was in hospital, and again KS raised safeguarding concerns about one of the hospitals concerned. Again, regardless of the rights and wrongs of these issues, this evidence demonstrates that more often than not there is an extremely challenging and difficult relationship between KS and professionals providing care for P with allegations being made of inappropriate behaviour on both sides. Frequently behavioural contracts have had to be put in place to manage this (D9 again). In my view, KS is extremely protective of P and probably genuinely believes she is simply trying to get the best for P (something that the social work evidence acknowledges), but it seems clear to me that KS at times may have had unrealistic expectations of what could be provided during Covid restrictions and what is reasonable to expect of carers. This would be bound to lead to friction on both sides and, since I can see no evidence of KS demonstrating any understanding or acceptance that she may need to do things differently in future in P's best interests, I find that there is a high risk of difficulties arising with any care agency providing care in KS's flat as the social worker told me. In fact, in KS's oral evidence when asked about P being hoisted for toileting, her response was to deny that she had asked for this, despite the overwhelming

evidence to the contrary. KS's response to this is something that corroborates the social worker's description of KS simply accusing her of lying or being wrong. As the social worker told me, if P were to be living in KS's flat where KS had greater control, this would add to concerns about the extent to which KS would be able to take on board professional advice and allow the carers to care for P in accordance with that advice rather than KS's requirements for P's care, I find.

30. As the final statement from the allocated social worker makes clear (D324), any of the 3 available options in this case are viable in terms of care and support. The sole distinctions that the allocated social worker draws between the options are that, in her opinion, there is a risk of the care package breaking down if P were placed in KS's flat, and only the option of her current placement would allow P to see her family as freely as is in P's best interests (D325).

31. The OT assessment at D310-D319 also concluded that each of the three available options would be viable in terms of care and support in broad terms. Both KS's flat or SS's house would mean that P could only have a bed wash as opposed to a full body wash in a bath or shower. In terms of KS's flat, there were accessibility concerns which would mean that P could only leave the flat in an emergency, whereas at SS's house she would be able to go into the garden and would be able to go out into the wider community once a ramp was fitted. At KS's flat P would have to use the lounge as her bedroom, but at SS's house she would have her own bedroom. There were no identified OT reasons for excluding either option or preferring either option in the assessment, but in her oral evidence to me the OT assessor did note that being able to access the garden and being able to see as much of her family as possible would be bound to improve P's quality of life, and that it would be better for P to use pads rather

than be frequently hoisted for toileting as this clearly caused P distress. She did note that many people lived in situations where they could not leave the premises save in an emergency, so this was not in itself a reason to rule out KS's flat.

32. A table comparing the 3 available options is in the final social work statement at D325-D326. There is very little to distinguish between the options from this evidence, save it does note the access concerns associated with KS's flat which would mean that P could only leave in an emergency, as opposed to her current care home and SS's house where she could have garden access (D326). In turn, this means that a placement with KS would mean no access to the wider community for P as the social worker has noted. Lack of space in KS's flat would also mean that the main lounge in the flat would have to function as P's bedroom, in turn preventing KS from using this space for entertaining any guests of her own. Culturally, it is acknowledged that P would have more Farsi spoken to her if she were to live with either SS or KS than in her current placement. However, the social worker notes that *"it is likely that it is dementia rather than language that is the major factor hindering communication – family may be more alert to non-verbal cues although care staff are trained to pick up on these signs which tends (sic) to be universal"* (D326).

33. The social work evidence also notes that P's current care home do try to meet P's cultural needs by using a list of Farsi words and phrases which all staff tending her can see and use, encouraging her family to provide her with Persian food, and making sure that she has access to Persian music. There is another Farsi speaking resident at the care home too, who apparently has some interaction with P. It is also clear from the evidence of all parties that P is moved around the care home and into the garden giving her variety and stimulation

(D327). It appeared from her oral evidence as if KS accepts that the current arrangements are meeting P's cultural needs, as well as that the care home generally is meeting P's care needs. HS and SS have always been clear that they think the current care home is meeting all of P's needs.

34. In terms of SS's house, as noted in the social worker's final evidence and in the OT assessment, there would be two carers to meet P's needs as well as a package of care and support from professional carers (D328 & D318). There would also be flexibility to allow for a live-in carer should P's needs require that at a later stage, though this is not assessed as necessary now given that there are two people able to care for her at the moment (D328). As I have noted, the house would allow P to be able to access the garden and go outside on a regular basis as there are no accessibility concerns.

35. In terms of placement with KS, the social work evidence notes that the flat is accessed by several flights of stairs so once in the flat P would only be able to leave in an emergency. There are sufficient rooms for P to live there and have a live-in carer (required due to the fact that KS does not live with anyone else able to help with making sure that P's needs are met, and she cannot meet P's needs alone), though this would mean that the lounge would have to become P's bedroom (D330).

36. The social work evidence is very clear that any move for P at this point would be disruptive to her. It is therefore important that any move should be viewed as permanent, and I share the social worker's concerns about KS expressing a wish for placement with her to be on a trial basis and having previously mentioned the possibility of P moving to Iran. It is not disputed that moving to her current care home was very unsettling for P, and I agree with the social worker's assessment

that this also means it is not in P's best interests to have two trials, one with KS and one with SS (D333).

37. The concerns around the possibility of placement with KS breaking down also give rise to the issue that P's current care home will keep her place open for 4 weeks but cannot hold the place open for longer. If placement were to break down after this period, it would inevitably mean that a new care home would have to be found. P would then have another move and have to adapt to yet another care home. As the social worker told me, this could also mean a care home that is further away from all the family members and thus it may reduce the amount of family contact that P is able to have.

38. I have also considered the fact that when P stayed with SS in June 2020, KS raised safeguarding concerns about the care that P received from SS. I am not making any findings about the allegations around this because it is not necessary or sought, but would note that again, regardless of the rights and wrongs, it is further evidence of the extremely acrimonious relationship between P's children and that a placement with SS would not necessarily stop allegations being made in relation to her care on both sides. It would not be in P's best interests to be the ongoing subject of allegations and counter allegations about her care, I find. This is because it has the potential to undermine the actual care that P receives (if for example it again resulted in a care agency withdrawing their services), but more importantly it has the potential to expose P to the conflict even if indirectly and in circumstances where she does not understand why there is conflict. As the social worker noted, just because P has diminished cognitive function does not mean that she is not sensitive to the emotions of those around her.

39. The social worker also gave very compelling evidence about the extreme nature of the acrimony and disputes in this case. She told me that in her over 20 years of experience as a social worker she normally only has about one or two cases per year where a care home says that they cannot handle the family conflicts and the demands that this places upon staff and the impact on other residents of staff time being taken up by issues arising from the family dispute. The fact that all of P's children have made requests of the care home to detail how often visits have taken place, and the petty and very unseemly spat about whether or not photographs have been removed from P's room is evidence of this sort of extreme and challenging behaviour which a care home should not have to manage on top of everything else.
40. It is also sadly the case that KS no longer participates in joint meetings designed to facilitate greater agreement and co-operation about what is in P's best interests between professionals and P's family. HS also told me that he had lost part of his family, namely his sister, and that was clearly very distressing for him. Tragically for this family, it is evident that there is a very deep and long-lasting rift between P's children. More significantly, for P this means that she does need to be protected from the consequences of this acrimony, I find.
41. A key potential positive of P moving to live with either KS or SS are that she would be with her family, and family was and is clearly very important to P from the evidence in this case. As the OS submitted in closing, it is not in dispute that before P reached a point where she was not capable of making her own decisions about visiting family, she would regularly visit her family. It is also abundantly clear to me that all of P's children love her and care very deeply about her remaining time being as positive as is possible.

42. I have very little other evidence before me about any previously expressed wishes and feelings from P, though it is clear she has a close relationship with her family as I have noted and based on this I think I can infer that she would have wanted to spend as much time with them as possible. A case was put by KS that she had had a closer relationship with P than her brothers. SS accepted that in their childhood KS may well have been closer to P since SS and HS came to the UK to study whilst KS remained with P in Iran. However, as SS pointed out, that does not mean they did not become close later and all the evidence before me in fact shows that each of her children clearly loves P and cares deeply about what happens to her. They all visit P as often as they can, the only limitations on this (outside of Covid outbreaks as HS told me) are the fact that SS and HS are at some distance from the care home and work, but even so SS normally visits at least once a week, and HS every two weeks and would like this to continue and to be able to visit P on holidays and other important days. KS visits P daily but she is much closer to the care home and does not work. I am also aware that in terms of P's culture of origin, caring within the family is usual (as is the case in many cultures) and indeed perhaps expected as a starting point. This is something that the evidence of KS's niece refers to as well (D403), though as SS notes in his statement dated 11th March 2022 this does not mean that those requiring specialist care do not receive that in care homes in Iran (D430). KS in making a tentative proposal for P to move to Iran noted that this may be in a care home (D302). I find there is no cultural bar to placement in a care home if P's best interests require this.

43. P would also be in a culturally appropriate setting if living with either SS or KS, reflecting her heritage and allowing her to receive care from her family who would

be able to speak to her in Farsi. How much of that spoken Farsi she may understand at this point is debatable, given the medical and social work evidence, but it seems likely that the presence of her family would be reassuring as the evidence of P's legal representative shows (see for example D200). As the social worker noted *"within her family environment, P would have easier access to Persian culture, but there is no way to objectively measure the significance of this for her due to P's advanced dementia"* (D337).

44. Ascertaining P's current wishes and feelings about where she should live and the care she should receive is not possible based on the evidence before me: *"P was not able to engage in a meaningful discussion about her care or where she is living. She did not appear able to understand where she was living or why, and the answers she did try to give were often unrelated to the questions, or did not make sense to the interpreter. However, P seemed to enjoy having people around her, particularly listening to KS and the interpreter chatting in Farsi, and she attempted to join in"* (D201 P's legal representative's statement). It does appear from the evidence of P's legal representative's attendances on P that P seems to derive enjoyment from seeing all of her family and going into the garden of the care home and seeing the flowers and birds (D201).

45. The main risks associated with a placement of P in KS's flat as already noted are identified by the social worker as breakdown of home care or live-in care and reduced visiting from other family members (D339). The social worker rightly notes that the risk of care breaking down has to also be seen in the context *"of a stretched market in terms of availability of paid care"* (D339), in other words, finding reliable and high quality care can be challenging whilst there are shortages of paid carers and a history of difficulties with care provided at home or

repetition of problems with that in the future may lead to a care company being unwilling to provide services.

46. It is alleged by KS in her final evidence (C359), that the Local Authority preference for P to remain at her current care home is driven by cost considerations rather than what is in P's best interests. This is not my understanding of the social work evidence, which confirms at D337-D339 that the Local Authority is prepared to pay up to the current fee level of P's current care home, ie up to £2114 per week, for a package of care regardless of where P is placed. The Local Authority therefore appears to have adopted a cost neutral stance in assessing the various available options as all are subject to the same financial ceiling. If KS's case is that there should be another option (and it seems this may be what she has tried to set out in her final statement as I noted earlier in this judgment), then this is not an available option for me at this hearing and I can only choose between available options as the case of N v A CCG makes clear.

47. KS also appears to take issue with the OT assessment noting the absence of access to the outdoors. In KS's statement at D362 she alleges that P can gain the same benefits by sitting at an open window in the flat, enjoying the flowers on the balcony and enjoying the view from the lounge. KS also appears to allege that P is often unhappy with being outside at the care home in any event (D362), and that this is thus *"no longer a factor that outweighs the benefits she can receive by being cared for privately at her home environment"*. This is contradictory to the evidence of P's legal representative's observations of P appearing to respond positively to being asked about going into the garden, as well as a contrast to the evidence of HS and SS about this. It seems more likely

than not to me that P would derive pleasure and thus benefit from being able to access outside space wherever she is living, based on the professional evidence before me about this.

48. Leaving aside the issues about the allegations against KS, as the OS has submitted, one of the key aspects of P being placed with either KS or SS is whether this would prevent her from having as much contact with her family as possible. KS says that she would not be able to visit P daily if P were to live with SS, and both SS and HS have expressed concerns about visiting P if she were to live with KS given the existing tensions. KS has given evidence both in her statements (D298-D299 and D363) and orally that she does not see a problem with her brothers visiting her flat and that if required she would leave the flat when they visit. When I asked her to clarify how she envisaged the practical communications around visiting working, she initially said that a simple text or email would suffice, but then said that they could also just turn up when they wanted. In terms of arrangements for her visiting P if P were to live with SS, she again said that a simple text or email would suffice. When I asked her how that would work if she received a response to the effect that it was not convenient because of some reasonable appointment or similar for P, she immediately assumed that any such response would in fact be false and an attempt to prevent her visiting P. She went on to suggest to me that they may need a third party to be involved, to help with making arrangements and monitor communications about them, and she thought that perhaps social services could do this. Similarly, SS gave me evidence about his belief that KS would make excuses or change her mind about arranged visits leading him to believe she would try to prevent visits taking place. This is very clear and extremely sad evidence about the lack

of trust between P's children and of the acrimony between them, I find. It is the extremely fraught relationship between KS, HS and SS which I find is more likely to significantly impact on the amount of contact that P would have with her family if P were to live with either SS or KS. Regardless of the rights and wrongs of how that fraught relationship has been caused, the tension is palpable when I have dealt with the parties in this case and clearly conveyed in the written evidence in the Bundle. That tension is bound to discourage people from visiting P as frequently as would be ideal for P, and potentially expose P to that tension in circumstances that would not be conducive to P having a calm and pleasant home environment. The arguments about whether family photos have or have not been taken down by KS also highlights this as a concern and I did not find KS credible when she told me that she knew nothing about the photos being removed and clearly did not believe the email from the care home about this. Given that nobody disputes that P does derive great benefit from regular visits from her family, it is in P's best interests for those visits to be promoted and facilitated as the OS has submitted. I have considered whether KS leaving the flat as she suggested might mitigate the impact on P of this family conflict, but it seems clear to me that the fact of the conflict itself would be likely to discourage HS and SS (and their wider families) from having as much contact regardless of whether KS were to leave the flat when they arrive. And I am not confident that this would enable P to see her family in a calm way that does not expose her to their emotions in a negative way. Despite KS saying that they have never exposed P to their conflict directly, this ignores the indirect impact on P if those visiting her or looking after her feel upset or angry about the arrangements and also ignores the fact that some of the evidence does in fact support a conclusion

that at times the family conflict has had an impact on P in terms of the demands placed on her carers in answering questions from family members. I am also concerned that KS's evidence to me demonstrated a complete absence of understanding of that indirect impact on P, as well as a complete lack of understanding of how the general family conflict may discourage others from visiting P. In this case, I find that the care home does represent "*neutral ground*" (D325) for family visits as described by the social worker.

49. The fact that there is a history of problems between KS and those providing care to P, both at KS's home and in her previous care home as well as when P was in hospital, does legitimately raise a concern about the sustainability of any care package for P with her family, I find. The risk of such issues undermining her placement in her current care home is considerably mitigated by the fact that the care home has been managing the fraught family dynamics since P moved there, and a statement of expectations of all concerned has now been agreed and produced in the course of this hearing, clearly designed to reduce the potential burden on care staff and the care home of the consequences of the lack of trust between the various family members. However, the concerns about the risk of care breakdown are very much secondary to the concern that placement with either SS or KS may result in fewer family visits for P, I find. As was submitted by both the Local Authority and the OS, somewhat unusually I do find that the least restrictive option for P is for her to remain in a care home where she is deprived of her liberty because this enables her to continue to have frequent contact with all her family. She clearly derives great enjoyment from this contact, and it is something that in turn will help improve her quality of life with all of the other positive benefits for her health and well-being that will flow from that. I find that it

is in her best interests to remain in her current care home as a result and will make final declarations to the effect that it is in her best interests to remain living there and to receive the package of care and support that is being provided there. As this results in a deprivation of her liberty and the proceedings have been reconstituted as being a challenge under section 21A of the MCA 2005, I will also authorise a deprivation of liberty for P.

A handwritten signature in black ink, appearing to read 'HHJ Owens', written in a cursive style.

HHJ Eleanor Owens
19th May 2022