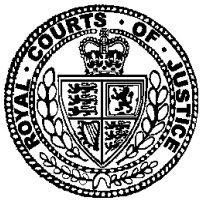

Neutral Citation Number: [2022] EWCOP 30

Case No. COP13258625

IN THE COURT OF PROTECTION

Date: 30 June 2022

Before:

MR JUSTICE POOLE

- -

Between:

SCC

Applicant

- and -

(1) FP (By her Litigation Friend, NS)
(2) RT
(3) ST

Respondents

- - - - - - - - - - - - - - - - - - -

Simon Garlick (instructed by SCC Legal Department) for **the Applicant**
RT in person
ST not appearing
Joseph O'Brien QC (instructed by Switalskis Solicitors) for the **First Respondent**

Hearing dates: 28-30 June 2022

- -

JUDGMENT

The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the incapacitated person and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mr Justice Poole:

1. The challenging issue for the court to determine in this case is whether it is in the best interests of a vulnerable 36 year old woman, FP, who lacks capacity to make decisions about residence, care, and contact with others, to be deprived of direct contact with her mother, RT, with whom she wants to have contact, for a period of at least five months. RT's behaviour forms the basis of the Local Authority's application to prohibit contact with her daughter for a long interim period, and her behaviour as an unrepresented party made it very difficult to manage the hearing of the application before this court. RT showed no respect for the authority of the court and no appreciation of the need to ensure a fair hearing for all concerned. Her husband, FP's stepfather ST, wrote to the court ahead of the hearing to say that he wished not to participate. The Local Authority was represented by Mr Garlick and FP, through her Litigation Friend, by Mr O'Brien QC. Both Counsel, and the Litigation Friend, have had a long involvement in this case.

2. FP was born and brought up in Russia until the age of 12 when she moved with her mother to the United Kingdom. RT then married ST. A few years ago the family settled in the area for which the applicant Local Authority, SCC, is the relevant social services authority under the Care Act 2014. As a child, FP was diagnosed with cerebral palsy and has a history of seizures, now controlled by medication, and mobility problems necessitating, now, the use of leg splints, a walking frame, and, for longer distances, a wheelchair. In 2011, FP contracted meningitis which resulted in a deterioration in her mental health ultimately leading to hospital admissions under the Mental Health Act 1983 (MHA 1983) in 2017. She has been diagnosed as suffering from paranoid schizophrenia, experiencing auditory hallucinations including that people were going to kill her and to harvest her internal organs. On discharge from hospital in October 2017, FP was cared for at placement 1. In January 2020, FP was admitted to hospital as a voluntary patient but in February 2020 she was detained under s.3 of the MHA 1983. That detention was discharged on 2 June 2020 but her health deteriorated once more and she was detained under s.3 MHA 1983 again on 8 July 2020, remaining subject to detention until 15 December 2021 when she was made subject to a Community Treatment Order. At some point plans were considered to place FP at placement 2 but they were not pursued. Since 10 November 2021 FP has been living at her current care home, placement 3. FP's schizophrenia has been resistant to treatment. She requires care 24 hours a day. She continues to suffer from delusions and will have episodes of screaming.

3. Her Honour Judge Moir, recently retired, conducted a lengthy hearing which covered several months from 2019 to 2020, lasting a total of nine days, and handing down judgment on 21 October 2020. I have read that judgment which is detailed and demonstrates the great care with which HHJ Moir approached the difficult issues in the case. She had the benefit of five reports from Dr Ince, Consultant Psychiatrist. Given that HHJ Moir has already provided a detailed history and analysis of the medical evidence and capacity, I need not repeat those in this judgment. In short, HHJ Moir:

    i) Held that FP lacked capacity to make the following decisions:

        a) Conducting the proceedings.

b) Where she should live.

c) Her care arrangements.
d) Contact with others.

ii) Made findings that:

a) RT lacks a basic understanding of the impact on FP of her mental disorder;
b) Over a period of many years FP and RT have had an enmeshed relationship in which FP is exposed to high expressed emotion;
c) RT communicates negative critical thoughts about FP's care to her, and to others, sometimes in abusive terms and in FP's presence;
d) RT has often behaved towards care workers in an abusive and unpleasant fashion which may be intended, and is likely, to demoralise them;
e) RT's contact (both direct and indirect) with FP, whilst of importance and value to FP, is on many occasions associated with a decline in her mental health and presentation;
f) RT has sought to control FP's care and treatment and prevents FP from expressing her own views;
g) RT's attempts to challenge FP's medication and has interfered with FP's medication to her detriment;

iii) Declared that it was not in FP's best interests to reside with RT or ST.

iv) Made injunction orders against RT restricting her recording FP and support staff or discussing the proceedings with support staff save in defined circumstances, and prohibiting the publication of the proceedings.

4. At a further hearing on 2 November 2021, HHJ Moir:

i) Made a s.16 welfare order that it was in FP's best interests to move to and reside at placement 3.

ii) Made a s.16 welfare order that it was in FP's best interests to receive care and support at placement 3 in accordance with a support plan dated 13 August 2021 and subsequently amended.

iii) Made an order under s.48 of the Mental Capacity Act 2005 (MCA 2005) in relation to interim contact arrangements between FP and RT.

iv) Continued the injunctive orders against RT and added an injunction against ST prohibiting him from any publication of the proceedings.

v) Gave directions for the listing of the dispute in relation to contact and RT's proposals for communication with placement 3.

5. At a further hearing on 1 to 3 March 2022 HHJ Moir heard evidence and made an order again that it was in FP's best interests to reside at placement 3. She

made interim orders that face to face contact was to be reduced to two hours per fortnight and contact should be supervised 2:1. Telephone contact twice a week was to be on loudspeaker and was also to be supervised by a staff member at placement 3. RT was not to instigate discussions on certain topics such as FP's medication. She extended the injunctions against RT and ST and ordered SCC to monitor the impact on FP of the reduced contact arrangements. She ordered SCC and placement 3 to provide RT with one weekly update by email and made directions of a final hearing before me, which is the hearing following which this judgment is given.

6. RT had been ordered to attend the hearing before me in person but prior to the hearing she wrote to the court asking to attend remotely by video link. I heard her application at the start of the hearing, allowing her to make the application by video link. She told me that the reasons she would not attend court were that she would be abducted if she attended, that the court was not a safe place for her, and that her husband needed her care. Given the desirability of RT participating in the hearing and her refusal to attend court in person, I allowed her to participate remotely. A Russian interpreter had been arranged to assist RT but at no point in the hearing was the interpreter required save when RT made the affirmation prior to giving evidence when, oddly, the interpreter repeated the words of the affirmation in English to RT who then spoke them herself.

7. At the outset of the hearing, RT contended that the court's previous findings on capacity were wrong and that I should find that FP has capacity in relation to all the relevant decisions. Her entire focus was on challenging the decisions on capacity that had been made previously by the court but she has not appealed those decisions, which were made over 20 months ago. At the time of those decisions RT had the benefit of legal representation and, as she made clear, she considered the issue of appeal with her legal representative after the judgment was handed down. I therefore proceed on the basis of the findings made by HHJ Moir. Nevertheless, capacity is time specific and an individual may regain capacity. Dr Ince, Consultant Psychiatrist, advised the court previously that FP was unlikely to regain capacity so long as she continued to lack insight into her condition. FP continues to suffer from the same condition which caused her to lack capacity on the findings of HHJ Moir in October 2020 and she remains sure that she does not have schizophrenia. Hence, Dr Ince's views remain highly pertinent. Therefore, I invited LP to direct the court to any evidence that might suggest that FP may have regained capacity. RT was unable to point to any grounds for suspecting that her daughter's condition had changed such that she may have regained capacity. Indeed, in her witness statements, affidavit and several written communications to the court preceding the hearing, RT's case was that FP was deteriorating because of failings and neglect at her placement. I have reviewed the evidence provided to me about FP's condition since the determinations by HHJ Moir. Contrary to RT's assertions, the evidence suggests a general improvement in FP's mood, sleep, eating, and self-care. However, there is no evidence of any material change in FP's ability to understand, retain, weigh and use information relevant to the decisions. She has been reviewed by Dr Keown, Consultant Psychiatrist in March 2021, and by Dr Harrington on 17 November 2021, who assessed FP as lacking capacity to make decisions about her residence. I have a number of recent records about FP's condition from placement 3. I bear in mind the principles and provisions of the MCA 2005 in relation to the issue of capacity, not least that there is a presumption that FP has capacity unless the contrary is established. More than once during the hearing

RT appeared to imply that the MCA 2005 states that "unwise decisions are allowed". What the MCA 2005 provides at s.1(4) is that "a person is not to be treated as unable to make a decision *merely because* he makes an unwise decision" (emphasis added). As I indicated early during the hearing, I can find no grounds on which to consider setting aside the determinations of capacity made by HHJ Moir. I can find no justification for directing that further assessments of FP's capacity be conducted. I am satisfied to the civil standard of proof that FP continues to lack capacity in relation to the conduct of this litigation and decisions concerning residence, care, and contact with others.

8. RT also sought to challenge the best interest determinations made by HHJ Moir in relation to residence. The most recent such determination was on 3 March 2022 when HHJ Moir ordered under s.16 MCA 2005 that FP reside at placement 3 receiving care and support there in accordance with the care and support plan of 9 February 2022. RT's alternative proposal was that FP should live with her and ST at home. She mentioned, in passing, the alternative possibility of FP renting a house near to RT and ST's home. Neither plan had been aired in advance of the hearing, no details for how care would be provided at those homes were given. It is also clear that if FP were in RT's care, RT would not administer the currently prescribed medication to FP because she believes that it is harmful to her daughter. Placement 3 has recently acquired an "outstanding" rating from the Care Quality Commission and is a placement capable of meeting FP's very complex needs. HHJ Moir had previously declared it to be contrary to FP's best interests to live at her mother and step- father's home and that declaration has not been appealed. Again, there has been no material change in circumstances since the last hearing and I can find no grounds on which to re-open the issue of residence. On the evidence before me it clearly remains in FP's best interests to reside at placement 3.

9. The Applicant now applies for reduced contact between FP and RT – no face to face contact for an interim period of just over five months, and telephone contact once every three weeks - and restrictions on communications between RT and the placement and professionals. FP's Litigation Friend recognises that it is a difficult decision to reduce FP's contact with her mother as proposed but Mr O'Brien QC submitted that it was not a borderline decision and that the Litigation Friend fully supports the application. I heard oral evidence from H, who has been FP's Allocated Social Worker for approximately three years, and from RT. I have been provided with a large bundle of expert reports, statements, and records.

10. I found H to be an impressive witness. She was measured, patient, balanced, and clearly committed to FP and her welfare. She frankly accepted that this has been the most difficult case she has had to deal with in her 15 years or so as a social worker - not due to FP's complex needs, but due to the behaviour of RT. In common with most professionals who have had a significant role in seeking to protect FP's welfare, RT has complained about H to her professional regulating body. H has had to spend a great deal of time dealing with the complaint. I am satisfied that H's evidence was not influenced by that complaint. Nevertheless, the pressure on those caring for FP caused by RT's constant complaints, accusations, and challenges is waring and distracts them from their work in trying to support FP. Placement 1 gave notice in part because of RT's conduct. A contact supervision service likewise gave notice. H advised the court that it would be very difficult to find another suitable placement in the same region for

FP were Placement 3 to give notice.

11. RT has complained more than once to the Care Quality Commission about Placement 3 but, H advised the court, Placement 3 has very recently been given an "outstanding" rating by the CQC. H praised the placement for its flexibility in trying to make contact between RT and FP work to FP's benefit. However, many indirect contact sessions have to be cut short because RT begins to tell FP that she is being abused, is on the wrong medication, is being neglected, or should complain about her treatment. This is not only in contravention of court injunctive orders, but also detrimental to FP's sense of stability and safety. FP has paranoid schizophrenia and RT's communications with her at most contact sessions tend to cause destabilisation and fear of being unsafe. H pointed to evidence in the contact log and mood summaries to substantiate her position.

12. H told the court that FP's medication is reviewed by Dr A and by the Community Psychiatric Nurse (CPN). FP's medication regime is essentially that which was prescribed to her on discharge from hospital in November 2021 but there may be occasional adjustments. H said that she had regular meetings with the manager at Placement 3, the Litigation Friend, and the CPN and a carer who knows FP well, HA. Those have been taking place fortnightly, but it is intended to hold them monthly in the future. They have questioned the medication, not because of their own concerns but because of the concerns raised by RT that it is harmful to FP. They have been satisfied with the answers given. H was satisfied that she can rely on the expertise of the healthcare professionals in relation to the prescription of medication.

13. FP continues to have treatment resistant paranoid schizophrenia. She does have episodes of delusions, she has interrupted sleep, she can scream out. However, compared with when she first came to placement 3, she is now sleeping better, she is engaged in activities, she eats well, and she had built good relationships with staff. There was a period of a few months when RT decided to disengage from direct contact with FP. H told the court that FP appeared to improve during that period but that more recently, once RT re-engaged with contact, she has been less willing to leave the placement for activities, and has become more withdrawn. Nevertheless, RT has only chosen to have face to face contact with FP on two occasions since the last hearing in early March 2022.

14. H expressed concern that FP might deteriorate so as to require further hospital detention under the MHA 1983. In those circumstances she would have less liberty and less opportunity to exercise autonomy than in her current placement. H also expressed concern that RT's influence on FP is such that it impinges on FP's autonomy. FP will defer to her mother and adopt her views which are expressed very strongly and repeatedly. Through contact, FP receives constant messages from her mother that she is being mistreated and neglected at the placement, that she should not take her medication because it is harmful to her, that she needs to be seen by doctors to stop her medication, and that she needs police protection from those caring for her. This constant barrage not only serves to undermine FP's sense of safety and stability, and her relations with carers and social workers, but also adversely impacts on her ability to make choices for herself.

15. RT gave evidence under affirmation. Initially, she was unable to confirm her previous witness statements, telling the court that her solicitor had amended them without her knowledge. Once she had been sent them separately (she had already been provided with them in the court bundle) she did confirm that their contents were true, leaving the court to wonder why she had said they had been changed without her knowledge. RT did not answer questions put to her so much as make a series of speeches in response. In most of her speeches she re-iterated the same message that no-one was listening to her, that she did not agree with the court's decisions or orders, and that her daughter was being harmed by the medication given to her. This had been going on for five years, she repeatedly said. Most of her evidence was shouted and she would not respond to the court's attempts to encourage her to focus on the question or to stop speaking over others. In cross-examination, when evidence was put to her, RT made little attempt to engage with the evidence, but would be dismissive of any evidence that challenged her own beliefs. She would not let facts get in the way of her views.

16. On the second day of the hearing, I spoke with FP, by video link from her placement. She appeared to be at ease in the company of her carer whom she knew well. She began by saying that her illness started six years ago when she was on holiday with her mother and felt she was being attacked by a robot and her body was burning. This feeling came back later when she was in England. Then she felt that her body was penetrable. She said that she should be seen by doctors more often because of a pain in her chest and people should take more notice of her and not ignore her. Otherwise, she said that people at the placement were trying to be nice to her. She enjoys going to the café, watching Russian documentaries on television, and having romantic poetry read to her. She enjoys speaking to her mother by telephone and seeing her in person. She said that it is nice and "I can relax". FP told me that the people who are now attacking her are called "the people 2019". She does not think she has schizophrenia but she has a physical problem. She then said that she did not feel well, in her chest, and we ended our meeting. She was very courteous throughout.

17. Why would contact between FP and her mother, and communications between the mother and the placement and professionals, need restricting? Having carefully considered the documentary and oral evidence in this case, and listened to the submissions of all parties, including RT, my conclusions about the concerns raised by the Local Authority and the Litigation Friend, can be stated as follows:

    i) RT believes that FP does not have schizophrenia. She believes that FP has been misdiagnosed and, as a result, she is being given medication she does not need and that is harmful to her. She believes that the harm caused to her daughter is being ignored by the court, by the Local Authority, and by care staff at the placement. These views are deeply entrenched She has repeatedly made those beliefs known to the placement, the Local Authority, the court, the police, the CQC, and other regulators. She refers to FP being "tortured" and "abused". In her oral evidence, RT confirmed that in her belief medical professionals and the Local Authority have conspired over many months deliberately to give FP the wrong medication to cause her harm. When she has been asked why they would do that she has previously responded, "because they can", but at this hearing she said "I don't know. Ask them." It is quite

clear to me, having experienced RT's conduct during the hearing, having read several documents she has prepared, and considering the evidence in the bundle, that she will not change her views and believes that anyone who does not share her views is deliberately ignoring the facts and is possibly corrupt. Her unshakable belief that her daughter would not be ill were it not for the medication, means that whenever FP has delusions or feels unwell due to what psychiatrists believe is her schizophrenia, RT thinks that her daughter is suffering due to the medication. This is a fixed view and there is no foreseeable prospect of it changing.

ii) RT's beliefs have no foundation in fact. A number of different psychiatrists have been involved in FP's care over recent years. The diagnosis of paranoid schizophrenia, resistant to treatment, is well established. Dr Ince, who was not involved in FP's care or management, carefully reviewed FP's condition in his five reports as an expert witness. He confirmed FP's long-standing history of complex delusional beliefs and the diagnoses over time of psychosis, non-organic psychosis and paranoid schizophrenia. In his view there was "clear evidence" that FP suffers from schizophrenia. It is difficult to discern the origin of RT's beliefs that her daughter does not have a mental health condition but is being deliberately harmed by a conspiracy of professionals. In cross-examination by Mr Garlick, RT appeared to suggest that for a period of about two weeks in May 2020 FP was well but that subsequent medication given to her, Clonazepam, a Benzodiazepine, had caused her to deteriorate. In fact, records from that month show that there was no period when FP was "better". Her condition can rapidly wax and wane so that she has good days and bad days. Sometimes she might have a few good days in succession but, sadly, her condition has been resistant to treatment and has been persistent. Clonazepam is not one of FP's current medications. RT has not adduced any evidence at all that the medications prescribed to her daughter have been the wrong medications, or that the combination of medications is liable to have caused her harm. Medical professionals from different centres and teams have been involved in her care and the management of her medication over the past few years. Her medication has been adjusted from time to time, but none of the practitioners have raised an alarm about the medications prescribed. FP is under regular review by suitably qualified healthcare professionals. There is not a shred of evidence of torture or mistreatment of FP by her carers, healthcare professionals, social workers or others. There is no evidence before the court on which I could possibly hold that FP is being harmed by her medication. What RT takes to be medically induced harms are the effects of FP's mental health condition.

iii) RT not only holds this false belief that her daughter's problems are not due to schizophrenia but due to a conspiracy to give her harmful medication, but she expresses her views about what is happening to her daughter in a highly confrontational manner. It is difficult adequately to describe her conduct over a remote link in court. Most of her communications during the hearing were shouted. Indeed, I struggle to remember any time when she was not speaking in a raised voice and remonstrating with me or the other participants. She did not swear but she was dismissively rude to the witness H, to Counsel, and to me. She

spoke over others throughout the hearing. She repeated her views about the harm being caused to her daughter and the court's inadequacies very many times and in forceful terms. She was insistent on completing repeated, long tirades about the injustices being perpetrated against her and her daughter. The evidence within the bundle shows that this was not atypical behaviour by RT caused by the stress of appearing in court, but rather that it was entirely consistent with her contacts with professionals and others involved in FP's care.

iv) RT makes her beliefs known to OE on the majority of occasions of direct or indirect contact between them. RT has sent in numerous recordings of her indirect contact with FP. She films herself speaking by telephone to RT, with the speaker phone switched on so that FP's voice, and the voices of staff at the placement who supervise the calls can be heard. On none of the videos that I have viewed does she tell FP or staff that she is recording the conversation. She persists in recording these conversations, and posting them on social media, in the face of repeated court orders not to do so. That court orders have penal notices attached to them. On viewing the recordings, a pattern emerges in which typically, but not always, RT states to FP that she is being abused or that her medication is making her ill, manipulates FP into agreeing and then says, for the purpose of the recording, that FP is complaining of the matters which RT herself has stated earlier in the conversation. Given the number of recordings submitted to the court and their dates, there must have been periods over which RT recorded every telephone contact with her daughter and then posted the recordings on social media.

v) RT is unable to restrain herself in the expression of her beliefs. She has demonstrated repeatedly, including at the hearing before me, that she has no respect at all for court orders she does not agree with. RT has failed to abide by any encouragement or orders to (i) restrain herself from sharing her beliefs about FP's treatment with FP; (ii) desist from posting recordings of FP and members of her care team on YouTube without their consent. She admits to conduct that amounts to repeated breaches of those orders because she disagrees with them and does not see why she should abide by them when she is justified, in her own mind, in making and posting the recordings. For over 18 months now the court has tried to manage RT's contact with FP to avoid distress to FP. For example, orders have been made to restrict RT from expressing her views about FP's medication when speaking to FP. RT is unable to restrain herself and she was unable to give me any reassurance that she would change her ways in the future. A note of a call between RT and FP in March 2022 provides one of many examples of how RT diverts conversations from positive things to her complaints:

> "FP stated she had a nice day at the farm and stated the types of animals that she saw and that she met a "handsome man" but was too shy to talk to him. RT stated this was good and proceeded to ask FP how she was feeling FP stated she was really good, RT said "yes but how were you yesterday?" FP responded, "the same as every other day" RT said "so up and down then, I'll hammer them for that". FP did not respond but diverted the conversation without prompt back to the farm and how she would like to go

back and asked SCHCA NH which farm it was. RT then asked FP if she had "received the medication list from the new CNM" FP said, "I don't know what happened to that, I will ask". RT said "yes, they say they will do something and don't there is always excuses"."

On a date in May 2022 there is a record of a telephone contact between RT and FP at [E47] of the hearing bundle:

"FP contacted RT due to it being her birthday today. On commencement of call they exchanged greetings and RT wished FP a happy birthday, explained that she had a cake and gifts for her and would be there at 2pm. FP talked to mum and explained that she had seen her CPN yesterday and had a lovely day with her and AN and she showed FP a lovely jewellery shop online, FP was very happy whilst explaining this. RT immediately shot FP down by saying, 'you should not be having fun with her that is not her job'. 'When is she going to put you back on your original treatment? You should be on different treatment by now'; 'This is why nobody listens'."

RT's own recordings of her telephone calls with FP give many examples of similar manipulation by RT. Nor can RT restrain herself from making emergency calls. Three times in the last month RT has made 999 calls (for police and ambulance) to attend on FP. There is no evidence that the emergency services were required on any of those occasions.

vi) RT has made formal complaints, including to professional regulators, about virtually all significant professionals involved with FP. From the information provided to me, it appears that RT has complained to their respective regulators/official offices about the conduct of placement 3, doctors, nurses (including the CPN), social workers, barristers, the Local Authority, and a judge. No upheld complaints or sanctions have been brought to my attention. Indeed, RT's constant grievance is that nobody is listening to her. It was apparent to me at the hearing that RT has no qualms about making career-threatening allegations against professionals on the mistaken basis that there is a conspiracy to harm her daughter. Recently, she has complained to the police about her daughter being abused at the placement. The police have sought this court's authority for disclosure of FP's medical records to allow them to investigate. H has had to give evidence to her regulator in answer to complaints against her by RT. These complaints have an adverse effect on those who are caring for FP. In a recent email from the manager of placement 3 to H, she wrote:

"Further to our communications meeting earlier today I am writing this to express my concerns in relation to the weekly email updates that I provide RT.

I am personally not seeing the benefit of these updates and I view them as a trigger for response of insult from RT.

I feel like no matter what I write in the update it goes unheard or

every single point is challenged in some way or another.

I try to add positive aspects of FPs week into the updates but RT is not interested in this at all and is fairly dismissive of the good stuff and focus' on the negative.

The constant threat of complaining or "exposing" myself and other staff is becoming tiring and unwarranted (although please note this would never be a reason for the placement to end from our point of view).

I would appreciate if the weekly contact could be reviewed. I give no other relative this level of feedback and I personally feel the updates are only proving successful in "adding fuel to RTs fire".

vii) RT's conduct has been harmful to FP. At paragraph 6.4.4 of his report of 29 July 2020, Dr Ince wrote,

"On the basis of the previously prepared reports and the further extensive oral evidence given at court, my view remains unchanged. E.O continues to present with a severe and enduring mental illness with a persistent and systematised delusional belief system and breakthrough auditory hallucinations that are exacerbated by external stressors and high expressed emotion; the summary of medical records emphasises the latter point and the, in my view, negative impact of the frequency and nature of contact between E.O and L.M."

At [119] of her judgment of October 2020 HHJ Moir found:

"I am satisfied that there is compelling evidence from a variety of sources over a period of time linking an increase in FP's distress and agitation with contact to RT. The increase in distress and agitation is in accordance with Dr Ince's concerns about high expressed emotion and criticism of staff and its effect on FP."

Following a face to face visit in April 2022, it was recorded at the placement:

"Since contact with her mother on the 27.04.22 FP has become more delusional, more distressed and more withdrawn and has not come out of this. Staff are finding it difficult to motivate her and engage her in activities. FP is still functioning but she is less enthusiastic and appears low in mood. FP has reduced appetite - not requesting treats or fizzy drinks."

On 10 May 2022, a record of a telephone contact notes,

"FP pleasant in mood prior to phone call, interacting well and holding good conversation with staff…. RT kept replying 'yes FP I know you are unwell and not doing anything to help you' FP kept changing the conversation to talk about jewellery. FP then said ok mum goodbye I will call you next time. Call ended.

> At 13:45 FP became verbally distressed shouting out in her bedroom."

viii) RT's conduct risks causing further harm to FP. Firstly, there is cumulative effect of telling FP she is being abused, that her medication is harming her, and that there is no other cause of her problems. FP's confidence in her carers and placement will be further undermined, leading her to feel unsafe and insecure. Secondly, there is the risk of further acute distress following contact, as has occurred in the past. Thirdly, there is a risk that the placement will give notice. Placement 3 has not said that it has contemplated giving notice – indeed it has said that it will not let RT's conduct prevent it caring for FP - but the barrage of hostile communications from RT does have a toll on staff and everyone has their breaking point. There might be a change of management or other personnel who will be less tolerant of the constant hostility from RT. Were FP to lose this placement, she would be plunged into uncertainty. It was said by H and in submissions, and I accept, that it would be unlikely to find a suitable placement for her, with her complex needs, in the region. Indeed, it would be difficult to find a placement willing to take her given the history of complaints by RT and the involvement of the Court of Protection. To lose her current, "outstanding" placement would be potentially very harmful to FP. Fourthly, there is a risk that the detrimental effects on FP of her mother's hostility, her continuous undermining of those seeking to care for FP, and her influence on her daughter, could trigger a deterioration in FP's mental health so as to require further detention under the MHA 1983. This would be very harmful to FP and would lead to a far more restrictive environment in which to live.

ix) FP does not understand how RT's conduct has an impact on her. HHJ Moir found at [79] of her judgment in October 2020:

> "I am satisfied that FP does not understand the effect of RT's behaviour upon her mental state and does not understand that RT's behaviour has the potential to undermine her care and placement. Dr Ince confirmed in his oral evidence that FP does not understand the extent to which the high expressed emotion, to which he refers, with which RT presents and the stress RT causes FP may precipitate or elongate relapse in her mental health, RT's conduct impedes FP's ability to exercise her autonomy. She is overbearing of FP."

x) RT's beliefs limit her own willingness and ability to spend time with her daughter. Although the most recent order made in early March allowed for face to face contact every fortnight, RT has taken the opportunity to see her daughter on only two occasions between that order and this hearing. RT refused to attend court in person at the hearing before me because, she said, she feared being abducted. She is reluctant to attend at placement 3 for a similar reason. RT told the court that the Applicant Local Authority has attempted to abduct her in the past. I heard evidence from H about this supposed incident. The hospital at which FP was being treated arranged a taxi for RT to facilitate contact. The taxi driver called out the wrong address for RT when trying to pick her up. That is all. As

a result of that error, RT now has a fixed belief that she is at risk of abduction.

18. I am very aware of the difference between, on the one hand, a parent who has concerns about P, here, their vulnerable adult child's, treatment and management, and who may sometimes express those concerns in a way which those responsible for caring for P regard as hostile, and, on the other hand, a parent whose antagonism is wholly unjustified and so extreme that it is harmful to the child. I am also aware of the importance of making all attempts to accommodate a parent's concerns, to make proper inquiry, and to respond to them, and to make all reasonable attempts to maintain the contact between parent and child in the best interests of P. RT urged the court to "look into all this". I asked her what that would involve and all she could say was that all the doctors should be brought before the court. It was unnecessary and would have been disproportionate for me to do so at this hearing (and no such application had been made prior to the hearing). In any event, it is clear that RT will never accept their opinions. She has accused those who do of perjury. For RT, the only fair enquiry will be one that endorses her beliefs.

19. In this case, HHJ Moir, a very experienced judge, gave a detailed judgment in October 2020 after a protracted hearing and having received extensive evidence. RT's concerns were acknowledged and addressed. There has been no appeal against that judgment and RT had the benefit of legal advice at the relevant time. RT may not accept the evidence relied on by the Local Authority at the hearing before HHJ Moir, and she may not agree with HHJ Moir's findings and decisions, but the evidence was properly tested and the judge's determinations were well reasoned and followed a fair process after a long hearing. The specific findings made by HHJ Moir stand. HHJ Moir then gave further careful consideration in November 2021 and March 2022. Extensive time and resources have been given to the consideration of RT's position in this case and the best interests of FP. On the basis of the past findings and the further evidence before me, and having regard to the matters set out above, it is clear that:

i) RT has an unshakable but erroneous belief that her daughter is being abused and harmed by a conspiracy of medical and other professionals.

ii) RT sees herself as fighting alone (perhaps with the support of ST) against a gross injustice. She believes that it is necessary for her to protect her daughter from those who are caring for her because they are in fact harming FP.

iii) RT's way of fighting for her daughter is to be confrontational, to complain in the strongest terms, to berate those who do not share her view (which is everyone involved in FP's care and the court process).

iv) RT has demonstrated that no amount of reasoning or evidence will change her views or change her approach to trying to protect her daughter.

v) RT's communications with her daughter are contaminated by her beliefs and her battle against the medical and caring professions. Contact has become a negative experience for FP. FP herself lacks insight into her own condition and into the adverse effects of contact with her mother on

her condition.

vi) RT uses contact to post recordings of her daughter and care staff on social media in breach of court orders and has no intention of ceasing to do so. It is harmful to FP's privacy and demeaning to her for her to be recorded and for the recordings to be published in this way.

vii) RT's conduct is corrosive to the morale of those trying to care for FP which itself risks harm to FP.

viii) All of HHJ Moir's findings, set out at paragraph 3(ii) above, remain valid. RT has continued to act in the ways she had acted prior to HHJ Moir's findings save that RT has not had any further opportunity to interfere with FP's medication.

ix) Communications from placement 3 to RT serve no useful purpose. RT has no trust in the communications and her lack of trust will not change in the foreseeable future. She believes that the communications are lies. They are merely used as a springboard for further complaint, whatever their content.

20. Section 4 of the MCA 2005 provides:

> (1) In determining for the purposes of this Act what is in a person's best interests, the person making the determination must not make it merely on the basis of -
>
> (a) the 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 what might be in his best interests.
>
> (2) The person making the determination must consider all the relevant circumstances and, in particular, take the following steps.
>
> (3) He must consider -
>
> (a) whether it is likely that the person will at some time have capacity in relation to the matter in question, and
>
> (b) if it appears likely that he will, when that is likely to be.
>
> (4) He must, so far as reasonably practicable, permit and encourage the person to participate, or to improve his ability to participate, as fully as possible in any act done for him and any decision affecting him.
>
> (5) Where the determination relates to life-sustaining treatment he must not, in considering whether the treatment is in the best interests of the person concerned, be motivated by a desire to

bring about his death.

(6) He must consider, so far as is 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.

(7) He must take into account, if it is practicable and appropriate to consult them, the views of -

(a) anyone named by the person as someone to be consulted on the matter in question or on matters of that kind,

(b) anyone engaged in caring for the person or interested in his welfare,

(c) any donee of a lasting power of attorney granted by the person, and

(d) any deputy appointed for the person by the court, as to what would be in the person's best interests and, in particular, as to the matters mentioned in subsection (6).

21. The medical evidence is that it is unlikely that FP will regain capacity. I am satisfied that she has been well supported and that everything is done to try to improve her ability to participate in the relevant decision-making.

22. I take into account FP's stated wishes and feelings but, for the reasons set out in this judgment, I am satisfied that FP lacks insight into the issues affecting her, in particular the influence of her mother, and that the mother's persistent messaging to her daughter has a strong and negative influence on FP's feelings, her wishes and her ideas of what is in her best interests. They have, as HHJ Moir found, an enmeshed relationship which is complex. For many years FP has been highly dependent on RT and she cannot see beyond the statements her mother makes to her about her care and treatment, to view the truth beyond them. I have seen FP and listened to her views.

23. I take into account the beliefs and values FP would have if she had capacity, but it is difficult to discern what they would be because she is so enmeshed in the relationship with her mother. It is difficult to see how FP would have been free to form her own views and beliefs, separate from her mother's. However, had she been free to do so, she may well have taken a rational view of her condition and treatment and wanted to have evidence-based, conventional treatment and to remain under care arrangements that were the best for her health. She may well have wanted to see her mother, but only if her mother was supportive of her

and those doing their best to care for her.

24. I must take into account the views of RT and ST but those views are based on an irrational and unjustifiable view that FP is being abused and deliberately harmed by a conspiracy of professionals. I take into account the views of the management and carers at the placement who are caring for FP which is that contact with RT should be strictly limited. I take into account the views of the Litigation Friend.

25. Weighing all the circumstances, and with considerable regret, I am driven to the conclusion that it is contrary to FP's best interests for face to face contact with RT to continue over the next few months. Whilst FP has said that she enjoys seeing her mother, the overwhelming balance of the evidence is that it is currently harmful to her.

26. Likewise, I have concluded that it is in FP's best interests for indirect contact to be reduced to one telephone call every fortnight for up to 30 minutes to be supervised by being on a loudspeaker at placement 3 with at least one staff member at the placement supporting FP. The application was for a reduction to one call every three weeks. In one more attempt to try to accommodate contact whilst protecting FP I have concluded that the appropriate balance, in FP's best interests, is telephone contact every fortnight. During telephone contact –

    i) RT shall communicate with FP in English, even if FP speaks to her in Russian;

    ii) RT shall not under any circumstances enter into any discussion with FP concerning:

        a) Any medical negligence claim, court action or complaint against FP's treating or former treating clinical team, FP's social work team or placement 3, including any complaint to the police, CQC or professional regulatory body.

        b) Any issue relating to FP's current or historical health or social care or her medication;

        c) Any possible or proposed change of placement from placement 3.

    iii) In the event that FP initiates discussion in respect of any of these issues RT shall seek to reassure FP and divert her from speaking about these subjects.

    iv) RT shall not contact emergency services but shall leave it to the discretion of those supervising contact to make decisions about whether FP requires any medical assistance. No penal notice should be attached to this injunctive order. It shall be attached to the other elements.

    v) In the event that RT breaches the orders above, the supervising staff at placement 3 have discretion to bring to an end any contact session.

27. I shall provide for a timetable in line with the draft order prepared by Mr Garlick

for the Local Authority leading to a review hearing in early December 2022. Neither RT nor FP's birthdays will fall before that review. The Applicant Local Authority shall keep under closer review the observed effects upon FP's presentation and mental health of the suspension of face to face contact and the reduction in telephone contact with RT. The role of the Litigation Friend will be important in reviewing any concerns. Placement 3 shall provide an update by email by the end of the first week of every month as to FP's progress and will inform her immediately of any serious event or deterioration in FP's condition or significant changes in her care arrangements.

28. Mr O'Brien points to the statutory requirement for RT to be involved in best interests decisions regarding FP. Thus, at MDT meetings to review whether the interim contact arrangements for FP remain in her best interests, as scheduled in the draft order, email contact must be made with RT at a reasonable time prior to those meetings and after the most recent updating information provided to RT, to ascertain her views as to FP's best interests. I shall make a declaration that it is lawful and in FP's best interests not to consult otherwise with RT in relation to FP's best interests regarding her residence, care and contact.

29. The proceedings shall be restored to court at any stage if the Applicant or the Litigation Friend consider that the interim contact arrangements are not operating in FP's best interests.

30. There is one matter of some concern to the Litigation Friend and to the court. FP's feet and toenails need reviewing by a podiatrist. I shall not make a s.49 order for a report but shall direct that the Local Authority shall ensure that FP is seen soon by a podiatrist and shall include an account of the podiatrist's opinion and treatment in any updating information given to RT and to the court.

31. One of the videos RT has posted of FP on YouTube has had 3000 views. It is demeaning to FP and a breach of her right to privacy to film her and then post recordings for others to see. During the hearing I ordered RT to remove video and audio recordings from You Tube and any other social media platform, whether posted privately or publicly by noon on 30 June 2022. An order is required, in the best interests of FP, to protect her privacy and that of care staff, that RT shall not:

    i) Record FP by video or audio for any purpose or in any way;

    ii) Record whether by video, audio or photographing, staff from placement 3 or any other health or social care staff concerned with FP.

    iii) In any way publicise these proceedings or any evidence filed in the proceedings, including by way of posting on social media, YouTube or any internet platform or website, including private or public sites.

    iv) Cause to be publicised on any social media, video or streaming service, including YouTube, any video or audio recording of FP recorded at any date.

32. On the second day of the hearing RT made an application to the Court of Protection without informing the court seeking "an urgent order that a Doctor discontinues the use of Adverse Medication that has caused my Daughter

periods of psychosis on a daily basis for almost two years…" When the application came to my notice RT indicated that she expected it to be heard by the Court of Protection in London. I told her that I would deal with the application during the current hearing. I asked her what "Adverse Medication" should be stopped. She was unable to answer and then said Amisulpride, which is an anti-psychotic. RT has provided no evidence at all that Amisulpride or any of the other medication currently prescribed for FP is harmful to her. I know that she will consider that finding to be plainly wrong, but her belief that the medication is harmful is not evidence that it is harmful. All the evidence points towards a careful management of her medication by experienced professionals. I dismiss her application made on 29 June 2022.

33. The contact arrangements that I have determined are in FP's best interests are for an interim period, albeit a long one of over five months. The review in December will consider whether they should be extended for a further period or whether face to face contact can be re-introduced and telephone contact increased, in particular over the Christmas period and at birthdays or other significant events.

34. It is important, in my judgment, that I make it plain that having reviewed the evidence in this case, having regard to the detailed findings and judgment of HHJ Moir from October 2020, and having had the opportunity to view and hear RT at this hearing, RT is labouring under an irrational and unjustifiable belief that FP is a victim of a conspiracy of professionals to harm her. This belief is entrenched. I do not have the medical qualifications to speculate as to why RT labours under this erroneous belief or why it is so entrenched that no evidence of facts will change it. RT herself vehemently resists any suggestion that she might benefit from an assessment of her own mental health or personality. However, this belief is what causes her to make complaints against all manner of professionals who become involved in FP's care and these proceedings. I am content to consider the release of this judgment, and the judgment of HHJ Moir to any regulatory body asked to investigate the conduct of such professionals.

35. In the circumstances I do not accede to the police application for disclosure of FP's medical records. This is not a "cover up", it is an exercise in protecting the privacy of FP and acting in her best interests. The fact that RT has made a complaint of abuse of her daughter does not justify the release of confidential records about FP because the evidence before me shows that the complaint irrational and unjustified. The application for disclosure is dismissed.

36. RT was keen for this judgment to be published once suitably anonymised.