



Neutral Citation Number: [2023] EWCOP 37

Case No: 13755775

IN THE COURT OF PROTECTION
IN THE MATTER OF THE MENTAL CAPACITY ACT 2005
AND IN THE MATTER OF THE INHERENT JURISDICTION
IN THE MATTER OF RK

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/08/2023

Before :

THE HONOURABLE MR JUSTICE COBB

Between :

NK
- and -
RK
(By the Official Solicitor)
X County Council
AK

Applicant

Respondents

Re RK (Capacity; Contact; Inherent Jurisdiction)

Victoria Butler Cole KC (instructed by **Burke Niazi, Solicitors**) for the **Applicant** and **Third Respondent**

Pravin Fernando (instructed by **County Solicitor**) for the **Local Authority**

John McKendrick KC (Instructed by **Miles & Partners** on behalf of the Official Solicitor) for **RK**

Hearing dates: 24-28 July 2023

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
THE HONOURABLE MR JUSTICE COBB

This judgment was delivered in public. A transparency order is in place. 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 R and members of her 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.

The Honourable Mr Justice Cobb :

1	Introduction	1-8
2	The Litigation	9-11
3	Background history	12-46
4	Mediation & the Talking Project	47-54
5	Signia and the Family: Assessment of the evidence	55-64
6	Lasting Power of Attorney	65-70
7	R: Her current situation and reported wishes.	71-85
8	Contact with others/family: Capacity	86
	• The law	87-93
	• The evidence	94-100
	• Conclusion on capacity re: contact	101-104
9	Inherent jurisdiction	105-106
	• The law	107-120
	• The evidence	121-132
	• Conclusion on inherent jurisdiction	133-136
10	Supportive framework & the future	137-148
11	Conclusion	
	• Outcome	149-157
	• Statement of key messages	158
	• Judicial letter / Judicial visit / Final words	159-162
12	Appendix: Key messages: what R should be told.	

1. Introduction

1. The application before the court, dated 18 May 2021, concerns R; she is 30 years of age and currently resides in supported living accommodation which I shall call Castle Hill (not its real name). I have had the great privilege of meeting R; she is a delightful young woman. She has Down's Syndrome, a moderate to severe learning disability (described in the documents before me as a significant cognitive impairment), and she is partially sighted. She has a full-scale IQ of 60, and has some expressive and receptive communication difficulties.

2. R is the middle child of the Applicant and his wife; R has an older sister, the Third Respondent. The Applicant and Third Respondent are jointly represented by Victoria Butler Cole KC. As there is no conflict between them, and as they effectively speak for R's entire family, I use the phrase 'R's family' to describe their jointly presented position, where it is relevant to do so in this judgment. R is herself a party to the application, and is represented by the Official Solicitor, who appears by John McKendrick KC. The commissioner of adult care services for R, pursuant to the statutory duties it owes to her under the Care Act 2014, is X County Council ('XCC'), which is represented at this hearing by Pravin Fernando.
3. R's tenancy at Castle Hill is held with Signia Trust (not its real name); the service provider of her care needs is Signia Family Support Services (not its real name) ('Signia') a company which is contracted by XCC for this purpose. The founder and Managing Director of Signia Trust and Signia is Ms TB. Signia is not a party to these proceedings, although it was at one time invited to join; as will be apparent from what follows, Signia plays a significant role in the dispute before me.
4. I have case managed the case for approximately 18 months. I have made determinations about aspects of R's capacity at previous hearings. These determinations have been founded upon the written filed evidence, including the earlier expert assessments (2021/2022) of Dr. Katherine McKay, a Consultant Clinical Psychologist with a specialism in learning disabilities, and on the representations/agreements of the parties. Thus, it has previously been acknowledged, and the Court has found, that:
 - i) R lacks capacity:
 - a) to litigate;
 - b) to manage her own property and financial affairs;
 - ii) R has capacity:
 - a) to engage in sexual relations;
 - b) to make the decision to remain at Castle Hill;
 - c) to make decisions about what support she needs on a day-to-day basis with an adequately supported environment.
5. At this hearing, R's family invite me to make the following declarations / orders:
 - i) that R lacks capacity to make decisions about contact;
 - ii) that R is susceptible to undue influence, and measures need to be put into place to protect her from this;
 - iii) that R lacks capacity to revoke the LPA created in respect of property and affairs and health and welfare.

If, contrary to the case advanced by R's family, I take the view that R *has* capacity to decide with whom she has contact, they invite me:

- iv) To make an order under the inherent jurisdiction (the application in draft has been served on the parties shortly before the hearing) in relation to supporting contact between her and her family.
- 6. R's family seeks an order (either under the Mental Capacity Act 2005 ['MCA 2005'] or the inherent jurisdiction) that it is in R's best interests to implement a 'supportive framework' around R to encourage R to repair and maintain her relationship with her immediate and wider family and friends. I return to this proposal towards the end of the judgment.
- 7. For the purposes of reaching decisions, I had been provided with two large bundles of documents, exceeding in total 1800 pages of evidence; there were several statements from the Applicant and the Third Respondent, and these were lengthy and detailed. I heard evidence from the Applicant and the Third Respondent, from the Applicant's wife, from the experienced social worker ('PB'), from Ms TB (Signia), and from the jointly instructed expert, Dr McKay. There was a vast amount of detailed evidence filed on both sides; I have not attempted to reference it all in this judgment. It would not have been appropriate or necessary to do so, in order to reach decisions on the matters in hand.
- 8. As I mentioned earlier, I had the great pleasure of meeting and spending some time with R at Castle Hill for a morning one day in June 2022. She showed me around Castle Hill, she showed me her room, the kitchen, the living areas; I met with members of staff and with her independent advocate. We sat together for a while and chatted. Before my visit, she had written to me, and I reproduce the contents of the letter below.

2. The litigation

- 9. By application on COP1 issued in May 2021, the Applicant sought the following relief:

“A declaration, pursuant to section 15(1) Mental Capacity Act 2005, that R lacks capacity to make decisions in relation to her residence, care, finances, contact with others, and whether to engage in sexual relations.”
- 10. As I have earlier mentioned, some of those issues have already been resolved by agreement. For the outstanding dispute (principally around contact) R's family were keen for me to embark upon an extensive fact-finding inquiry in this case; shortly prior to the pre-trial review on 13 July 2023, I was presented with a 73-page schedule of proposed facts which they argued required determination. I made clear at that hearing that my focus in the resolution of the relatively limited dispute had to be on:
 - i) R herself;
 - ii) R's capacity to make the relevant decision(s);
 - iii) In the light of the decision on capacity, what best interests decisions flow.

I indicated then that I was unpersuaded of the necessity or proportionality of investigating a wide range of allegations stretching back for three years or more. I was unconvinced that any such findings would materially impact upon the orders which I was being invited to make.

11. I was steered to this conclusion by reference to the provisions of rule 1.3 of the Court of Protection Rules 2017 ('COPR 2017'), namely the court's duty to manage cases, and in particular, the duty actively to manage a case, to avoid delay and keep costs down, to encourage parties to cooperate with each other in the conduct of proceedings, to consider whether the likely benefits of taking a particular step justify the cost of taking it. I strictly applied rule 3 COPR 2017, exercising my general powers of case management, and the power to take any step for the purpose of managing the case and furthering the overriding objective – i.e., to deal with a case justly and at proportionate cost. Inevitably, I have had to consider some of the factual issues from the 73-page schedule in any event. Where it is necessary for me to make findings I have done so.

3. Background history

12. This section of the judgment is intended to provide a factual context for what follows. Where there are disputed features of the history, I have sought to identify these; where I make findings on aspects of the history in this section I do so on the balance of probabilities.
13. R is the middle of three children of the Applicant and his wife. She has an older sister (the Third Respondent) and a younger brother. R lived at home with her family until 2011. She attended a special needs nursery attached to a mainstream primary school, before going on to a school for children with profound, severe and complex learning difficulties, including autism spectrum disorder. She spent much of her education there. In 2011, she moved to a residential college at Hillcrest (not its real name) for three years of study. In 2015, R moved to live at the supported living accommodation at Castle Hill where she has been supported by a service provider, Signia.
14. Castle Hill is a converted large country house at the end of a short driveway. There is a large garden and a Cottage for three occupants in the grounds. It has spacious living accommodation and a large open-plan kitchen which leads onto a dining area, and then out on to the garden. Castle Hill has been converted into a small, supported living accommodation home, with altogether seven residents, all of whom receive their care from Signia. R receives thirty- three 1:1 support hours and fifteen shared hours. R receives sleep-in support which is shared by all of the residents, and she attends three days of formal day care activities.
15. In 2016, on legal advice, R's family arranged for R to sign Lasting Powers of Attorney for health and welfare, and for property and financial affairs. The Applicant and his wife, and the Third Respondent became R's attorneys. Her capacity to sign this LPA was apparently verified by an experienced solicitor. R's attorneys claim always to have made decisions in R's best interests, while providing R with the tools she needed (including information and advocacy) to participate in decisions to the maximum of her abilities.

16. During the first few years of R's residence at Castle Hill, R would often visit her family home, and was in almost daily contact with all of her family members. She had several friends and undertook activities such as swimming (R is an accomplished swimmer, having competed in national and European championships and, until recently, swam once a week at her club and once a month with the county squad), drama (she has been on national TV in a well-known series) and playing the piano (for which she was studying Grade 1).
17. It is agreed that the period from 2015-2020, arrangements ran smoothly, and the family was able to work reasonably well with Signia.
18. In or about 2018 or early 2019¹, R formed a relationship with a male resident at Castle Hill, SA; this relationship is in fact now said to be at an end. The relationship generated no small amount of anguish for R's family, and their concerns about it led to dispute with Signia. R was clear that SA made her feel happy; whilst she may not have been able to articulate the intricacies of this relationship, she recognised and responded to the emotional value this relationship brought her. Those supporting them believed them to have a loving and nurturing relationship from which they both equally benefited. The anguish focused on whether R had capacity to engage in sexual relations with him.
19. When the COVID-19 lockdown was announced in March 2020, the Applicant and his wife were on holiday abroad; R left Castle Hill and initially moved in with the Third Respondent and her partner, before moving in with her parents upon their return to the UK. She returned to Castle Hill on 31 July 2020.
20. There was a little contact between R and her family in August. In late-September 2020, the Applicant and his wife wished R to return home; a further national lockdown arising from the COVID-19 pandemic looked imminent. On 20 September, the Applicant wrote to the manager at Castle Hill at the time:

“I think it is probably best that R leaves [Castle Hill] for a time to come stay with us for a time, as we feel that her health, both mental and physical, is in danger. Could you please arrange this. I trust that you can explain to R that it is in her best interests.”

On 22 September the UK Prime Minister announced new restrictions in England, including a return to working from home. On the same day, the Applicant wrote again:

“I just wanted to let you know that we have decided that R should return to live at our family home tomorrow, given the escalating dangers with COVID-19 and the need to protect her. We have made this decision as we have a lasting power of attorney over R's health and wellbeing and this is too complex a decision for her to make herself. We will pick her up at 6 pm. Could the staff please ensure that she has everything packed.

¹ R has said that their relationship began on St Valentine's day in 2019.

Could you also please ensure that all her financial records are available as we will bring them home to look at.

I trust that your team will help R understand that this is in her best interests. It is also in her best interests to not be alienated from her family”.

R could not be persuaded to leave. The Applicant and R’s family were very unhappy with this.

21. It was then or thereabouts that the relationship between the family and Signia truly broke down. Many reasons are offered in the documents as to the precise cause of the breakdown: a dispute over a cancelled bank card; a dispute over a donation; a dispute over the apparent failure of Signia to monitor effectively and manage R’s weight. Perhaps it was a combination of all of these. R’s family launched (in correspondence) a number of serious allegations about Signia and its failures to care for R in very many ways. It is illuminating to identify them a little more fully:
- i) The family generally questioned the quality of care provided by Signia;
 - ii) They pointed to Signia’s failure to ensure that R had attended important medical appointments, including dental check-ups, podiatrist and/or ophthalmologist appointments;
 - iii) They were concerned about R’s significant weight gain; this had long-standing origins in fact going back to 2015 when R had moved in to Castle Hill; at that time, R gained significant weight (almost 30kgs) over a relatively short period; she now weighs over 90kgs. It seems that this has in fact been a ‘running battle’ between the family and Signia about which R is acutely aware and now sensitive and self-conscious; R’s family allege that Signia have misled R into believing that she is *losing* weight when in fact she is *gaining* weight;
 - iv) The family alleged that Signia were “systematically” financially exploiting R – initially through high rents and utility and other charges; they firmly believed (and continue to believe) that a donation of £25,050 from the family to Signia in 2016 (part of which was intended to set up a course for R and other vulnerable adults in retail services, to enhance financial skills and awareness) had been misappropriated or (per the Applicant) “misallocated fraudulently”²;
 - v) In June 2020, Signia had failed to notify the family properly about R breaking her foot. The Applicant asserts that Signia “tried to downplay the incident, stating that R had only fractured her little toe, an inaccuracy which has been repeated by [the local authority]. They took her to A&E the following day but did not tell us until afterwards”. The family report that R was apparently still complaining of pain in her foot in December 2020;
 - vi) The family were concerned that R had started to drink alcohol, and had not been provided with any, or any adequate, advice about this.

² The Applicant reports that the claim in relation to the £25,000 was settled in July 2002 with Signia repaying the sum of £16,000.

R's family went on to make the serious allegation at the time that "[XCC] have used the 'presumption of capacity' as an argument to avoid investigating many of our concerns" and have "changed their narrative on [R]'s capacity, with the word 'articulate' figuring prominently in their communications".

22. From about this time, R ceased contact with her parents³; she left the family WhatsApp group (something which the family do not believe she could have done without help), and rarely (if ever) responded to text or e-mail messages. She initiated no contact with her family, and made herself unavailable if family members or friends called in at Castle Hill unannounced; she cancelled pre-arranged visits. The family say that she missed all of the family birthdays, something which she would generally not have done.
23. In the late-autumn of 2020, R agreed to meet with her parents, but this did not happen. On the 16 November 2020, R stated to her advocate that she was happy to share requested MCA documentation to her parents but only because she felt it showed her own mind.
24. At or about this time, R also stopped the range of activities she used to enjoy, including 1:1 piano lessons, swimming, a drama group and attending project which offers a range of activities including drama (the latter two had continued online during lockdowns); the family believe that this – again – was the result of pressure from Signia.
25. R chose not to return home for Christmas 2020, and instead met with her family 'virtually' on Zoom; the family were incredulous that R would willingly have passed up this opportunity to be at home at this special time.
26. In early 2021, the Safeguarding Service Manager from XCC completed a report on R; she reported that:

"From the information gathered it is clear to see that R has been consistent in her wants and wishes. She states she remains happy, would like to stay residing at [Castle Hill] and does not feel she is being influenced or told what to say and do. As an addition I also investigated her finances relating to her utility bills in more detail, and I could not see any anomalies from the breakdown that would suggest R is being financially harmed either".
27. At about the same time, R's family became concerned that R was at risk of suffering sexual abuse through her relationship with SA, with whom (it became apparent) R was spending some nights. This concern was – to a material extent – reinforced by Dr Claudia Camden-Smith, a jointly instructed consultant psychiatrist with a particular interest in Neurodevelopmental Disability Psychiatry who assessed R in April 2021. The family felt that R did not have the capacity to understand sexual relations, despite having the benefit of specific support and education in this area. Dr Camden-Smith advised as follows:

³ She had contact with the Third Respondent in August / September / October 2021

“I have the utmost concern that [Signia] is allowing two highly vulnerable people to spend the night together in the same bed engaging in sexual activity without any evidence of any capacity assessments or risk analysis having been made.”

28. This was in the context of a wider assessment by Dr. Camden-Smith (April 2021) which – the family allege – ran counter to the assertions of XCC and Signia about R’s developing autonomy and capacity to make decisions:

“In my opinion she is clearly lacking in capacity to make decisions about residence, care and support. She was entirely incapable of understanding the different areas in which she might live and the pros and cons of each area. She was incapable of understanding the pros and cons of sharing a house and was incapable of understanding the nature of the different people with whom she might share a house. She was incapable of understanding different support that might be available to her in different residential settings. She was incapable of understanding the ways in which she needs support beyond the most basic concrete support (such as helping her to batch cook food and helping her not to get lost). She was unable to understand the ways in which she is extremely vulnerable and the ways in which she requires support to meet her intangible needs and keep herself safe. She was unable to understand abuse beyond the very basic issue of gross physical abuse.”

29. On or about 12 April 2021, the Applicant and his wife contacted the police to raise a ‘safeguarding’ alert about R’s care – in particular the alleged financial abuse of R (“fraud ... financial mismanagement”); in that contact, the Applicant also referenced their increasing concerns about sexual abuse, and about her drinking alcohol. On 2 May 2021, two police officers paid a visit to Castle Hill to speak with R and SA. This caused very considerable upset to R and SA. Indeed, even though I am satisfied that neither the Applicant nor his wife wanted the police to speak with R and SA directly, R has still not really forgiven her parents for involving the police in this regard. R later said to her solicitor on 5th July 2021:

“The thing is, my mum rang the police about me and my boyfriend, about how I feel, but I’m angry about why my mum rang the police.”

She mentioned this again in her letter to me a year later (2022) (see below). It matters little, perhaps, that it was her father rather than her mother who informed the police (although R should certainly be corrected on her understanding). It is apparent that SA and his mother are also angry with R’s mother (and/or R’s family generally) about involving the police in this issue. It is inevitable that R knows of their upset too. The police were not concerned by what they saw and heard, and they closed the file.

30. It is appropriate that I should record here that the Applicant accepted in his evidence that it would indeed have been “very, very upsetting” to R for the police to attend at

Castle Hill to speak with her and SA about their sexual relationship; the Applicant's wife further told me in evidence:

“She must have been terrified and distressed when the police turned up. For this to happen to R and [SA] must have been horrible. If we could have done something different, we would have done. We thought that she was being sexually abused. She had no protection and no one to talk about it”.

31. In June 2021, in the context of the proceedings which had by now been launched, Dr Katherine McKay reported on the issue of capacity to engage in sexual relations. She felt that R had “good enough” knowledge and understanding, and therefore had/has capacity in relation to sexual intercourse, consent, and associated risks, but that she did not have capacity in relation to risks of infections, and sexually transmitted diseases.
32. In the summer (2021), the Applicant contacted the Charity Commission, the Care Quality Commission, the local planning department, the Department of Work and Pensions, and later HMRC to pursue further his allegations and complaints against Signia and its mismanagement of R's finances, and the dereliction of its duty of care to her.
33. Later that month, R reported feeling upset and angry at her family, because they had launched these proceedings. One evening, while washing up at Castle Hill, she took a kitchen knife from the knife rack and pointed it towards her stomach. She said that she felt angry at herself and scared of her parents telling her off: she was said to be “unhappy that they are still doing the court case”. Some months later, R consulted her doctor as she was struggling to sleep as she was so worried about the proceedings.
34. In August 2021, R met with the Third Respondent on two occasions; these are reported to have been broadly positive meetings.
35. In early 2022, the family commenced mediation. I discuss this further below.
36. On 13 June 2022, R wrote to me as follows (I have changed the formatting):

“The problems I am having are: My family are trying to make decisions about my life. I do not like the choices they make for me. There are some decisions I can make by myself... I do not want my family to be the people who help me make decisions about my money or my support... Everybody thinks that this can be sorted out by sitting down and talking. I do not think it will be. The problem will not go away until my family stops having the power to make all of my decisions. I am upset that my parents called the police about my boyfriend [SA] and that the police came to [Castle Hill]. I am upset that my parents don't like my boyfriend. I am upset that mum and dad have told lies about my staff. I want mum and dad to trust [Ms TB] and [Signia] staff. I think my mum has been talking to people about the court

case. My mum has written a letter to [SA] but [SA] told me that my mum did not say sorry in the letter. I don't know what she has written to [SA] in the letter because it is [SA]'s private letter but I do want mum to apologise to [SA] for calling the police.”

37. I visited R two days later.
38. In the following month, the parties agreed to take part in the ‘Talking Project’ (see below) and to advance their work in mediation. The Talking Project was intended to help R to re-connect with her circle of family and friends. Both the mediation and the Talking Project were facilitated by an independent mediator, Ms AT, who was contracted via the Medical Mediation Foundation. During the Talking Project, R was further supported by an independent advocate, who was paid for by XCC.
39. During the sessions within the Talking Project, R proposed that on 17 November 2022 she would host a family gathering at Castle Hill. This was, it hardly needs saying, to have been a momentous event, some two years since R had seen her family. R went to some lengths to prepare for this gathering, including buying some food. R’s mother sent a message to her about SA attending. Then two days before the gathering, R cancelled it. It seems to me that this was a result of the fact that SA and his mother both felt that SA was being drawn into R’s family disputes; they wanted to avoid this. SA had told R that he did not think that he would be welcome at the gathering. A furore followed, with R’s family being led to believe that Signia (and Ms TB in particular) had undermined the arrangements for the party. I should say that, having reviewed the material, I do not consider that the cancellation of the 17 November gathering had anything to do with Signia or XCC, but was truly because R was highly sensitive to how her family viewed her relationship with SA; the upset about the police visit was not far below the surface. However, as with so much else in this case, a potential step forward, which had all the hallmarks of promise, fell apart with recriminations and accusations flying.
40. It was agreed in mediation that a further attempt be made for a family reunion, and a plan was hatched for a meeting in a café for 9 December 2022. Ms TB reports that in the days before the meeting, R changed her mind repeatedly about whether she wanted it to go ahead. R was understandably anxious about the meeting, but I am satisfied that she was encouraged by PB and others to take part. I particularly accept PB’s evidence that he tried to get her to think about how her parents would feel not having seen her for so long. R asked to be supported to write a letter to her parents which she said she might show them if she found it difficult to explain things to them; she wrote the letter. I have seen it. The family later described the letter as “demanding” and “inappropriate”, which (they said) had the effect of undermining all the good of the Talking Project – these are not descriptions which I would have applied to the letter. R also signed a Christmas card for her parents.
41. Having initially been an enthusiastic proponent of the meeting, Ms AT apparently backtracked when she understood the arrangements; she reports spending time with both XCC’s social workers and with the Official Solicitor’s representative describing her fears of the likely negative consequences of the proposed meeting (principally in the way it was being set up), and later reported that her advice was met with “extreme resistance”. It appears that the family themselves were concerned that the meeting

would go ahead without a skilled facilitator (as it happens, Ms AT had recommended a number of possible facilitators, and PB's name was among them). The family felt that a more supportive environment was required.

42. At R's request, she was accompanied by PB. This was, of course, R's first direct contact with her parents since August 2020. PB described how R changed in her demeanour immediately upon seeing her parents, becoming very childlike and more distressed. Her parents were unfortunately but unavoidably delayed in arriving, and this did not help alleviate R's anxiety. After some initial hugs, R found it hard to speak with her parents, or look at them, spending much of the time looking down at the ground. PB then records that:

“[The Applicant] had noted the letter and said started to open it. I said that R wanted them to take the letter away as it might change the focus of the meeting if they read it. I asked R what she wanted to do, and she asked that they take the letter away with them. The Applicant said that they wanted to read the letter because they might have questions to ask. I asked R again what she would like, and she agreed that her parents could read the letter. This was very stressful for R who by now was twisting her sleeves with acute anxiety and she began rubbing her face”.

43. After 20 minutes or so, PB took R to one side so that she could have a break. She said she wished to leave. PB observed that “the meeting was very distressing for all concerned”. PB observed that it was regrettable that R's parents approached the meeting by seeking to use it to interrogate her and defend themselves. At the end of the meeting, the Applicant's wife gently hugged R and said “I suppose we won't be seeing you again”; the Applicant placed his arm around her back and said to R “have a nice life” – comments which they now regret. The adverse impact of these comments can only have been extremely (potentially irreversibly) damaging to R's relationship with her family.
44. From the family's point of view, the meeting with R “went badly”. However, it is notable that in his written evidence, the Applicant did not acknowledge any failing on his part or on the part of his wife for the failure of the meeting. R's family nonetheless does acknowledge (rightly in my judgment) that the meeting has in itself caused a further profound deterioration in family relations.
45. In May 2023, the Third Respondent gave birth to a baby boy. R indicated that she wished to meet her nephew. On 11 June 2023, the Third Respondent wrote to Signia suggesting some pre-conditions for the meeting. They were said by the Third Respondent to be the:

“... necessary conditions to maximise the chance of this upcoming meeting with R being the first step towards reconciling. I apologise for the long list - I realise it must seem disproportionate for what should be a simple meetup. But we have had so many promising meetings turn into false starts that I don't think we should spare any effort when this could help us successfully reconcile”.

The key professional witnesses were asked about the list of pre-conditions when they gave evidence before me, and they all agreed that they were broadly sensible and acceptable. It is regrettable that Signia did not acknowledge the letter, or respond, but this was only because they had referred the matters to XCC for an opinion. Silence from Signia on this important issue was inevitably viewed with a degree of contempt from the family.

46. Having agreed to meet with her sister and the baby, R then retracted her agreement and indicated that she did not want to go ahead with the meeting after all; it did not take place. R sent hurtful messages to the Third Respondent, which caused understandable upset. R is plainly still carrying a great deal of hurt and anger.

4. Mediation & the Talking Project

47. As I mentioned above, in the spring of 2022, some low-level mediation was commenced, and during the autumn of 2022, this was stepped up and the parties engaged more actively in mediation facilitated by Ms AT. The mediation was of course privileged.
48. Alongside the mediation, the parties engaged in the Talking Project which involved R (supported by an independent advocate) and her family. There was no direct involvement by XCC, Signia, the Official Solicitor or any lawyers. The Talking Project was not subject to any confidentiality agreement. This started in October 2022.
49. Looking back at these initiatives, they were both in their own way commendable. The family in fact regarded both as successful; they found in Ms AT someone who appeared sympathetic. The Applicant described in his evidence how over six sessions of the Talking Project, during carefully facilitated conversation on Zoom, R, the Third Respondent, the Applicant and his wife were all able to discuss a number of important topics together; the tone was said to be “warm, light and loving”. R’s family believed that R demonstrated in these sessions that she harboured a number of misconceptions about them (in some senses this may be true: see below). Having seen the picture in the round, including the thoughts of the independent advocate, I could not help feeling that the family may have somewhat overstated the achievements of this laudable project: R still appeared to struggle to speak easily, and later told PB and Ms TB that she found the meetings overwhelming.
50. Although the mediation showed some signs of promise, it was not in fact a success. Signia did not play a significant part in the mediation, having been given a clear expectation (it is said) that they would be expected to participate in the mediation on the basis of full disclosure and open communication. Signia felt that it could not in good faith sign up to this, given the status of R’s capacity and her views. R had been very clear with Signia (so it was reported) that she did not wish any information about her service or her personal circumstances to be shared with her family. Signia had understood at that time (from XCC) that R was assumed to have the capacity to make that decision following a capacity assessment undertaken by the previous social worker. A further concern to Ms TB, and a deterrent to successful engagement in the mediation, was that during this period in which mediation was being attempted, the family ignited fresh allegations of fraud which on no account would be amenable to mediation, and which would inevitably complicate the relationships further.

51. I have some sympathy with Signia's sense of disquiet, and to her credit Ms TB did meet with Ms AT to discuss this. Ms TB also attended a pre-arranged meeting on 22 November at which the family were expected to attend, but they did not. At that meeting, Ms TB proposed to the mediator a list of proposals for closer communications between Signia and the family including a key worker for R whom the family could contact directly. The mediator circulated Signia's proposals, presenting them as a positive contribution.
52. XCC welcomed the mediation and spent many hours involved in it; it appointed a Care Act advocate to support R through the process. PB, whose evidence I found impressive and thoughtful, vehemently challenged the criticism from Ms AT of the local authority's lack of engagement; he has pointed to messages from Ms AT in which she commends all sides, including XCC, for engagement with the process. Among these messages, I noted an e-mail from Ms AT to PB: "thank you for all you do to support RK and her family. You really are a most wonderful ally to this family".
53. From the documents which I have seen, I do not accept (without more) Ms AT's criticism that Signia and XCC thwarted or undermined either the mediation or the Talking Project.
54. At an advanced stage of the mediation, Ms AT raised a number of safeguarding concerns with XCC about R and her placement at Castle Hill. These safeguarding concerns reflected in very large measure the concerns which R's family had been expressing for some time and had largely been the subject of police and XCC counter-fraud investigation which had reported in early 2022. A further 'section 42' safeguarding enquiry was formally initiated as a result of Ms AT's referral, but concluded with the view that all matters complained of had already been addressed. Given the persistent allegations of financial fraud, Signia offered to undertake a further audit in December 2022, but the family did not agree and chose not to participate.

5. Signia and the Family: Assessment of the evidence

55. It will already be clear from what I have recorded above (and indeed in the sections which follow), that at the heart of this litigation lies the damaged relationship between R's family and Signia, and to some extent, the damaged relationship between R's family and XCC.
56. The family and Signia had enjoyed a reasonable working relationship from 2015-2020, but three years ago it broke down, and since that time, it has deteriorated further. Inevitably, significant and profound mistrust has built up, particularly of the family towards Signia; there remain significant disputes between them about a range of issues.
57. At the centre of the dispute is the allegation of financial mismanagement and fraud, including but not limited to the donation of £25,000 (referred to above)⁴. The allegations of fraud have been extensively investigated by the XCC counter-fraud team, and no mismanagement has been found. I am advised that the family have

⁴ As referenced elsewhere, the dispute over this sum was privately settled between the family and Signia in the summer of 2022

escalated their complaints further to the Local Government and Social Care Ombudsman, but no investigation is being undertaken while these proceedings are underway. In fact, the Applicant has already made similar referrals twice before.

58. The oral evidence of the Applicant and Third Respondent (confirming the tone of their written evidence) laid bare their very obvious anger with Signia; many of their answers in evidence were diverted to launch attacks on Signia, and individuals employed by Signia. The Applicant and Third Respondent were insistent that the staff had deliberately alienated R against the family in retaliation for the family having raised complaints about financial mismanagement and other issues. They aver that R has been “influenced into believing untrue things about us and other members of her family”. During his oral evidence, the Applicant made a not-so-thinly-veiled suggestion that Signia had adopted a racist stance in its dealings with his wife. The family considers that Signia have changed R's e-mail address, blocked members of the family from the WhatsApp groups, written communications as if they are from R (in language the family does not believe she is capable of). I was left with the clear view from their written and oral evidence that their focus was on finding fault with Signia, regrettably showing little or no introspection or reflection of their own contributions to the current situation. More worrying to me was that they seemed to find it hard to focus on R, and often deflected their answers (to questions about R and her situation) to find further reason to attack Signia and/or the Local Authority. It was apparent from their written evidence that both the Applicant and the Third Respondent are meticulous with their research and referencing of the issues; their statements are lengthy, and reflect a preoccupation on the detail and a fixation on the shortcomings of the care agency caring for R. In a similar vein, I noted that PB had commented that in the first year of his involvement as R's social worker (2020-2021) he had received over 400 pages of communications from the Applicant.
59. It is the family's case that R has been persuaded to sever contact with the family by Signia staff. The Applicant's evidence is that the conflict between Signia and the family (for the reasons listed above) are “at the root of R's alienation from her family and that she is being used as a pawn”. The Applicant expresses the “fear” that Signia has “undertaken reprisals against [R's family] by alienating [R] from us, although we cannot prove this.” The Applicant references a text which R is said to have sent to him: “[Ms TB] doesn't want me to contact you” as the clearest proof of this. The Third Respondent referred to Signia as “not a safe option” to provide care for R.
60. The Applicant was not more sparing in his complaints about XCC. He went on to make this serious allegation against XCC:

“We believe that [XCC]'s attempts to claim that R has mental capacity have been undertaken deliberately to frustrate us in using the LPAs to protect R and hold [Signia] to account, as well as to avoid any investigations into both [XCC] and [Signia]. [XCC]'s main defence against accusations of poor practice and potential negligence by them... is to continue to argue that R has mental capacity.”

The Applicant considered that XCC has not, and would not, offer any check and balance over Signia as “the state always protects the state”.

61. That all said, it was evident that R's family are very deeply affected indeed by the current loss of a relationship with R. It is obvious to me that they love R very much and are desperate to rekindle the relationship with her.
62. Both Signia and XCC broadly deny that they have behaved as alleged; they have encouraged R to see her family, but have also supported R in choosing currently not to see her family. The family are suspicious of R using the word 'choice' in her communications with them, but this fails to acknowledge a degree of autonomy which R plainly enjoys. In this regard, I recognise that Signia and XCC have a fine line to tread in 'real time' as carers of R, to achieve a balance between supporting R in her views, and encouraging her to form different views; PB and Ms TB gave compelling evidence to that effect, which I accept.
63. Ms TB was willing to accept Signia's mistakes of the past; for instance, when the detail of the missed appointments was put to her, she was able to acknowledge (subject to checking the detail) Signia's failings in this regard. She accepted⁵ that she and her staff are "only human" and may have been overly defensive in the past when challenged on other issues. She seemed prepared to find a solution to the current situation; she appeared very slightly sad that things had turned so nasty, and I detected that she was also a little weary of the frequent complaints raised by the family, and the consequent investigations. She may, in my opinion, have underestimated the frustrations of the family in facing the wall of denial from Signia in the past, and needs – going forward – to acknowledge more fully and quickly that some of the family's complaints have been legitimate. I include the family's concerns about weight-gain in this regard, which I sensed was brushed away too easily by Ms TB, but should have been taken seriously.
64. My assessment is that Ms TB, who was composed and reflective in the face of some fairly tenacious questioning during the hearing, will find it easier to find a way of working with the Applicant and Third Respondent, than the other way round. That said, neither side showed obvious signs of reaching out to pluck an olive branch.

6. Lasting Power of Attorney

65. There is a dispute on the face of the documents as to whether R had capacity to execute the LPAs in 2016, but it is agreed that no purpose will usefully be served now in me examining and deciding that question. There is no issue between the parties that R does not currently have capacity to revoke the LPAs; it appears that R's understanding of an LPA is very limited, and she purely sees an LPA as a negative thing, by which her parents can exercise control over certain areas of her life. Dr. McKay addressed this and opined:

“... that [R] has not understood or retained the relevant information that would be required in order to have capacity to either make or revoke an LPA. Nor is she able to reason around the relevant information in order to make an informed decision in this matter. She does not comprehend the benefits of an LPA, for anyone, and she does not have a concept of when and how the powers of an attorney would

⁵ Cross-examination JM KC

be exercised. Furthermore, she does not have a concept of the limits of the power of an LPA. [R] would not know how to appoint or dismiss an attorney”.

66. I am satisfied that R has insufficient understanding of the authority of an attorney, the scope of the attorney’s powers, or when they could be executed. R’s lack of capacity to revoke an LPA is a direct consequence of her cognitive impairments, due to her difficulties with understanding and abstract reasoning. Therefore, I am satisfied, applying the law as it is helpfully laid out in *The Public Guardian v RI, D, RS, RO* [2022] EWCOP 22, that R does indeed lack capacity to revoke the LPAs.
67. In these circumstances, the three family members who are attorneys agree to disclaim the LPAs. This should be done without delay, and a recital to my order should reflect this.
68. I was asked to consider granting R’s family *temporary* authority to address financial issues with Signia, and/or pursue complaints ‘on behalf of R’ to the Ombudsman (who has currently declined to consider the issues, see above). The precise scope of what this means, or the extent of the temporary authority sought, is unclear. R’s family remain concerned by Signia’s reluctance to pass onto them the receipts and invoices for items charged to R, nor invoice them directly for charges they wish to make to R. R’s family are well aware that R does not like them to look at her daily spending, and they have apparently respected this by not scrutinising her bank statements; when they have done so, they say that they have identified withdrawals from her account which remain unexplained to them (“she has nothing to show for the expenditure”).
69. While I accept that it is in R’s best interests that her financial affairs are accurate and tidy, I am not satisfied that it is in her best interests for her family to continue to exercise any role in relation to them. The alleged disputes have been investigated by XCC’s counter-fraud team and others, and it has been established to the satisfaction of the independent agencies who have scrutinised the material that there has been no irregularity. If this means that there are unresolved issues in the family’s eyes, so be it.
70. The Local Authority propose appointing an appointee to manage R’s finances moving forward.

7. R: Her current situation and reported wishes

71. *Current situation:* R is described as a confident woman who can articulate her needs and wishes verbally, demonstrating a well-developed use of vocabulary and verbal comprehension. She presents as confident and engaging. She has a warm personality (I saw this for myself), and is a determined character, often holding firm to matters that are important to her happiness and independence.
72. R has been resident in Castle Hill for approximately eight years. She appears settled there. She benefits from a range of activities which are laid on by Signia though the family are unhappy that some of the activities which she previously enjoyed have fallen away. It was said in the hearing that Castle Hill has its own ‘eco-system’ from which R benefits.

73. It is now proposed that R should move to reside in the Cottage, which is a self-contained unit within the grounds of Castle Hill; this provides separate accommodation for up to three residents. At one time there had been a plan that R would move there with SA; this will not now happen as their relationship has foundered. The proposal now is that R will move there with two other women – they are friends of R’s. They are currently provided with accommodation elsewhere, but both receive Signia services. Perhaps importantly, one has a close and loving relationship with her family; one (who had been in the care system) has a ‘managed’ relationship with her own family. This may augur well for R and the restoration of her relationship with her own family.
74. The Applicant describes R as someone who enjoys life and has always been very enthusiastic in engaging in challenging activities to better herself. She is also described as independent spirited; she has the skills and voice to be able to advocate for herself. This is, as Mr Fernando rightly said in his closing submissions, testament to the very good quality emotional care which R received from her parents and family throughout her childhood. She is a confident young woman, with considerable charm; I saw these qualities in abundance for myself when I visited her. The Applicant refers in his evidence to the fact that R has a tendency for mood swings and can become angry quickly if she does not get her way, although she quickly recovers.
75. *R’s wishes on the central issue:* I am satisfied from all that I have read that R fundamentally loves her family, and wishes to be a part of the family. That is the view of PB, Ms TB and Dr McKay.
76. That said, she has for some time (probably since the late summer of 2020) been steadfast – at least in her discussions with Signia staff with whom she has her most regular relationship – that she does not want to see her parents. I find that she is currently highly conflicted in this regard. Dr McKay described her as “ambivalent”. R’s independent advocate for the Talking Project advanced a similar perspective in an e-mail to PB in October 2022:

“I sense that there are deep rooted issues that the family has with [Signia] that remain unresolved. However, this is an issue they have with [Signia] and not with their daughter although she senses it and I believe this is what holds her back from reaching out to the family.” (Emphasis by underlining added).

Dr McKay went on in her evidence⁶, to demonstrate R’s ability to ‘use or weigh’ the relevant information, to remark that:

“R did not have polarised views of her family. We see many people who only see good or bad but this is not the case with her... she suggested lots of positive attributes in the family”.

I find, having heard all of the evidence, that R feels great empathy towards her family but she is also angry with them because she believes *inter alia* that they are trying to

⁶ Cross-examination VBCKC

control her. Ironically, R's parents are firmly of the view that it is the Signia staff who are controlling and coercing R. She senses their anger with Signia, and she does not like being caught in the middle of that.

77. The origins of R's anger with her parents and sister, and her strong sense that the family are controlling her or trying to do so, is not entirely clear, but they may well lie in the time when they applied pressure on her in relation to losing weight. This, at least, is what she told the previous social worker, and this was associated in time with the family's stated wish to remove her from Castle Hill (where she was/is happy and has friends) to live at home. Her relatively recent experience of living at home during the early phase of the COVID-19 lockdown in the spring 2020 may have a bearing on this too.
78. I am satisfied that her current antipathy towards her family is real; the feelings are, in my judgment, neither confected nor are they the result of pressure (improper or otherwise) from those who currently support and care for R. It is R's view that the family exercise inappropriate control of her in relation to:
- i) The proceedings, which they initiated and about which she is unhappy; within the proceedings, R has been assessed, questioned and interviewed repeatedly over the same issues. It is possible that her answers in interview for the court have been affected by her unhappiness with the process. The fact that she has been repeatedly questioned may have left her wondering whether her views count for nothing, and this may well have made matters worse;
 - ii) Her money; she wishes them not to know about her spending;
 - iii) Her weight; she senses that they are trying to control what she eats and impose rules around her diet (I was directly aware of her sensitivity about this when I visited her, from comments which she made while we stood together in the kitchen);
 - iv) Her relationship with SA.
79. Furthermore, I am of the clear view that R's current opposition to contact is likely to derive at least in part from some real lived experience too:
- i) Lockdown restriction on her liberty (not, of course, a fault of her parents);
 - ii) The visit of the police to Castle Hill for them to investigate her relationship with SA on 2 May 2021;
 - iii) Perhaps the occasion in late-2020 when R was "accidentally" copied into an e-mail between R's mother and R's piano teacher in which R's mother referenced her belief that a member of Signia staff had stolen R's money. R responded:

"Why did you email them about what they didn't do? Staff didn't buy shoes. Staff didn't tell lies. You did. ... I'm not going to be part of the family again. You're being horrible. Stop writing emails about me all the time when they're not

the truth and don't you dare tell them (me?) what they (I?) should eat or not eat".

- iv) These proceedings, launched by R's family, in which – at least initially – it was the objective of R's family to move R from Castle Hill, where she is happy, and return to live with her parents or her sister;
 - v) The 9 December 2022 café contact visit.
80. R has spoken of having been 'abused' by her family; she has spoken negatively about aspects of her parents' care of her. I am not in a position to make findings about 'abuse' one way or another. But I do accept that in speaking as she does, R may simply be using the term 'abuse' to convey negative feelings towards them currently.
81. The family's case (that Signia have exerted undue pressure on R) is founded in very large measure on inference, context, and circumstance. I am not similarly persuaded. I have seen no evidence which suggests that the Signia staff have acted in such a way as to sap R of her free-choice to meet with them; on the contrary, I was impressed by Ms TB and accept PB's assessment of the quality of care which they offer to R. I accept Dr McKay's persuasive view that if the staff had conveyed to R deeply negative views about R's family, R herself would not hold or communicate positive thoughts about her family. Dr McKay is of the view that R has a desire to reconcile with her family, but lacks confidence that it will be a positive experience; the recent attempt would confirm this. I am satisfied that PB in particular has made concerted efforts to persuade R to see her family, but those efforts have been in vain. In the *current* circumstances, I am not surprised.
82. The Third Respondent gave some thoughtful and insightful evidence about her sister, telling me that she felt that R had a tendency to say what she believed the listener wanted to hear. I think that she is probably right about this, and I can identify instances in the evidence where I suspect that this has happened. For instance, she knows that Signia is in dispute with her parents; therefore when she speaks with Signia about her parents it is often in negative tones. When she spoke with others, including in the Talking Project, she gives a different view. I do not think that this happens all of the time, and I am satisfied that there is also much evidence of R's ability to say what she thinks irrespective of the likely sympathies of the listener. It does mean that – going forward – those with whom she lives need to consider subtly challenging those views, and/or not overtly endorsing them.
83. R articulated her specific wishes for this litigation in the letter which she wrote to me on 13 June 2022 which I have set out above. The letter is clear and coherent. I actually find comfort in this letter because it signals ways in which the situation can improve:
- i) The disclaimer of the LPA will signal the moment when her parents cannot "make decisions" about her life, particularly money;
 - ii) R can and should be told that her parents had good reason for referring their concerns to the police about SA and genuinely did not expect the police to visit Castle Hill; R should be told that the mother described to me how she recognised R's upset and distress;

- iii) It would be possible for R's parents to apologise (again) to SA. If they feel that they have already done this, they could repeat it in such a way that R knows and understands that the apology has been issued;
84. There is no doubt in my mind that R desperately wants the proceedings to be over. PB expressed it well thus:
- “This independent spirit, this determination to set her own store has been continuously undermined and undervalued time and time again. R has been assessed, questioned and interviewed repeatedly over the same issues which have left her feeling that her words and feelings count for little. That her views have been ignored or diminished, her experiences, her feelings and more importantly her own decisions, disregarded”.
85. It is against this backdrop that Ms TB expressed herself to be “... optimistic that when the Court case is concluded and if [R]’s wishes are respected, that she will feel able to reunite with her family”. I cautiously share that optimism.

8. Contact with others/family: Capacity

86. Having discussed at some length the important context for the decision I have to make, I turn finally to the core disputed issue in the case.
87. *The law:* In reaching a determination on the issue of capacity in relation to contact with others in this case, I have applied the core principles of the MCA 2005, starting with the statutory assumption that R has capacity unless it is established that she does not (section 1(2) MCA 2005); that she is not to be treated as unable to make a decision unless all practicable steps to help her to do so have been taken without success (section 1(3) MCA 2005); and that she is not to be treated as unable to make a decision merely because she makes an unwise decision (section 1(4) MCA 2005).
88. I recognise that I must satisfy myself that the relevant sections of the MCA 2005 are satisfied (“a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain” section 2 MCA 2005); I need to consider whether she is unable to understand the information relevant to the decision, to retain that information, to use or weigh that information as part of the process of making the decision, or to communicate his decision (whether by talking, using sign language or any other means). Proof of lack of capacity is established on the balance of probabilities (section 2(4) MCA 2005). Section 2(1) MCA 2005 constitutes the single test for capacity, albeit that the test falls to be interpreted by applying the more detailed provisions around it in sections 2 and 3 of the MCA 2005.
89. I have considered MacDonald J’s helpful discussion of the law in *North Bristol NHS Trust v R* [2023] EWCOP 5 at [47]:
- “Once the case is before the court, the overall assessment of capacity under the single test is a matter for the judgment of

the court (see *Re SB (A Patient: Capacity to Consent to Termination)* [2013] EWHC 1417 (COP) at [38]). In this context, the question of whether any inability of R to make a decision in relation to the matter in issue is *because of* an impairment of, or a disturbance in, the functioning of the mind or brain is a question of fact for the *court* to answer based on the evidence before it”.

90. In this regard, I have also followed the guidance offered by the Court of Appeal in *PC v NC and City of York Council* [2013] EWCA Civ 478 at [35], namely that the court should consider the issues specifically:

“The determination of capacity under MCA 2005, Part 1 is decision specific.... all decisions, whatever their nature, fall to be evaluated within the straightforward and clear structure of MCA 2005, ss 1 to 3 which requires the court to have regard to 'a matter' requiring 'a decision'. There is neither need nor justification for the plain words of the statute to be embellished”.

91. What the ‘relevant information’ is under section 3(1)(a) MCA 2005 will depend on the decision to be made but includes the reasonably foreseeable consequences of the decision or failure to make a decision (section 3(4)). I recognise that it is important not to overload the test with peripheral detail, but to limit it to the “salient” factors (per Macur J as she then was in *LBL v RYJ* [2010] EWHC 2664 (Fam) at [24], and *CC v KK & STCC* [2012] EWCOP 2136 at [69]). On the issue of contact, I follow the guidance offered by Theis J in *LBX v K, L, M* [2013] EWHC 3230 (Fam) (at [45]), by asking in relation to those with whom R is said to be making the contact decision:

- i) who they are and in broad terms the nature of her relationship with them;
- ii) what sort of contact she could have with each of them, including different locations, differing durations and differing arrangements regarding the presence of a support worker;
- iii) the positive and negative aspects of having contact with each person;
- iv) the impact of deciding to have or not to have contact of a particular sort with a member of one’s family.

92. I have approached the issue on the basis that it is not necessary for a person to weigh up every detail of the options but rather the salient features, and that different people will give different weight to different factors. At the end of the day, these formulations of the information to be taken into account when making a decision are “to be treated and applied as no more than guidance to be adapted to the facts of the particular case” (*B v A Local Authority* [2019] EWCA Civ 913 at [44]⁷).

93. It is appropriate to note that in the same case, namely *B v Local Authority*, the Court of Appeal went on at [35] to say this:

⁷ And, per [62], “we see no principled problem with the list provided that it is treated and applied as no more than guidance to be expanded or contracted or otherwise adapted to the facts of the particular case”.

"Cases, like the present, which concern whether or not a person has the mental capacity to make the decision which the person would like to make involved two broad principles of social policy which, depending on the facts, may not always be easy to reconcile. On the one hand, there is a recognition of the right of every individual to dignity and self-determination and, on the other hand, there is a need to protect individuals and safeguard their interests where their individual qualities or situation place them in a particularly vulnerable situation"

94. *The evidence:* In April 2021, R was assessed by Dr Claudia Camden-Smith (see above). She opined as follows:

"In my opinion, [R] lacks capacity to make decisions about contact with others due to her inability to understand the pros and cons of contact with people. She has responded to the conflict between her family and [Signia] by separating them into two separate camps of people and by choosing to cut an entire group of people out of her life. This is a very rigid and autistic response to the difficulties she is facing, however has the effect of her not needing to hold opposing views and ideas in her head or accept that people she likes, loves and needs may have differing views. It is, in a way, a very primitive defence mechanism, which is in keeping with her developmental age and autistic traits".

95. For these proceedings, Dr Katherine McKay, Chartered Clinical Psychologist, was instructed on a joint basis to consider R's capacity in this regard; she has opined on several matters over a period of time. Dr McKay had provided a report at the beginning of last year (31 January 2022) dealing with a number of the capacity issues on which declarations have already been made (see §4 above). Latterly Dr McKay has assessed R's capacity concerning contact, amongst other matters.

96. In my judgment, Dr McKay carried out a thorough and comprehensive assessment, taking into account all of the relevant matters; she had read the relevant documentation and in my judgment she applied the correct test. Although challenged by the family on her approach to her task, I agree with Mr McKendrick that her assessment and its methodology was both thorough and robust; in my judgment, she tested R appropriately in order to establish her capacity. As earlier indicated, she had met with R on a number of occasions previously, which was a great advantage: she was able to begin her assessment with some pre-existing knowledge and experience of R's abilities and limitations.

97. Dr. McKay's summary view on this issue is as follows:

"She had a good understanding of the nature of the relationships with professionals, family members and others. She was aware that there were people involved in her life who were transient, and paid for their employment, whereas her family and her boyfriend were not. She was

very clearly able to consider the positive and negative aspects of having contact with each person. [R] showed an ability to call to mind positive memories of being with her family, as opposed to having purely polarised negative views. Her ambivalence regarding her family was evident (as it had been in my previous report), and she reported feeling loved, and loving her family, and at times missing them, but also feeling controlled and criticised by them. She reported feeling ongoing negative feelings associated with the police being called in the past, which distressed both [R] and her boyfriend (regardless of the ‘truth’ about who called the police, [R] remains upset about this, in part due to the impact on her boyfriend) ... Thus, [R] was assessed as having capacity to make decisions around contact. [R] herself was also able to make suggestions of things that would make her more amenable to having contact with her family, such as doing this on ‘Zoom’, although her priority in this area was for the cessation of legal proceedings”. (Emphasis by underlining added).

98. I thought it interesting (Appendix 3 to Dr McKay’s report) that in the hierarchy of issues which would make it more likely that R would want to see her family (from a selection of possible choices), she identified the following (in this order):

- If they stopped court;
- If they let her make her own decisions;
- If they liked SA;
- If SA trusted them;
- If they stopped being angry;
- If they stopped arguing with [Signia]/Ms TB⁸;
- Zoom.

It may be thought that this list goes some way to illustrating R’s ability to ‘use or weigh’ the information relevant to the decision under examination.

99. Dr McKay is clear that R has capacity to make decisions about contact and, in the circumstances, the choice as to whether, when and how she has contact with her family is a matter for her. Insofar as they express a view, XCC, Signia and the Official Solicitor share Dr McKay’s view.

100. The family does not agree, arguing that (a) the methodology and conclusions reached by Dr Camden-Smith (see above) are to be preferred to those of Dr McKay, and (b)

⁸ Interestingly, this was the first thing which R told me was influencing her against seeing her parents when I met with her in June 2022.

further that R is currently incapacitated by reason of the undue influence exerted on her by her professional care-givers.

101. *Conclusion on capacity to make decisions re: contact:* I start from the important premise that a person must be assumed to have capacity unless it is established that they lack capacity (section 1(2) MCA 2005). The burden of proof lies on the person or body asserting a lack of capacity, in this case the Applicant and the Third Respondent; the standard of proof is the balance of probabilities.
102. For the reasons given above, I am satisfied that the family have not rebutted the presumption that R has capacity to make decisions about contact with others.
103. I am satisfied that she understands the issues, and has been able to use or weigh the information relevant to the decision on contact. She knows her family well and she loves them, but has been hurt by them (for the many reasons which I have discussed above) and deeply so; she feels it very keenly. I do not think that the family see how badly they have hurt R and this is perhaps in part why they cannot accept that she can make a capacitous decision in this regard. R has been clear in saying that she would like to see her family on Zoom initially; this is perfectly understandable. I further sense that she is not saying that she will not want to see her family ever again; she is very clear that a number of impediments to contact need to be cleared first – the disclaimer of the LPAs, and the end of these proceedings being the most important.
104. The fact that R has vacillated in recent times (reference 17 November 2022 and June 2023) over seeing the family (or members of them) is perfectly understandable, and utterly predictable; it is not evidence of inappropriate pressure being applied on her to change her mind. Nor is that that she does not understand the information relevant to a decision on whether to see her family. She does understand that information; she can use and weigh that information; she can retain it, and can communicate her views. But – and this is the key – I find that she is deeply conflicted, very aware that she is caught in the crossfire of the dispute between her family (which fundamentally she loves) and Signia (in whose care she lives, and whose relationship she values). She may say to people that which she thinks they want to hear. That of itself is not an indicator of a lack of capacity; many fully capacitous people do exactly that. Her vacillation is not, or not necessarily, an indicator that she is coming under pressure, let alone undue pressure, from external sources.

9. Inherent jurisdiction

105. The secondary position of R's family (in the event that I conclude, as I have, that R has capacity to make decisions about contact), is that I should nonetheless make orders under the inherent jurisdiction to facilitate the supportive framework, as a precursor to the restoration of contact.
106. I had required the Applicant to serve an application, in order to formalise the process. The Applicant seeks declarations that:
 - i) “[R] is reasonably believed to be deprived of the capacity to make decision as to contact with her immediate and wider family;

- ii) It is in [R]’s best interests to reinstate contact with her immediate and wider family;
- iii) It is in [R]’s best interests for those providing care and support to [R], including [Signia] staff, [R]’s Care Act advocate, and [R]’s social worker, to implement a supportive framework for decision-making about contact.”

The proposed orders and declarations set out in the form (rehearsed above) are unhelpfully vague; no attempt has been made to set out the legal basis on which such orders could be made in this case, but I have proceeded nonetheless to consider it fully.

107. *The law*: The circumstances in which the inherent jurisdiction can be invoked in respect of vulnerable adults has been discussed in two seminal cases: *Re SA (Vulnerable Adult with capacity: Marriage)* [2005] EWHC 2942 (Fam) (*‘Re SA’*) and *DL v A Local Authority & others* [2012] EWCA Civ 253 (*‘DL’*).
108. Turning first to *Re SA*, Munby J expressly did not wish to define who “might fall” into the category of persons in respect of whom the inherent jurisdiction could properly apply (he said that it would be “unwise, and indeed inappropriate” for him to attempt to do so), and said at [77]:

“...the inherent jurisdiction can be exercised in relation to a vulnerable adult who, even if not incapacitated by mental disorder or mental illness, is, or is reasonably believed to be, either (i) under constraint or (ii) subject to coercion or undue influence or (iii) for some other reason deprived of the capacity to make the relevant decision, or disabled from making a free choice, or incapacitated or disabled from giving or expressing a real and genuine consent.” (Emphasis by underlining added).

109. Munby J considered what is meant by “constraint” and described it (at [78]) as:

“... whenever a vulnerable adult is confined, controlled or under restraint, even if the restraint is only of the kind referred to by Eastham J in *Re C (Mental Patient: Contact)*⁹. It is enough that there is some significant curtailment of the freedom to do those things which in this country free men and women are entitled to do”.

In relation to “coercion or undue influence” he continued (at [78]):

“What I have in mind here are the kind of vitiating circumstances referred to by the Court of Appeal in *In re T (Adult: Refusal of Treatment)* [1993] Fam 95, where vulnerable adult's capacity or will to decide has been sapped and overborne by the improper influence of another. In this connection I would only add, with reference to the

⁹ [1994] 1 FCR 705

observations of Sir James Hannen P in *Wingrove v Wingrove* (1885) 11 PD 81, of the Court of Appeal in *In re T (Adult: Refusal of Treatment)* ... and of Hedley J in *In re Z (Local Authority: Duty)* [2004] EWHC 2817 (Fam), [2005] 1 WLR 959, that where the influence is that of a parent or other close and dominating relative, and where the arguments and persuasion are based upon personal affection or duty, religious beliefs, powerful social or cultural conventions, or asserted social, familial or domestic obligations, the influence may, as Butler-Sloss LJ put it, be subtle, insidious, pervasive and powerful. In such cases, moreover, very little pressure may suffice to bring about the desired result.”

110. *Re T* (above) was a medical treatment case¹⁰, in which the Court of Appeal was considering inter alia, the effect of influence on the patient’s right to choose how to live, and in which guidance was being sought to offer to hospital authorities and to the medical profession on the appropriate response to a refusal by an adult to accept treatment. Butler Sloss LJ in that case referenced at [46] the much earlier judgment in *Hall v Hall* [1868] Vol. 1 P. & D. 481 at page 482, to the effect that persuasion, appeals to the affections or ties of kindred do not amount to undue influence. On the other hand, “pressure of whatever character”, whether acting on the fears or the hopes, “if so exerted as to overpower the volition without convincing the judgment”, would be so. Threats or interference with “the free play” of individual’s judgment, discretion or wishes to the point that it is “overborne” will constitute undue influence, even though no force is either used or threatened.

111. Munby J went on to say ([79]) that he was not suggesting that:

“... the jurisdiction can only be invoked if the facts can be forced into one or other of these headings. Quite the contrary. Often, indeed, the facts of a particular case will exhibit a number of these features. There is, however, in my judgment, a common thread to all this. The inherent jurisdiction can be invoked wherever a vulnerable adult is, or is reasonably believed to be, for some reason deprived of the capacity to make the relevant decision, or disabled from making a free choice, or incapacitated or disabled from giving or expressing a real and genuine consent ... A vulnerable adult who does not suffer from any kind of mental incapacity may nonetheless be entitled to the protection of the inherent jurisdiction if he or she is, or is reasonably believed to be, incapacitated from making the relevant decision by reason of such things as constraint, coercion, undue influence or other vitiating factors.”
(Emphasis by underlining added).

It was later explained ([80]) that the phrase “reasonably believed to be incapacitated” was used to describe the exercise of the jurisdiction on an *interim* basis while proper

¹⁰ In which J Munby QC appeared for the Official Solicitor.

enquiries are made, “and while the court ascertains whether or not an adult is in fact in such a condition as to justify the court’s intervention”. I do not treat the phrase “reasonably believed” as diluting the test for involvement, or lowering the threshold beyond which it could be appropriate to make an order under the inherent jurisdiction.

112. On the extent of the court’s *powers* to make orders by reference to the individual’s best interests (see [96]), Munby J said this at [84]:

“... the court’s powers to make orders under the inherent jurisdiction in relation to adults would seem to be as wide as its powers when exercising its inherent *parens patriae* jurisdiction in relation to children. Just as there are, in theory, no limits to the court’s powers when exercising the wardship jurisdiction I suspect that there are, in theory, few if any limits to the court’s powers when exercising the inherent jurisdiction in relation to adults”.

113. At [83], Munby J went on to define the concept of ‘vulnerability’ in the context of the inherent jurisdiction, in this helpful passage:

“The inherent jurisdiction is not confined to those who are vulnerable adults, however that expression is understood, nor is a vulnerable adult amenable as such to the jurisdiction. The significance in this context of the concept of a vulnerable adult is pragmatic and evidential: it is simply that an adult who is vulnerable is more likely to fall into the category of the incapacitated in relation to whom the inherent jurisdiction is exercisable, than an adult who is not vulnerable. So it is likely to be easier to persuade the court that there is a case calling for investigation where the adult is apparently vulnerable than where the adult is not on the face of it vulnerable. That is all”.

114. The Court of Appeal in *DL* considered the survival of the inherent jurisdiction following the passing of the MCA 2005; it ‘unreservedly endorsed’ ([68]) the approach of Munby J in *Re SA* as one which is still applicable post-MCA 2005. That case concerned an elderly couple who were found to lack capacity as a result of undue influence and duress brought to bear upon them by their son, DL, even though they had capacity within the meaning of the MCA 2005. McFarlane LJ (as he then was) referred to *Re SA* as “the high point” ([11]) in a series of first instance decisions which describe the extent of the inherent jurisdiction in relation to vulnerable adults, and accepted that the jurisdiction could / should be “targeted solely at those adults whose ability to make decisions for themselves has been compromised by matters other than those covered by the MCA 2005” ([53]).

115. The Court of Appeal in *DL* was keen to emphasise that the inherent jurisdiction is *not* “extensive and all-encompassing” ([53]):

“..., or one which may threaten the autonomy of every adult in the country. It is ... targeted solely at those adults whose ability to make decisions for themselves has been

compromised by matters other than those covered by the MCA 2005”. (Emphasis by underlining added).

[54] ... The jurisdiction... is in part aimed at enhancing or liberating the autonomy of a vulnerable adult whose autonomy has been compromised by a reason other than mental incapacity because they are (to adopt the list in paragraph 77 of *Re SA*): (a) Under constraint; or (b) Subject to coercion or undue influence; or (c) For some other reason deprived of the capacity to make the relevant decision or disabled from making a free choice, or incapacitated or disabled from giving or expressing a real and genuine consent”.

116. The court’s approach in *DL* is perhaps best encapsulated by the passage from [63]-[68] to which Ms Butler Cole took me, and particularly where McFarlane LJ posed the rhetorical question in [65], in relation to someone with ‘borderline lack of capacity’:

“Where, on a strict mental health appraisal, such an individual does not lack capacity in the terms of the MCA 2005 and therefore falls outside the statutory scheme, but other factors, for example coercion and undue influence, may combine with his borderline capacity to remove his autonomy to make an important decision, why, one may ask, should that individual not be able to access the protection now afforded to adults whose mental capacity puts them on the other side of that borderline?”

117. McFarlane LJ went on to confirm that this approach did not offend against the provisions of the European Convention on Human Rights ([66]):

“Any interference with the right to respect for an individual’s private or family life is justified to protect his health and or to protect his right to enjoy his Article 8 rights as he may choose without the undue influence (or other adverse intervention) of a third party. Any orders made by the court in a particular case must be only those which are necessary and proportionate to the facts of that case, again in like manner to the approach under the MCA 2005.”

118. Finally, it is worth noting that the court in *DL* specifically endorsed the approach of Macur J (as she then was) in *LBL v RYJ and VJ* [2010] EWHC 2665 (COP), that the court has the power under the inherent jurisdiction “to facilitate the process of unencumbered decision-making by those who they have determined have capacity free of external pressure or physical restraint in making those decisions”.

119. The burden falls on the Applicant and Third Respondent to prove in this case that R’s will has been and/or is being overborne by those who are caring for her, and that she is the subject of constraint, coercion, undue influence or other vitiating factors. It is a serious allegation to make; the more so, it may be thought, when the accusation is

made against professional care providers. I have considered the allegations on the balance of probabilities; and I approach my task on the basis that if the party who bears the burden of proof fails to discharge it, the fact is treated as not having happened. If he does discharge it, the fact is treated as having happened (*Re B* [2008] UKSC 35). I found it useful to reconnect with what Lord Nicholls said in *re H (Minors)(Sexual Abuse: Standard of Proof)* [1996] AC 563, at 586D-H:

“When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability”.

120. I have explained the law in this area at some length in this judgment in order to demonstrate that while the inherent jurisdiction is available in the right case, it is not “all-encompassing” and there are clear limits to its applicability.
121. *The evidence:* It is an important question of fact as to whether R is, or has been, subject to coercion and influence, and external pressure from those working at Signia, particularly when dealing with issues relating to her family. As I have referenced extensively already, R’s family argue that R is and has been for a period of time subject to “systematic” influencing and “alienation” against them, “deliberate (undue) influence” and “environmental influence” from the carers with whom she lives. R’s family point to the abrupt change of attitude towards them in the autumn of 2020, when the family started to challenge the professional care-givers about their conduct, as evidence that “over a period of eight months she had been subjected to an intense process of influencing”. This is disputed by Signia and by XCC.
122. In fairness to the Applicant, I set out how he summarises his case in his own words, thus:

“At the heart of the undue influencing has been a stream of negative and false information that R has been subjected to, since August 2020. This has resulted in her being very angry with us, to the extent that she has said on a number of occasions that she no longer wants to see us and does not want to be part of her family. It needs to be borne in mind that R has turned against us during a period when she has not seen us, meaning that we have not been able to do anything bad to her. Therefore, her anger with us must have come from a consistent process of hearing negative information about us.... As a result of receiving consistent negative information about us, R no longer wants to meet with us.”

123. The Applicant cites R’s decision not to return to the family home at Christmas 2020 as one example of R being ‘coerced’ or ‘controlled’ by Signia. The family refers to R’s decision to pay Signia’s bills herself in the office, rather than letting her parents scrutinise the bills as another. The Applicant references the finding of Dr Camden-Smith that R “is very aware that money is a source of substantial conflict between her

parents and [Signia]” as evidence that Signia have inappropriately shared detailed information with R as a means of turning her against them.

124. I have referred above to the firm belief held by R’s family that R has been used as a “pawn” in the conflict between the family on the one hand, and Signia / XCC on the other. The family feel that the only plausible explanation for R’s sudden change of attitude towards them in the autumn of 2020 is that she has been alienated by someone, or indeed by the “eco-system” as a whole, and she is now acting under the control of a third party.
125. The Third Respondent described, both in her oral and written evidence how she felt that R is:

“...highly prone to influence and can be manipulated into giving certain answers. This can be achieved both by asking her leading questions and presenting options to her that are unsafe. ... R also often tries to give the answer that she thinks people want to hear, rather than what is the correct answer. ... It is well known in my family that R will often lie, despite all evidence pointing to the fact that she is not telling the truth.”

She described the coercion as follows:

“By treating R as somebody who has mental capacity, [Signia] and [XCC] have fed her information about my parents’ criticisms of both institutions. However, R does not have the mental capacity to process the information and to reach an objective independent decision. Consequently, she has sided with the institutions that she currently has the most contact with and who she perceives as powerful”.

126. R’s family hold (or certainly held) a firm belief that R is suffering “trauma” from her time at Castle Hill, and her separation from her family, for which she needs “psychological support” once removed from Castle Hill. The Applicant referred to the fact that R has lost autonomy – although both he and the Third Respondent also separately claim that she has acquired too much.
127. XCC and Signia deny the allegations of undue influence, coercion or control; they deny that R’s will has been “sapped and overborne by the improper influence of another” (i.e., Signia workers) (see *Re SA* above). PB’s view is that while there has been “much talk of undue influence”, and accusations made against R’s care providers and against him (as well as against a number of other professionals) there is no evidence of this from his dealings with Signia. Of Ms TB he said:

“My experience of working with the director has been to witness a compassionate and learned individual who has worked tirelessly to provide all the information requested and has been responsive in the most professional and courteous manner despite being subject to numerous and simultaneous investigations of her organisation”.

128. I accept PB’s evidence when he speaks of the efforts which he has made to encourage R to see her family. He told me that he has been mindful at all times not to lead R, and he has always respected her view; rather poignantly, he observed in his evidence that:

“I have tried to help her see that her silence has an impact on her family and that this would be painful for them”.

129. PB points out that the intensity of the “negative and harming comments” about undue influence emanating from the family have taken their toll on “everyone, - especially R” and SA.

130. According to Dr. McKay, R “is undoubtedly a vulnerable adult” and “people with learning disabilities are vulnerable to undue influence, coercion and abuse, to a greater degree than the general population”. Dr McKay’s view is that R is subject to influence in a normal way. Dr McKay states that R is not more vulnerable than other people with learning disabilities; she has in fact shown an ability to sustain her opinions despite significant distress and challenge, including court proceedings which she wants to end. Dr McKay states that whilst R is vulnerable to influence, this is not to the extent as meant in *Re SA* when defining a ‘vulnerable adult’.

131. Indeed, Dr. McKay is of the view that R has shown “incredible resilience”, in terms of her “ability to hold a steadfast view in the face of opposition, including within the legal proceedings”; she adds that “there is some irony that her strong sense of self is no doubt testament to her parents. They have provided her with care that has instilled a robust sense of her being able to achieve her dreams, and an ability to assert herself”.

132. In refuting that the grounds are made out for the use of the inherent jurisdiction, Dr. McKay further expresses herself of the view that:

“It would not, in my view, be appropriate to use an alternative legal framework, such as Inherent Jurisdiction. Moreover, I believe that this could damage relationships further, as [R] will feel less control, and increased frustration, particularly if this impacts negatively on her relationship”.

133. *Conclusion on inherent jurisdiction:* As I mentioned above, in *Re SA*, Munby J declined to define the categories of person for whom the inherent jurisdiction may be invoked, but it is nonetheless clear from his judgment (and from *DL* which followed) that those for whom it would apply are those who are under constraint, subject to coercion or undue influence or otherwise (for some other reason) deprived of the capacity to make a relevant decision, or disabled from making a free choice (see above). In my judgment, this has not been R’s experience in her placement.

134. I reject the suggestion by the Applicant that there has been any deliberate attempt at, or actual, alienation of R against her family by members of the Signia staff; I further reject the allegation of ‘environmental alienation’ – i.e. Signia creating an environment or eco-system in which R is not able to speak positively about her family and/or where all conversation about her family is negative. In my judgment it is

likely that, once R's family started making allegations about Signia and the care it was offering R, Signia staff will have found it difficult actively to encourage R to engage with her family; it may well be that R picked up on Signia's sense of unhappiness at being on the receiving end of a wide range of allegations.

135. It is clear that R has recently made free choices, and these are choices which have brought her into contact with her family – i.e., she agreed to take part in the Talking Project; she agreed to a meeting with her family in November (albeit that this did not happen), and agreed again to the café meeting on 9 December 2022.
136. I view with some sympathy the 'supportive framework' proposals advanced by the parties; indeed in the next section of the judgment I discuss them and actively encourage those with responsibility for R's care closely to consider them. But it is not 'necessary' for me to make orders in relation to them in order to liberate R to make decisions freely, nor is it 'proportionate' ([66] and [76] of *DL*) that I should. I am conscious of the need to guard against adopting an overly paternalistic attitude to a vulnerable adult who is the subject of the proceedings, and to make orders in (what McFarlane LJ referred to as) the "hinterland" of the MCA 2005 which undermine the very concepts of the MCA 2005 itself.

10. Supportive framework & the future

137. In view of the conclusions reached above, there is no jurisdictional peg on which to hang any ruling about the arrangements for R's care going forward, in order to maximise the potential for contact. But the parties have all been clear that it would be helpful if I could express some views about the future arrangements, and the focus of future work and support for R, and I do.
138. First, I have been invited to consider evidence in relation to the care provider for R, and whether a case is made out for a change. This only arises because of the family's unhappiness with Signia, for all of the reasons rehearsed in this judgment – their negligent care of R, of compromising R's health and welfare to the point of risking her life, of theft, of allowing R to be sexually abused, of fraudulent charging of housing benefit, of coercion and an abuse of power. Mr Fernando, in his closing submissions, made the valid point that the delivery of care provision is an important issue in its own right, on which R could be expected to make a capacitous decision – particularly given that I have found that she has capacity to decide to remain at Castle Hill, and has capacity to make decisions about what support she needs on a day-to-day basis with an adequately supported environment. I accept his point that a change of care provider is not a peripheral decision linked merely to the question of contact. There is nothing on the face of the papers to suggest that R lacks capacity to decide on her care provider. However, the point was clearly trailed in the oral evidence, I was addressed on it by counsel, and I have been asked to express a view.
139. Ms TB was, surprisingly, more open to the possibility of a new care provider being installed for R than I had expected. She certainly recognised that it may be "unsustainable" for Signia to continue. She continued:

“Over the past three year three very capable service managers from [Castle Hill] have left the role all of whom cited the stress of managing the complaints and allegations

from [R's] family to be untenable. This situation is to no one's benefit, least of all [R]'s and it may be the case that it is felt that an alternative provider should be sought".

"R is due to move into a new home, the [Cottage] at [Castle Hill] with two very close friends who will certainly continue to be supported by [Signia]. It is possible for a second support provider to work in the house supporting just R. It is not without its complications for the Local Authority or [Signia] with regards to funding, rota management, staff deployment and accountability but I believe it could be made to work if it is the only option for R remaining in her home of choice, [Signia] would do all it can to make any such arrangement work".

140. Ms TB suggested, on this model, that if R were to move to the Cottage, she would be cared for by a new provider, while Signia would be providing care for the other two residents. The family propose (and I agree with them on this) that if a provider other than Signia could provide care for all three residents in the Cottage, this would be preferable, and easier to 'sell' to R. However, this is *not* the model being proposed.
141. The 'pros and cons' of a change of care provider for R were discussed in the evidence:

On the positive side:

- i) A change of provider would offer the family a degree of reassurance that carers who have previously been caring for R (who they have accused of alienating R from them) would no longer be in post; it would be likely to reduce scope for suspicion that contact was being frustrated by the care provider (though Signia carers would still be working at Castle Hill, so I think it unlikely that suspicions will be eliminated altogether);
- ii) The family would be able to work directly with the care provider in a way which they cannot currently work with Signia;
- iii) A more collaborative relationship between the family and the care provider may smooth the passage for the resumption of contact;

On the negative side

- iv) It seems likely that R would not want a change of care provider; she likes Signia, and the staff who currently care for her; there is a risk that she would reject a new care provider for this reason;
- v) R would strongly suspect, and indeed may conclude (accurately, as it happens), that her parents had largely driven this change, however the change of care provider was presented to R; this may in itself be a reason for her to reject the new care provider. Moreover, if this were her view it would be wholly counter-productive to the restoration of R's relationship with her family; it would feed directly into her belief that her family retain control of

important aspects of her life. If R formed these views, it would be bound to frustrate any proposed change of carer;

- vi) It would be potentially awkward having two care providers operating in the Cottage offering care to three women; the Applicant himself recognised that this would not be a good option;
- vii) This may not altogether eliminate the family's mistrust of the current arrangements; Signia would be the dominant presence in Castle Hill; XCC would remain involved, and it is the Applicant's view (as I mentioned earlier) that "the state always protects the state";
- viii) This is all rather theoretical; there would be many practical difficulties in actually recruiting another provider for R; any interested provider would need to know the history; Ms TB was not optimistic about recruiting into the role;
- ix) There is objectively only limited foundation in the family's belief that Signia has been responsible for the failings suggested by the family; Signia has been subjected to full investigation prior to the start of the mediation process by the Local Authority, the Care Quality Commission, the counter-fraud team of the local authority, the Housing Benefit Agency and the Police. No findings of wrongdoing by Signia have been identified by these investigations and no actions were required of Signia. It would, in the circumstances, be wrong to replace them.

142. Overall, in my judgment, the negatives above outweigh the positives – and not just in number. Insofar as I have been invited to express a view, I suggest, on the information currently before me, that Signia should remain in place, caring for R.

143. I am particularly persuaded by points (iv) and (v) in §141 above, namely that if a new care provider were put in place R would reject them, and then rightly conclude that her parents had largely driven a change of care provider for her and that this would be counter-productive to the restoration of R's relationship with them. That said, while I have not found that Signia have been guilty of undue influence or control or coercion of R, I agree with the Official Solicitor that Signia *has* been responsible at times for over-stating and over-promoting R's autonomy, when some firmer guidance would have been appropriate, and this ought to be borne in mind going forward.

144. In relation to a future supportive framework for R, I have received a number of suggestions from the parties and Dr. McKay. There is inevitably some overlap in some of those proposals which I have identified *in italics* in the paragraphs which follow.

145. R's family have presented an impressive 21-point supportive framework plan. I do not propose to rehearse its entire contents here, but highlight the key features which, in my judgment, have particular merit for incorporation in any plan going forward:

- i) R's new social worker (*to replace PB, as he proposes – see below*) to meet with the family at an early stage; [1]¹¹

¹¹ The numbers in [square brackets] correspond with the numbered points in the family's plan

- ii) R to retain her advocate, who should meet the family; [2]
- iii) A professional to be appointed with relevant expertise in learning disability, (query: I am not sure about the need for expertise in relation to pathological demand avoidance and autism as to communication methods) to give advice about restoration of contact and its practicalities; [3] (*this could potentially be Ms BL, see Signia's proposals below*);
- iv) The engagement of a family therapist with experience in special needs conflict resolution and trauma, to advise on how best to offer family therapy to R, and to carry out that therapy; if R is not keen initially, this to be re-visited at intervals; [4]¹²; (*Dr McKay prefers individual therapy for R first, which I support. Family therapy may usefully follow*);
- v) Work with R to explain the past, the family's views on key issues, and importantly to clear up misunderstandings; [5] (*again, this could potentially involve Ms BL, see Signia's proposals below*);
- vi) A 'narrative' of the family's views on a range of issues to be available for all staff so that R receives a consistent account; [6] / [9]
- vii) A keyworker to be appointed by Signia; [8]; the keyworker to meet with the family on appointment and routinely thereafter; (*this ties in with Dr. McKay's proposal of a go-between, and is supported by XCC*);
- viii) A meeting to take place involving R's new social worker, Ms TB, R's keyworker and independent advocate at which the social worker and Ms TB confirm to R that they fully support R's reintegration with her family; note of the meeting to the family [15];
- ix) R to be asked about contact with the family at key events in the calendar – birthdays / Christmas / Easter; [16]
- x) R will be supported by the key worker to integrate with her friends outside of Signia; [19]
- xi) Updates to be provided to the family at intervals (three monthly) about progress with attempts to encourage R to have contact; [20]

I would like to emphasise that I share the family's view ((v) above) that R needs clearly to understand that the family's concerns about her were in *some* respects entirely legitimate (i.e., their concerns about sexual harm, her missed medical appointments, her weight); the communication of this to R will be central to the operation (and I believe the success) of a new supportive framework.

146. Signia suggest that :

- i) It would be beneficial for them to engage Ms BL to work with R; Ms BL has 27 years of experience as a national expert in communicating and supporting

¹² I am not persuaded, having heard Dr McKay, that "trauma informed" needs to be included in a model of work or necessary expertise of the professional.

the communication needs of people with Down Syndrome; she has met R already (17 April 2023), and worked with her briefly; Ms BL would be able to work with R going forward to ensure she is supported in her comprehension of the feelings and intent of others, her processing of that information and her decision making. R would also be facilitated at the highest level to communicate her wishes and feelings;

- ii) An independent advocate will remain in place; R will be supported to meet a befriender with whom she can speak openly and who is not associated with her housing, support service, her work or her family;
- iii) A key worker shall be appointed to spend time with R and ensure that her family remain alive in her mind and that she is encouraged to think about her future involving them in her life; (*this may tie in with Dr. McKay's proposal of a go-between, and is supported by XCC*);
- iv) Signia will provide R with the necessary support to arrange and attend meet-ups with her family and will facilitate any invitations she may wish to issue – perhaps to see her new home (the Cottage) or attend events such as her theatre productions.

147. XCC has advocated for:

- i) Continued work at the shop where R works at present;
- ii) Attendance at day provision with a wider range of options available for her, including social enterprises, or community interest companies;
- iii) A change of social worker (this is in fact necessary, given that there will be a change of local authority responsibility for monitoring R after these proceedings);
- iv) Continued engagement of the Care Act advocate (SH);
- v) Appointment of a new key worker at Castle Hill;
- vi) Support from health professionals, namely community nursing to maintain support in areas such as healthy eating, portion control and healthy lifestyle choices. R's attendance at health appointments will also continue to be monitored pursuant to her care and support plan and "health passport" which was helpfully initiated by her family;

148. Dr McKay suggested:

- i) That a 'Go-between' be appointed to operate between the family and R;
- ii) A further 'Go-Between' should be appointed to operate between the family and the professional agencies working with R;
- iii) Individual counselling for R;

- iv) Some work with the family “to have support and do some thinking about how they may think about R’s experience” (evidence in chief) counselling for the key members of the family would be a complement to the individual work with R; this could move in time to some family therapy.

11. Conclusion

- 149. I am very sad for R that the intense and bitterly-fought disagreements at the centre of this litigation have dominated her life for nearly three years; the disputes have adversely affected the key relationships with all the people who matter most to her – her family, her staff network, and SA. This litigation itself has, I am sure, caused deep distress to R, and indeed to so many others; I fear that this hearing will have done little to repair or heal relationships. I am sure that the family are grieving the present absence of the relationship with R; this was evident. They are also very angry with what they see as a lack of professionalism (and worse) from her care provider.
- 150. From what I have read, seen and heard, I am satisfied that the Signia staff and other professionals are providing a good level of practical and emotional care for R; I am equally clear that they have been left feeling bruised by the allegations which have been made, and are (and have been for some time) anxious that their every step and turn will be scrutinised in detail and then met with nothing but criticism and accusation.
- 151. For these reasons, there is at least one conclusion which it has not been difficult to reach in this case. And that is that these proceedings should now come to an end. R has repeatedly said that she is unhappy by the court’s involvement; I am sure that she blames her parents for having initiated the litigation, and that this very issue in itself undermines the efforts which have been made to promote reconciliation. I accept the evidence that R has regularly lost sleep with worry about the court’s involvement in her life, and that for a time she was “struggling... crying every night” because of them.
- 152. I agree with PB and Ms TB that R does show a good level of interest in, and empathy for, her family, but she is clearly conflicted; she has feelings of love and obligation towards them, but a strong desire to pursue her own interests and be free from what she sees as their ‘control’. I find that she has been relatively steadfast in the last three years in her view on the issue of reconciliation; she has attempted to meet the many demands placed upon her by professionals, and has been frustrated by having to answer repeatedly many similar questions, when she has already made clear her position. I share the optimism of Ms TB that when the litigation has ended, and particularly if R’s wishes are respected and hostilities cease between Signia and the family, R will feel freer to explore the options around seeing her family. I also agree that this may take time, and perhaps some third-party help from a personal counsellor for R.
- 153. Other issues raised by the parties at this hearing have not yielded answers with the same ease. While the Court of Protection is accustomed to making important decisions about an individual’s capacity to make decisions, and declarations about their best interests, it is not able to order or declare how people should think, or what they should do to get on better with each other. And that, in large part, is what needs to change in this case for the situation to move on.

154. I repeat my view, so that it is clear, that it is plainly in R's best interests that she achieves a reconciliation with her family. I am satisfied that all the key professionals from whom I have received evidence in this case recognise the importance of supporting R to do so; this will I hope be advanced by a reduction in hostilities around R, and the promulgation of collaborative, clear, consistent, and positive communications between all those who connect on a daily basis with R about the importance of family in R's life. The objective will be better achieved if the context in which R lives contains many of the features of the supportive frameworks which I have outlined above. I do not feel it right that I should prescribe the precise terms of the supportive framework; it should nonetheless incorporate – so far as possible – the essential points raised by each of the parties which I have included in my judgment above. It would be helpful if XCC could draw together a draft supportive framework, drawing on those points, for consultation with the key parties.
155. When it comes to a resumption of contact, I would like to offer these two thoughts:
- i) It seems to me that the first contacts between R and her family can and should be by video-calling (Zoom). This is certainly R's current preference; I would suggest that the Third Respondent's baby should be present on the family side;
 - ii) I had hoped that the first direct family contact(s) could perhaps be with the Third Respondent and her baby son; the baby would provide a wonderful focus for R and her family to come together. I was advised at the conclusion of the hearing by Ms Butler Cole that the Third Respondent was not willing to facilitate this in advance of R meeting with her parents. This is a shame; it may be the Third Respondent's baby could be present at contact with the Applicant and his wife.

I am of course conscious that when the time is right for contact, other considerations may be in play, which may suggest a different arrangement.

156. Drawing the threads of this judgment together, I confirm that I have reached the following conclusions:
- i) There shall be a recital to the effect that Signia and X County Council, together with the family, will consider carefully and constructively, and will adopt where practical and in a manner consistent with R's best interests, the outline of the 'supportive framework' which is discussed at §145 to §148 of this judgment;
 - ii) I will declare (pursuant to section 15 MCA 2005) that R lacks capacity to revoke the LPAs for property and affairs and health and welfare; I make a declaration to this effect;
 - iii) It is unnecessary for me to determine whether R had capacity to execute the LPA in 2016;
 - iv) My order should contain a recital that the three attorneys have agreed that they will disclaim forthwith the LPAs in relation to property and affairs, and health and welfare;

- v) I will make no order or provision in relation to the family's wish to pursue other complaints or applications in relation to R's finances;
 - vi) I will declare (pursuant to section 15 MCA 2005) that R has capacity to decide on contact with her natural family and others;
 - vii) I shall refuse the Applicant's deemed application for an order under the court's inherent jurisdiction; I find that R is not under undue influence, nor is she being coerced, pressured, or otherwise constrained, in her decision making in relation to contact with her family.
157. It may be that it will be necessary for me to consider any new tenancy agreement if / when R moves to the Cottage.
158. *Statement of key messages.* I have prepared a statement of key messages from this judgment for R, and for all those who work with her. This is set out in the Appendix to this judgment. It is not exhaustive; the parties may wish to add to it.
159. *Judicial letter / Judicial visit.* When the time is right (if requested, I shall allow for any appeal period to expire) I propose to write a short letter to R to explain that the proceedings have ended, and to set out some key outcomes from the proceedings. I propose to run this past Ms Turner from Miles & Partners before finalising it.
160. I would also like to give R the opportunity to meet with me again, should she wish to do so, so that I can explain to her myself what decisions I have made. At Mr McKendrick's suggestion, I will invite R to the Royal Courts of Justice to see the court room and the building; it is of course possible that she may prefer that I visit Castle Hill, which I am willing to do.
161. *Finally:* I would like to thank all the solicitors and counsel for their industry in this case, which has absorbed much time in and out of court over the last two years; particular thanks to those who appeared before me at this final hearing, and to Rhys Hadden (counsel) who has held the brief for XCC for some time prior to the final hearing. I hope that the other lawyers will understand if I extend particular thanks to Ms Turner from Miles & Partners for the conscientious and sensitive way in which she has represented the interests of R throughout the last two years on behalf of the Official Solicitor. Her attendance notes of her meetings with R have been extremely useful in me forming a clearer understanding of R, her wishes, and her needs.
162. That is my judgment.

12. Appendix: What should R be told

1. The court case has finished!
2. It has been agreed that Mum and Dad and AK will no longer have control over your money, or be in charge of decisions about your health and welfare; someone else will be appointed to make big decisions about your money now;
3. In the court hearing, the judge spoke with Mum, Dad, AK, PB, Ms TB and Dr. M;

4. That the Judge is very sure – from everything that he has heard – that your family love you very much; and that your family really want to see you again.
5. If you want to start seeing the family, or any of them, by Zoom to start with, that would be fine;
6. The Judge thinks it would be lovely if you could see S and her baby soon; everyone wants that to happen;
7. Ms TB wants to help you to start to see your family again; she said this to the Judge;
8. Everyone is very happy that you are to move to the Cottage;
9. Mum and Dad are very sorry that the police came to see you two years ago now. They wish that the police had not done so. They did not want that to happen, and they only called the police because they were worried about you. They realise that a visit from the police would have been very scary and upsetting for you and SA.
10. Mum and Dad are very sorry for the things they said when they saw you before Christmas.
11. Mum and Dad have been worried about you, but they realise that you are fine.
12. *[I shall allow the parties time to consider other points to raise with R].*