



Neutral Citation Number: [2023] EWCOP 64

Case No: COP13868207

IN THE COURT OF PROTECTION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/08/2023

Before :

MRS JUSTICE THEIS DBE

Between :

	A Local Authority	<u>Applicant</u>
	- and -	
	X	
	(By her litigation friend, The Official Solicitor)	<u>Respondent</u>

Mr Hilton Harrop-Griffiths (instructed by LA) for the **Applicant**
Ms Asma Nizami (instructed by **Burke Niazi Solicitors**) for the **Respondent**

Hearing date: 2 August 2023
Judgment date: 16 August 2023

Approved Judgment

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MRS JUSTICE THEIS DBE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that in any published version of the judgment the anonymity of X is strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Mrs Justice Theis DBE :

Introduction

1. This matter concerns an application by the local authority seeking orders pursuant to section 16 of the Mental Capacity Act 2005 (MCA 2005) for the removal of X from her home due to what they consider are the risks to her caused by her diagnosis of Obsessive Compulsive Disorder ('OCD') and Hoarding Disorder. X is represented in these proceedings through her litigation friend, the Official Solicitor.
2. When the proceedings were issued in December 2021 the local authority sought orders that would give them permission to access X's home to clear the clutter that had been hoarded, carry out repairs and monitor the situation going forwards. Some two years on, despite strenuous and creative attempts by the local authority, X's legal team and the court to bring about any change the position largely remains the same. As a consequence, the local authority sought orders that would, in effect, remove X from her home to enable the necessary work to be undertaken due to the level of risk to X and the unlikelihood of any change in the position that would avoid such an order being sought. X strongly resists such an order and, as a consequence, the Official Solicitor was neutral in relation to the order sought by the local authority.
3. It was agreed between the parties that no oral evidence was required. X joined the hearing by telephone, via the video link her solicitor had, and was able to address the court and make clear her views.
4. Having considered the written and oral submissions from both parties and having heard from X, I made the order sought by the local authority with reasons to follow. Those reasons are now set out below.

Relevant background

5. X is a single woman who lives on her own in a one bedroom maisonette rented from the local authority. The flat is on the first floor with a separate lounge, bathroom and kitchen. She has been a tenant of this property for over 27 years. The flat is part of a block of six flats and X's flat is in the middle property on the first floor.
6. Since about 2001 X has had a diagnosis of OCD and a Hoarding Disorder. Her last period of detention under the Mental Health Act 1983 (MHA 1983) was for a period of 8 weeks in 2007. At around that time concerns were first being raised about the level of clutter in X's flat.
7. In 2017 her treating psychiatrist, Dr Z, described her mental health as follows '*...that she could not function normally and that her contact with the outside world was minimal. She would not let anyone access her home and was herself effectively confined there, meaning that she could not attend the community health team base for therapy. Input from mental health services was therefore limited to supportive visits and monitoring....She has also found it extremely difficult to get rid of any belongings, meaning that over the years she has amassed many items that fill her property. For this reason she had not felt able to allow anyone enter her home for many years. In the last year this has led to something of a crisis in her conditions, following the local authority advising her that they would need to gain access to her*

property to carry out repairs. She is particularly concerned that they may insist on disposing of some of her belongings which would cause her acute distress’.

8. Dr Z was X’s treating psychiatrist for about six years up to the end of 2022. He did not consider there had been any change in X’s symptoms, they remained ‘*consistently severe*’.
9. In about 2017 the local authority housing and environmental health departments and mental health services commenced work with X to find a solution to the hoarding in the flat, which in 2018 extended to X’s two cars.
10. In November 2018 a notice pursuant to s287 of the Public Health Act 1936 was served on X requiring X to permit access to her property on 30 November 2018. X refused access on 30 November 2018.
11. X was informed of a further date (13 December 2018) when she should permit access to the property. X permitted limited access on 13 December 2018, some photographs were taken. The property was described as being ‘unwholesome and some areas were filthy’.
12. On 19 December 2018 X was served with a further notice to permit access.
13. In July 2019 the local authority used powers under the Public Health Act 1936 to obtain a warrant to enforce clearance. X permitted access to her property for 90 minutes when the scale of the hoarding was assessed at level 9 (where the grading is 1 – 9; 9 being the most serious).
14. A further attempt was made by environmental health services to clear the property. After threats by X to harm herself and the involvement of the police, some limited progress was made with the bottom of the stairs and the porch cleared. The attempts to continue this the next day were abandoned on the advice of the police after threats by X to harm the Environmental Health Officer with a pair of scissors, which X denies.
15. Attempts by the local authority in late 2019/early 2020 to agree a clearance plan with X were unsuccessful, as X consistently refused access to her flat. In December 2020 X was informed if she did not allow access to the flat on 7 January 2021 civil action would be taken by the local authority.
16. On 6 January 2021 X contacted the local authority to ask if they would consider an organisation called YZ. When the local authority contacted YZ they advised they could not assist.
17. In March 2021 a multi-agency meeting held by the local authority agreed consideration would be given to alternative companies. GH was contacted by the local authority, X was sent a letter to inform her she would be contacted by her care co-ordinator to discuss the new company. X stated she would not be available on the suggested date. X’s solicitor informed the local authority that she was willing, in principle, to co-operate but was concerned about any contact with others as X had not been vaccinated. The local authority provided details of the proposed company and provided details of how X could be vaccinated at home.

18. Also in March 2021 the local authority fire adviser produced a fire risk report in relation to X's property. It concluded the fire risk was '*substantial*' and the risk to neighbours '*tolerable*'. The clutter level was rated at 8-9.
19. From September 2021 the local authority sought further to engage with X and her solicitor. X attended a best interest meeting by telephone on 24 September 2021 and in early October 2021 X's solicitor proposed a further company MN. The local authority discovered that company did not offer a clearance service. They set out the dates when GH would be attending, on 11 and 18 November 2021. X informed the operations services manager for mental health that she wanted the 11 November 2021 appointment cancelled as she did not require their services. The local authority cancelled appointments with MN.
20. The local authority commenced these proceedings in December 2021 and since then has sought to engage X with various draft clearance plans.
21. At the first directions hearing on 31 January 2022 X attended and addressed the court. Directions were made that included for the local authority to liaise with X's GP, the local CCG, the local Mental Health Trust and GH to develop a clearance plan with the next hearing listed on 22 February 2022. That hearing was vacated on the basis that GH would undertake an assessment on 4 March 2022, a further hearing was listed on 26 May 2022.
22. The hearing on 26 May 2022 was vacated as GH had been unable to carry out an assessment as 5 appointments had been cancelled by X and during the appointment on 4 March 2022 X refused access to the property. The local authority wanted to further develop the clearance plan and to do so needed to instruct another company, AB. AB provided a specialist hoarding therapy service that is occupational therapy led, providing one to one psychological hoarding therapy, holistic assessments, interventions and practical support. A further hearing was listed on 29 July 2022.
23. On 10 June 2022 AB visited X. They were not given access to all the property but their conclusions include that the hoarding is at the level of 8/9, it poses a significant risk to X, a fire risk to X and her neighbours, any clearing will be a very slow process and the clearance plan should not be implemented in its current form as it risks X's mental health and makes no mention of addressing the psychological reasons for X's hoarding. AB considered that a client centred psychological approach is essential to minimise distress and promote X's autonomy.
24. On 6 July 2022 the local authority wrote to X to inform her that it would put on hold the clearance plan for decluttering her home to enable her to engage with AB about alternative ways to declutter it. A round table meeting took place on 21 July 2022. As a result of that an application was made to vacate the hearing on 29 July 2022 on the basis of the agreed way forward. That was for X to develop a working relationship with AB, so they could comment on what progress could be made with the clearance. The hearing was vacated and re-fixed for 14 September 2022.
25. In early August 2022 AB produced a timetable for working with X which set out that it planned to start work with her on 11 August 2022 and for four weeks they would alternately either attend at her home, or provide her with support by phone with the

aim of clearing the entrance to her home and the stairs, then undertake a review and make any further recommendations.

26. On 11 August 2022 X informed AB that she was unable to keep to the timetable as she was not well enough for them to visit her home.
27. On 12 August 2022 a meeting took place at which an initial plan for the clearance of the entrance and stairs was discussed. An initial plan is set out in the social worker's witness statement dated 22 August 2022.
28. On 2 September 2022 a meeting took place in the car park of X's home. X attended with her solicitor. Representatives from AB and the housing officer were also present. Access was provided by the housing officer to the flat below X's flat which it was subsequently agreed would be kept vacant, so it could be used for storage, and as a temporary decant for X's possessions.
29. A plan was agreed on 12 September 2022 which included for X to be provided with talking therapy by phone on 15 September 2022 and for AB to attend her home on 23 September 2022 with the aim of clearing the entrance and the stairs, followed by talking therapy on 7 October 2022 and an attendance at X's home on 14 October 2022.
30. The parties (including X) attended court on 14 September 2022. X attended remotely with the assistance of her solicitor. The court noted the progress and listed the matter again on 14 October 2022. The local authority informed the court that it may ask for an order at the next hearing that authorised a contingency plan that would include provision for X to reside elsewhere, whilst her home was decluttered.
31. On 28 September 2022 the local authority filed a draft contingency plan in the event that the work with AB was not successful, which included provision for X to be restrained whilst being moved elsewhere whilst her home was decluttered.
32. On 6 October 2022 the local authority housing department wrote to X with confirmation that her possessions would not be disposed of except in accordance with the decluttering plan agreed with AB.
33. On 6 October 2022 AB reported numerous calls to them by X seeking to avoid the planned appointment for 14 October 2022. AB referred to X's extreme anxiety which they thought was not conducive to a therapeutic relationship with her.
34. AB informed the local authority on 12 October 2022 that the planned appointment on 14 October 2022 had been cancelled as X was attending a family funeral on that day.
35. On 13 October 2022 X had an online remote meeting with the District Judge when she discussed her concerns about the property being cleared. By that stage, two appointments for practical sessions had been cancelled by X.
36. On 21 October 2022 X's GP provided an update about X's current medical and mental health and his view about the local authority's draft contingency plan.
37. On 10 November 2022 AB provided practical support for X in partially decluttering the entrance to her flat and the staircase. Some items removed were placed in the

empty flat below X's flat for sorting, while others were disposed of with her agreement. The session had to be cut short due to the actions of one of the neighbours.

38. Dr Z's report dated 13 November 2022 states he had not been able to speak to X despite trying on two occasions.
39. On 22 November 2022 a further court hearing took place. Directions were made including for the local authority to file a revised contingency plan and a report from Dr Z to take into account the impact on X should the draft contingency plan be implemented, and to address whether X has capacity to manage her items and belongings. Talking therapy/decluttering sessions with AB were planned for fixed dates in December 2022 and January 2023. The next hearing was listed on 23 February 2023.
40. The appointments with AB did not take place. The December appointment was cancelled by X. For the appointment in January Ms G, X's social worker, attended together with the housing officer and three members of staff from AB as arranged. X refused to open the door despite encouragement to do so from Ms G. X wanted access to the flat below hers to enable her to count her belongings, that was given and she did that. Since then the appointments have not taken place as X is hesitant to work with AB, subsequently reporting that she was no longer willing to work with AB. AB provided a report at the end of January 2023 stating *'we are now at a point where we cannot move forward due to [X's] behaviour and lack of insight. The working relationship between [AB] and [X] has become unsustainable'*.
41. X had contacted another company, YZ, and said she would work with them. She had suggested them previously, but then refused to work with them. The local authority did not support this alternative due to the history and the likelihood of X repeating the way she had dealt with AB and the risks of further delay.
42. At the hearing on 23 February 2023 attended by the parties, including X (who attended remotely with the support of her solicitor), the order records that AB agreed to three more decluttering sessions on dates set out in the order in March 2023, subject to X signing an agreement with them to allow the decluttering and agreeing not to cancel sessions, whether in advance or on the day. X agreed to sign the agreement and allow contractors engaged by the local authority to enter her flat in order to check the utilities and appliances. A further hearing was listed on 4 May 2023.
43. After the hearing X refused to sign the agreement as she considered the terms of the plan had been changed by AB.
44. At the end of February 2023 AB informed the local authority that *'we will not be proceeding further with [X]...from our clinical perspective [X] is unable to engage. Her intrusive and obsessional thoughts impact on her ability to engage in any therapeutic intervention. Every attempt that is made to progress is met with avoidance and any change is met with an extreme and irrational response. [X] lacks any insight and is completely accepting of her living environment despite it being hoarded and squalid. [X] does not acknowledge the risk her environment poses to herself, her neighbours or anyone entering the property'*.

45. The court made directions about the future management of the case and the matter was re-allocated to a Tier 3 judge. A roundtable meeting took place to discuss the draft clearance plan, the hearing on 4 May 2023 was vacated and adjourned to 10 May 2023. That hearing was vacated and further directions made.
46. On 25 July 2023 a professionals meeting took place to discuss the proposed clearance plan involving all the relevant bodies involved in the plan. The plan was agreed by all those who attended the meeting and signed by those who have a role in the implementation of the plan.
47. X's solicitor filed a further witness statement, in addition to the one he filed on 23 February 2023, exhibiting voicemails from X and a letter from X to the court. X referred to a further organisation that she wanted to be considered and described the progress she considers she has made and the impact on her of the proposed plan to separate her from her possessions.
48. The court heard oral submissions from the parties on 2 August 2023. The court's decision to grant the local authority application was announced at the conclusion of the hearing.

The evidence

Capacity

49. There are six reports from Dr Z over a period from January 2017 to December 2022. Although the initial reports from Dr Z concluded X had capacity to make the necessary decision and instruct solicitors by January 2019 Dr Z concluded that the severity of the symptoms of her OCD impacted on her ability to weigh information in the balance and that she lacked capacity to make decisions about letting people into her property for the purposes of inspection of clearing. Dr Z's report in January 2021 concluded X lacked capacity *'whether to allow people into her property for the purposes of inspection or clearing due to her reasoning about this being unduly influenced by active symptoms of mental disorder, namely severe OCD'*.
50. In the December 2021 report Dr Z concluded X still lacked capacity to make decisions about how potential risks relating to her hoarded items are managed. This is due to her decision making capacity being impaired by her OCD and Hoarding Disorder. Dr Z stated X's ability to weigh information relating to the risks from her hoarded belongings is impaired; *'similarly her ability to make decisions about disposing of [the items] is impaired by symptoms of her mental disorder...her ability to weigh relevant information [is] overwhelmed by the very extreme anxiety triggered both by having people in her property and by the hoard being diminished to any meaningful degree.'* Dr Z considered X had capacity to conduct proceedings.
51. In his fifth report dated November 2022 Dr Z attempted to speak to X twice but X did not answer his calls. Regarding the likely impact on X's mental health of the contingency plans being implemented, he observed that X had threatened suicide and that she would not be able to tolerate being away from the property whilst clearance takes place without worrying to a severe degree that valuable items are being disposed of. Dr Z considered there was a real risk of impulsive behaviour and that it was

difficult to predict what the longer term effect of the proposed contingency plan may have on X's mental health.

52. Prior to the final report in December 2022, Dr Z had managed to speak to X on the telephone. Dr Z said X's symptoms of OCD and Hoarding Disorder had remained consistently severe over the last 6 years with no real change in the symptoms. Dr Z concluded X continues to lack capacity to make decisions about how her items and belongings are managed. The severity of X's symptoms continue to render her unable to weigh in the balance information relevant to making decisions in regard to managing her property, so whilst she recognised concerns about her hoarded belongings she remains compelled to buy more belongings. Dr Z also considered the impact on X of the clearance plan being implemented.
53. Ms G is a social worker and Approved Mental Health Practitioner and has been allocated to work with X since June 2022. She has filed six statements in the proceedings as well as the recent detailed capacity assessment. In July 2023 she prepared a capacity assessment based on her contact with X over the previous 12 months. She concluded that X lacked capacity to make decisions regarding care and support, residence, her items and belongings and conducting these proceedings. This is due to the impact of the symptoms of her OCD and Hoarding Disorder on X's ability to process information and weigh up relevant information to enable her to reach a decision. Ms G considers that X is unable to weigh up the risks involved to herself and others with leaving the property as it is. It is a balanced and careful report providing clear rationale to underpin the conclusions reached.
54. In addition to this material the court also directed a s49 MCA 2005 report. It was provided by Dr S in March 2023. He did not have any direct contact with X and his views accorded with those of Dr Z.

The level of risk

55. X has consistently refused access to the property since 2007. Since 2017 the local authority environmental health department, working together with the mental health services, have been trying to find a solution to X's hoarding. There have been repeated appointments made that X has not kept.
56. In September 2018 X is recorded as informing a housing officer that she would take her own life if anyone attempted to gain access to the flat.
57. In December 2018 the local authority environmental health officers were given limited access to the property. X refused further access resulting in a warrant being issued by the Magistrates Court in July 2019. X let the environmental health officers in for 90 minutes. They were able to take photographs and the level of hoarding was rated at 9, with 9 being the highest and most serious level. It was reported there was evidence of the hoarding extending to the loft space. There is no gas supply to the property but X is reported to use fan heaters, which increases the risk of fire. In the event of an emergency the emergency services would find it difficult to enter in order to provide assistance to X due to the level of hoarding.
58. A further attempt was made to enter the property in September 2019, whilst initially X threatened to harm herself, the police attended and persuaded X to open the door.

Although some decluttering was done (the bottom of the stairs and the front porch were cleared) it was very difficult to do as a result of X's interruptions, due to her concern and anxiety that something would be thrown away. There was a further attempt made to continue the decluttering the following day, when it is alleged X threatened the Environmental Health Officer with a pair of scissors, something which X strongly denies. The police attended and advised the decluttering work to stop.

59. The local authority, on Dr Z's advice, engaged with specialist agencies to try and re-start the decluttering work, but each attempt failed due to X denying access to the flat.
60. In March 2021 the local authority housing fire adviser produced a report in which the risk of fire and the consequences of such a fire for X were described as substantial risk/intolerable. As regards the risks caused by heating using electric fan heaters the report notes *'With the amount of combustible material throughout the property, the risk from fire is therefore very high...the staircase displays a highly obstructed route being another area that items are stored and is an extremely high trip and slip hazard even without the added urgency of potentially having to exit in a fire situation.'* The report assesses the risks to neighbours of a fire starting in X's property as a tolerable risk.
61. Following the commencement of these proceedings and the instruction of AB in May 2022 they gained access to the flat in June 2022. They reported a considerable amount of clutter just inside the entrance and on the internal staircase; it was described as being waist high with no clear space to walk up, as the photographs confirm. At a subsequent attendance at the flat, in November 2022, AB were able to remove some clutter before a neighbour's behaviour caused X so much distress that she was unable to engage any further. AB described what others have about X constantly having to check if anything of value and importance has been removed inadvertently from her flat. The report notes *'[X's] OCD was exacerbated by the work that we were doing. [X] has a checking ritual which was present throughout the process. She insisted on checking the pockets and shoes of all staff for any of her items. In particular 'pieces of paper that may have fallen in'. She became fixated on what items were in the staff's car and was counting cleaning rags and other items in the boot and then she began looking at staff's personal effects in the back seat of the car.'*
62. Following this appointment AB's attempts to arrange further visits with X were all cancelled or changed by X at the last minute. AB wrote to the local authority in February 2023 stating *'From our clinical perspective X is unable to engage. Her intrusive and obsessive thoughts impact on her ability to engage in any therapeutic intervention. Every attempt that is made to progress is met with avoidance and any change is met with an extreme and irrational response...[X] does not acknowledge the risk her environment poses to herself, her neighbours or anyone else entering the property.'*
63. A detailed plan was drawn up for 3 appointments in March 2023 as requested by the court and X agreed to this. The plan made clear that if X refused access to the property to carry out the plan the case would be referred back to the court. X subsequently refused to sign the agreement and AB confirmed to the local authority they could no longer work with X.

X's wishes and feelings

64. X has remained consistent throughout the period the local authority have been engaged with her seeking to declutter her flat; she strongly resists any such action.
65. Whilst there have been limited periods when she has co-operated, these have only been for relatively short periods of time before her default position returns of refusing access to the flat and/or engaging with any of the professionals and cancelling appointments.
66. That has been her position expressed to the various local authority officials who have sought to engage with her, her social workers, her psychiatrist and the specialist agencies engaged by the local authority.
67. On a number of occasions she has threatened suicide if any action is taken that would result in her being separated from her possessions.
68. I have read the letters she has written to the court and listened to the voicemails she has left for her solicitor that she wanted to be listened to by the court. The court is left in no doubt from having considered that material what X's views are.

Legal framework

69. There is no issue between the parties as to the relevant legal framework. They each refer the court to the helpful summary set out in the schedule in *AC and GC* [2022] EW COP 39.
70. The MCA 2005 provides as follows:

1. The principles

- (1) The following principles apply for the purposes of this Act.
- (2) A person must be assumed to have capacity unless it is established that he lacks capacity.
- (3) A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
- (4) A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
- (5) An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
- (6) Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

2. People who lack capacity

- (1) For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter

because of an impairment of, or a disturbance in the functioning of, the mind or brain.

(2) It does not matter whether the impairment or disturbance is permanent or temporary.

(3) A lack of capacity cannot be established merely by reference to—

(a) a person's age or appearance, or

(b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about his capacity.

(4) In proceedings under this Act or any other enactment, any question whether a person lacks capacity within the meaning of this Act must be decided on the balance of probabilities.

(5) No power which a person (“D”) may exercise under this Act—

(a) in relation to a person who lacks capacity, or

(b) where D reasonably thinks that a person lacks capacity,

is exercisable in relation to a person under 16.

(6) Subsection (5) is subject to section 18(3).

3. Inability to make decisions

(1) For the purposes of section 2, a person is unable to make a decision for himself if he is unable—

(a) to understand the information relevant to the decision,

(b) to retain that information,

(c) to use or weigh that information as part of the process of making the decision, or

(d) to communicate his decision (whether by talking, using sign language or any other means).

(2) A person is not to be regarded as unable to understand the information relevant to a decision if he is able to understand an explanation of it given to him in a way that is appropriate to his circumstances (using simple language, visual aids or any other means).

(3) The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him from being regarded as able to make the decision.

(4) The information relevant to a decision includes information about the reasonably foreseeable consequences of—

(a) deciding one way or another, or

(b) failing to make the decision.

4A Restriction on deprivation of liberty

(1) This Act does not authorise any person (“D”) to deprive any other person (“P”) of his liberty.

(2) But that is subject to—

(a) the following provisions of this section, and

(b)section 4B.

(3)D may deprive P of his liberty if, by doing so, D is giving effect to a relevant decision of the court.

(4)A relevant decision of the court is a decision made by an order under section 16(2) (a) in relation to a matter concerning P's personal welfare.

16. Powers to make decisions and appoint deputies: general

(1)This section applies if a person ("P") lacks capacity in relation to a matter or matters concerning—

(a)P's personal welfare, or

(b)P's property and affairs.

(2)The court may—

(a)by making an order, make the decision or decisions on P's behalf in relation to the matter or matters...

71. The Supreme Court in *A Local Authority v JB* [2021] UKSC 52 stated at para 61 that the MCA 2005 applies a 'function' or 'understanding' approach to capacity focusing on the personal ability of the person to make a particular decision. At paras 63-79, the Supreme Court clarified the correct ordering of the capacity test (i.e. starting with the question of whether the person is functionally capable or incapable of understanding, retaining, using and weighing the relevant information and communicating their decision). It also emphasised the importance of (1) identifying the precise matter upon which the person's decision is required; and (2) identifying the information relevant to the decision. It also made clear that the reasonably foreseeable consequences of making (or not making) the decision that the person must be able to understand, retain, use and weigh can include the consequences not just for the person but for others.

72. In summary, as set out in *AC and GC (ibid)* there are three elements to be considered when determining a question of capacity:

1. Is the person able to make their own decision (with support if required)?
2. If they cannot, is there an impairment or disturbance in the functioning of their mind or brain?
3. If so, is the person's inability to make the decision because of the impairment or disturbance?

73. The Mental Capacity Act 2005: Code of Practice provides guidance at Section 5 regarding the issue of best interests. At 5.13, the Code recognises the wide and flexible range of factors that may be relevant to a best interests' decision:

"Not all factors in the checklist will be relevant to all types of decisions or actions, and in many cases other factors will have to be considered as well, even though some of them may then not be found to be relevant."

74. The leading case regarding the application of the best interests criteria is the decision of the Supreme Court in *Aintree University Hospitals NHS Foundation Trust v James and others* [2013] UKSC 67. At [39] and [45] Baroness Hale stated:

‘The most that can be said, therefore, is that in considering the best interests of this particular patient at this particular time, decision-makers must look at his welfare in the widest sense, not just medical but social and psychological they must try and put themselves in the place of the individual patient and ask what his attitude to the treatment is or would be likely to be; and they must consult others who are looking after him or interested in his welfare, in particular for their view of what his attitude would be.’

[...]

‘The purpose of the best interests test is to consider matters from the patient's point of view. That is not to say that his wishes must prevail, any more than those of a fully capable patient must prevail. We cannot always have what we want. Nor will it always be possible to ascertain what an incapable patient's wishes are. But insofar as it is possible to ascertain the patient's wishes and feelings, his beliefs and values or the things which were important to him, it is those which should be taken into account because they are a component in making the choice which is right for him as an individual human being.’

Submissions

75. On behalf of the local authority, Mr Harrop Griffiths, makes clear that the local authority have sought to engage with X over an extended period of time. They now consider X's best interests are met to in having the flat decluttered and that can only be achieved if X is accommodated elsewhere while it is done. He submits they have developed a contingency plan following wide consultation in order to achieve this, with a heavy focus on seeking to engage and work with X. In the event that is not possible then in a wholly supported way, ultimately with the use of restraint, for her to be removed from her flat.
76. He submits first it is necessary for the court to determine whether X has capacity to make decisions about her belongings. He outlines the decisions to be made by or on behalf of X are (1) whether to accept support in order to declutter the flat; (2) whether to allow access to the flat for that purpose; and (3) whether to be present while the flat is decluttered.
77. The relevant information for those decisions is the clutter in the flat is a hazard to X; as a consequence her flat needs to be decluttered; X needs support to declutter it; it can only be decluttered if she allows access to her flat for others to declutter it; and, it can only be decluttered if she is not in the flat while this is done.
78. He relies on the reports from Dr Z where he concludes that X's ability to weigh the relevant information is impaired due to the symptoms of her mental disorder, namely severe OCD and Hoarding Disorder. X has a compulsion to buy items that is beyond her conscious control and not amenable to being weighed in the balance against other relevant information and that the result of her resisting that compulsion would be overwhelming anxiety. Mr Harrop Griffiths submits that whilst X may be able to understand and retain certain information, she is unable to use or weigh it due to

pathological avoidance of the anxiety that drives her behaviour. As a consequence, her anxiety renders her unable to use or weigh the information that she needs support and that she needs to be away from her flat while it is provided. This view, he submits, is supported by the evidence of Ms G.

79. If the court considers X lacks the relevant capacity, Mr Harrop-Griffiths submits X's best interests require the court to make the orders sought by the local authority given the risks posed to X's safety and well-being by the severe extent of the hoarding. The evidence, he submits, demonstrates that this can only be done with X living elsewhere and not being able to return to the flat whilst that is done. The local authority seeks orders that X is taken to an appropriate supported living placement and for an order to be made depriving her of her liberty there to prevent her returning to her flat until the necessary work has been done. The local authority recognises that the order it seeks interferes with X's Article 8 rights to respect for her private life and home but submit such orders are justified and proportionate bearing in mind the risks to X, such orders being necessary for the protection of her health and only for a temporary period.
80. Ms Nizami, on behalf of the Official Solicitor, makes clear that in the light of X's strongly held wishes they take a neutral position regarding the orders sought by the local authority.
81. In relation to capacity they get to the same conclusion as the local authority, but by a different route. Ms Nizami submits that the key 'matters' for the purposes of section 2 (1) of the MCA 2005 in respect of which the court is evaluating whether X is unable to make a decision are as follows: (a) does X have capacity to make decisions about her residence; (b) does X have capacity to make decisions about her care/support; (c) does X have capacity to make decisions about her items and belongings.
82. As regards residence Ms Nizami submits this includes relevant parts of the tenancy agreement, which if they are not complied with may mean X can no longer continue to live there. There is evidence that due to the levels of anxiety caused by her mental disorder X is unable to weigh the relevant information. As Ms G stated X *'struggles to understand the terms and conditions of her tenancy and risks associated with the number of items within her home'*. The evidence demonstrates the repeated attempts to engage with X to clear the property with no success.
83. Turning to the issue of X's care and support, her assessed needs include being unable to use her home without support safely and maintain a habitable home. X has repeatedly told professionals she wants support, so understands her need for it at that level but is not able to make use of the support. So, submits Ms Nizami, X is not able to use and weigh that information to a sufficient level that would enable her to engage with the support that is offered. As Ms G notes in her capacity assessment *'...even though she was aware of the instructions from the court and had previously agreed to the plan with [AB], she was unable to use and weigh up the relevant information and fully understand the consequences of her decision not to engage in the support being offered. [X's] compulsive purchasing of items result in excessive hoarding within her home, which has meant she has been unable to maintain a habitable home due to the volume of accumulated personal belongings, and refusal of entry for relevant professionals to provide support for her to manage her hoarding behaviour and items. Her entrenched and irrational belief system prevents her from agreeing for her landlords to carry out necessary safety inspections or maintenance works in the*

interests of her own health and safety or engage with professionals to declutter her home’.

84. This view, Ms Nizami submits, accords with the observations by AB that *‘[X] is unable to engage. Her intrusive and obsessive thoughts impact on her ability to engage with any therapeutic intervention. Every attempt that is made to progress is met with avoidance and any change is met with an extreme and irrational response. [X] lacks any insight and is completely accepting of her living environment despite it being hoarded and squalid.’*
85. In respect of items and belongings Ms Nizami submits the court should consider the relevant information outlined in *AC and GC (ibid)* at [14] namely the
- ‘(1) *Volume of belongings and impact on use of rooms*: the relative volume of belongings in relation to the degree to which they impair the usual function of the important rooms in the property for you (and other residents in the property) (e.g. whether the bedroom is available for sleeping, the kitchen for the preparation of food etc). Rooms used for storage (box rooms) would not be relevant, although may be relevant to issues of (3) and (4).
 - (2) *Safe access and use*: the extent to which you (and other residents in the property) are able or not to safely access and use the living areas.
 - (3) *Creation of hazards*: the extent to which the accumulated belongings create actual or potential hazards in terms of the health and safety of those resident in the property. This would include the impact of the accumulated belongings on the functioning, maintenance and safety of utilities (heating, lighting, water, washing facilities for both residents and their clothing). In terms of direct hazards this would include key areas of hygiene (toilets, food storage and preparation), the potential for or actual vermin infestation and risk of fire to the extent that the accumulated possessions would provide fuel for an outbreak of fire, and that escape and rescue routes were inaccessible or hazardous through accumulated clutter.
 - (4) *Safety of building*: the extent to which accumulated clutter and inaccessibility could compromise the structural integrity and therefore safety of the building.
 - (5) *Removal/disposal of hazardous levels of belongings*: that safe and effective removal and/or disposal of hazardous levels of accumulated possessions is possible and desirable on the basis of a “normal” evaluation of utility.’
86. When the evidence from Dr Z and Ms G is considered against that framework, together with the evidence from AB of the steps they sought to take and the evidence of the conditions in the property provided by the fire safety report and the photographs, Ms Nizami submits it demonstrates X is unable to use and weigh the relevant information as a result of the symptoms of her mental disorder.
87. All of these considerations lead the Official Solicitor to accept that X lacks capacity to conduct these proceedings, relying on the evidence of Ms G, taken together with the other evidence. Put simply, X does not understand the problem, so is unable to

consider the relevant information about it and the advice, and then to weigh the information in the balance when reaching a decision. This is evidenced by her letters to the court where she is keen for the court to know information, which is not always relevant to the proceedings.

88. Finally, the Official Solicitor accepts that X lacks capacity regarding property and financial affairs. The evidence from Ms G demonstrates that X acts impulsively when making purchases. Once purchased she does not open the parcel and as Ms G observes X *'does not appear to understand the consequences of her continued purchasing and how this can impact her home and tenancy, as mentioned, she cannot see a link between her purchasing items and this adding to items in her home, which has subsequently resulted in health and safety concerns resulting in restricted movement within the premises'*.
89. The Official Solicitor submits X's position is a complex situation, with competing factors relating to best interests. The clearance plan sought by the local authority would be a significant interference with X's fundamental rights under the ECHR, in particular her right to private life under Article 8 and liberty under Article 5. X has lived in the property for many years and any removal from the property is likely to cause X significant distress. X has consistently objected to any plan that would separate her from her property and possessions. In his most recent report, Dr Z noted regarding his conversation with X that he asked how she would feel about not being present whilst the property was cleared and states in his report that *'She said the idea was 'inhuman' and would feel 'worse than being burgled'. She said that if she were not there to be involved in the clearance that this 'would tip her over the edge' into a suicidal state of mind as she 'couldn't live without my belongings''*. Dr Z considered that the risk of X becoming actively suicidal were the contingency plan carried out *'needs to be taken seriously given the very likely high levels of distress that will accompany any clearance of her belongings'*. Dr Z did not consider any measures could be taken to reduce her anxiety as it is fuelled by symptoms of her mental disorder and is not amendable to rational argument. As the proposed plan has not been tried before Dr Z stated *'...it is not possible to know whether [X] would in fact become actively suicidal were the contingency plan to be carried out, however I agree with [Dr T's] view that this risk needs to be taken seriously given the very likely high levels of distress that will accompany any clearance of her belongings'*.
90. Ms Nizami details in her written submissions the various ways X has made clear the importance of her possessions to her in the letters she has written to the court, the messages the court has listened to and what she has said to her solicitor. X feels she has been making some progress and refers to the assistance she has from her friends, the help she gets from the dustmen and how they have enabled her to get rid of her possession each week. X expresses her concern about the way she has been treated by the local authority and that she feels unsupported by them. X would like to access support from the resource she has suggested and is very concerned about being away from her flat whilst she is awaiting receipt of hospital appointments for ongoing health issues.
91. In her written submissions Ms Nizami has helpfully set out in tabular form the factors for and against approving the clearance plan proposed by the local authority.

Discussion and decision

92. The Official Solicitor's assessment is right; this is a complex situation. Before the court can consider any aspect of X's best interests the position regarding her capacity needs to be addressed.
93. As regards the differing ways the issue of capacity is approached by the parties, I consider the approach adopted by the Official Solicitor is to be preferred. In the context of this case to limit it to decisions about items and belongings risks the focus being too narrow. I prefer the more holistic approach that looks at X's capacity to make decisions about her residence, her care/support and her items and belongings. It is only by looking and considering that wide base can the court be sure each aspect of this difficult situation has been taken into account and means all the relevant 'matters' in s 2(1) of the MCA 2005 have been considered.
94. The information relevant to these decisions under s3(1) MCA 2005 includes the obligations under the tenancy agreement; what areas X needs support with; what type of support; what are the consequences if X does not have that support or she refused it; the volume of belongings and the impact on use of rooms; safe access and use; creation of hazards; safety of the building and the removal or disposal of hazardous levels of belongings.
95. The evidence from a number of different sources speaks with one voice and establishes the following:
 - (1) As a result of the symptoms of her mental disorder X is unable to use and weigh the relevant information regarding her residence, in particular the impact of her actions on the tenancy agreement she has and the risks on her continuing to be able to reside there unless there is any change. The evidence from the local authority establishes that. It sets out the repeated attempts by the housing and environmental services, over many years, to gain access to the flat, which X consistently and persistently thwarted.
 - (2) Over an extended period of time, lasting over 5 years, X has been unable, due to the severity of the symptoms of her mental disorder, to use and weigh the information that she needs support to a sufficient level to enable her to engage in any meaningful way with that support. The evidential foundation for this rests on the detailed involvement of AB between May 2022 to March 2023. Their structured, staged, creative and cautious plans demonstrated their flexibility. X was unable to engage in any meaningful way with this holistic approach, including the therapeutic support offered.
 - (3) In relation to her items and belongings, X has shown over an extended period of time the symptoms of her mental disorder prevent her from engaging with any intervention to bring about any change in the chronic situation regarding her items and belongings. The evidence establishes that situation within the home has not changed and remains at the highest level of clutter rating. X demonstrates no insight into the situation she lives in, the inherent risks that exist for her in that situation continuing and has demonstrated a complete inability to weigh in the balance information relevant to making decisions in regard to managing her items and belongings.

- (4) By virtue of her OCD and Hoarding Disorder, X is unable to understand the problem that would, in turn, enable her to obtain, receive and understand relevant information about it which would include advice. She cannot weigh the information in the balance when reaching a decision. As a result of the symptoms of her mental disorder, she is unable to understand the initial problem, namely what to do regarding the level of hoarding at her property. Without that understanding she cannot have litigation capacity that would require her to weigh up the needs for clearance and the risks of her squalid living conditions continuing unchanged.
- (5) In Ms G's detailed capacity assessment, which is not the subject of challenge, she concludes X lacks capacity with respect to making decisions about her property and financial affairs. That is supported by the analysis of impulsive purchasing of items and the impact they have on the health and safety concerns, and restricted movement within X's property.
96. I am satisfied in the light of the evidence that X lacks capacity in relation to residence, care and support, her items and belongings, property and financial affairs and conducting these proceedings.
97. In relation to best interests the court is required to consider the wide canvas of evidence.
98. A factor that the court needs to weigh carefully in the balance is X's wishes and feelings. Her descriptions to Dr Z, her legal team and the court could not be clearer. She strenuously objects to any steps that would seek to remove her from her home and her possessions. It is very likely that any such step would cause her very great distress and acute anxiety. She has described how such a step could tip her over into a suicidal state of mind. Dr Z's view is that the risk of this happening needs to be taken seriously *'given the very likely high levels of distress that will accompany any clearance of her belongings.'* Whilst the evidence demonstrates that she has expressed these views in very strong terms, she has also demonstrated an awareness that this option is being seriously considered. She has known for some time it is an option that the court was going to be invited to consider. In her more recent messages and just prior to this hearing, X has produced a list of things that are important to her that she would want to make sure are kept safe, perhaps on one level showing some recognition of the reality that the court may make the order sought by the local authority.
99. It is right to weigh in the balance that X has lived in the property for a long time, most recently for a number of years in the squalid conditions referred to in the evidence. To date X has managed living in those conditions. X has not had to live in any shared accommodation for many years. X did make some limited progress with AB and has expressed a wish to work with another organisation. Undoubtedly, the orders that are sought constitute a significant interference with her Article 8 rights as her wishes are to be left alone in her home.
100. Against these strong factors it is necessary to weigh in the balance the significant risks to X of remaining in the property without any change. The risks to her come from a number of different directions. The risk of fire was assessed over 2 years ago as substantial, there is nothing to suggest in the evidence that has changed. The

assessment in 2022 was that the hoarding level was at 8/9, very nearly the highest level. Whilst there was a some limited change in the hall and stairway, as demonstrated by the photographs. It was only a marginal change and it is very likely the level remains at the same high number as so graphically illustrated in the photographs in the papers. This means that in addition to the fire risk, the risk to X of tripping or falling, of the emergency services, if required, being unable to get to her, remain significant. This applies in the context of what X describes about her continuing health difficulties and the need to attend medical appointments that may, in due course, require treatment at home. The condition of the property interferes with X's every-day living, again resulting in further risks for X. In addition, there are the inherent risks to her of the property having been left for years without any proper maintenance. Overall, in my judgment, the continuing risks to X remain very high if no steps are taken to remove the clutter from her home.

101. I also have to weigh in the balance whether any further steps can be taken that would be less of an interference in X's Article 8 rights. Sadly, I have reached the conclusion that there is no further support that can be given that would bring about any real change. The local authority have shown considerable resourcefulness in trying to find a way to help support X to take the necessary steps to bring about real change to the circumstances which she lives in. The local authority, together with the medical and mental health professionals, have been patient, creative and resilient in what have been the very challenging circumstances they have had to manage over a number of years. Despite the steps taken, with appropriate support for X, the situation has remained largely unchanged. In my judgment, there is no basis for any further delay to try another organisation which is very likely to fail, as others have done. The action required to remove the clutter from the home can only take place in the absence of X.
102. The move proposed in the clearance plan is for a limited period of time with a plan that enables X to return to her property, once the works required have been undertaken. The proposed supported living placement is not far from X's home. It will provide for X's privacy as she will have her own bedroom, bathroom and cooking facilities and X will have access to additional support. The plan involves AB who know X and understand the importance X attaches to her possessions.
103. The detail in the contingency plan provides for a multi-disciplinary staged approach with the focus very much on seeking X's co-operation with appropriate specialist support available. Much of the detailed discussions relating to the plan has been done in collaboration with the Official Solicitor, in the event that the court did grant the order. It is right to acknowledge that it does, in the event of no co-operation from X, provide for restraint to remove X from the premises that is proportionately and appropriately overseen by mental health and medical practitioners.
104. Having stood back and looked at the wide canvas of evidence, the court is really faced with a binary best interest choice. Either X remains in the property with no prospect of any change which is very likely to get worse, in a situation that is described as being a significant fire risk to her, along with the many other risks outlined above, or steps are taken to seek to bring about change. However, this latter course is not without its own risks bearing in mind X's very strongly held wishes, the very high level of distress she is likely to experience, her threats of suicide, which need to be taken seriously, and the significant interference in her Article 8 rights that such a move entails. There is no middle ground that has any credible evidence to

support it; based on past experience any further attempt to support X to bring about changed is certain to fail.

105. I have reached the conclusion that X's best interest are served by the local authority application being granted. In doing so I readily accept the considerable risks that are being taken in overriding X's expressed wishes and the consequences for her of such a step being taken, bearing in mind her mental disorder and the suicide threats she has made. Those matters weigh heavily in the balance. Having said that, I consider the balance is tipped the other way by what I regard as the substantial and increasing risks X would be left exposed to if this order was not granted. They are serious risks that would have a direct impact on X's health and safety. There is no prospect of any other step being taken that would bring about out any meaningful change. The evidence set out in the detailed contingency plan includes provision that would seek to mitigate the impact on X of what is proposed by the multi-disciplinary approach, where X would have the continuing involvement and support of the Official Solicitor and a hearing to review the next steps by the court.
106. In approving the steps outlined in the contingency plan it will also mean that X's best interests will be served by an order that deprives X of her liberty in the temporary supported accommodation she will move to. That order will ensure the main purpose of the order, to clear X's flat, takes place with the aim of enabling X to return to the property.