Neutral Citation Number: [2024] EWCOP 64 (T3)

Case No: COP 14187074

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

The Law Courts
Bishopgate
Norwich
NR3 1UR

Date: 10th October 2024

Before:

Mrs Justice Arbuthnot DBE

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Between :

NORFOLK COUNTY COUNCIL	**Applicant**
- and -	
CA (by her litigation friend, the Official Solicitor)	**1st Respondent**
- and -	
DA	**2nd Respondent**
- and -	
EA	**3rd Respondent**

- -

Oliver Lewis (instructed by NP Law) for the **Applicant**
Malcolm Chisholm (instructed by Irwin Mitchell) for the **1st Respondent**
DA (litigant in person) is **2nd Respondent**
EA (litigant in person) is **3rd Respondent**

Hearing dates: 2nd to 7th October 2024

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JUDGMENT – Fact-Finding, Capacity, Inherent Jurisdiction, Injunctive relief

Mrs Justice Arbuthnot DBE:

Introduction

1. On 18th December 2023, the court issued an application brought by Norfolk County Council under sections 16 and 22 of the Mental Capacity Act 2005. On 25 April 2024, the High Court issued a Part 8 claim form, the local authority having made a parallel application under the inherent jurisdiction of the High Court for orders to protect CA in the event that the Court of Protection finds that CA has capacity to make decisions.
2. The first respondent is CA who is aged 79 born in 1945 and whose litigation friend is the Official Solicitor who was represented by Mr Chisholm. She has been present throughout and from time to time has made her views clear.
3. In 2021 she was diagnosed with dementia or Alzheimer's which may not have been a correct diagnosis.
4. The second and third respondents are CA's daughter and the first respondent's ex-husband respectively. They do not live with CA.

Fact-finding

5. On 2 October 2024, I conducted a fact finding in relation to nine allegations made against the second respondent and two made against the third respondent.
6. The second respondent holds lasting powers of attorney in respect of her mother's property and affairs which was made on 30 September 2021 and registered on 28 May 2022 whilst she holds lasting powers of attorney in relation to health and welfare which was registered on 10th June 2022.

7. In February 2023, CA was in hospital with a chest infection and was not discharged until 4th May 2023. The discharge had been delayed over disagreements over her care in the community.
8. NCC were made aware of a number of concerns raised by healthcare professionals whilst CA was in hospital.
9. From 23rd October 2023, a care plan was put in place and the first respondent has since then lived in her home with 24 hour care. There is a live-in carer, who is entitled to a two-hour break each day during which a replacement carer attends.
10. At the first hearing in this matter before HHJ Beckley on 17 January 2024, DA gave an Undertaking to the court not to have unsupervised contact with her mother. I think it is fair to say that their relationship is tumultuous, with loud argument between the two and over the years, a number of professionals have made complaints about the second respondent's approach to her mother.
11. There is a lengthy schedule of allegations made by the local authority. NCC considers CA to be a vulnerable adult and says that the first respondent has coercively controlled aspects of CA's life and it says she has been assaulted by the second respondent.
12. The second respondent denies some of the allegations and does not agree that CA lacks capacity to make the relevant decisions.
13. The proceedings have been separated into two parts. First, on 2nd October 2024, I heard evidence relating to the allegations made by NCC. I heard from Ms Haverson, the team manager from Norfolk County Council, Ms X a once full-time carer for the first respondent (about whom I varied the transparency order to prohibit publication of her name), DA the second respondent, and EA the third respondent. NCC has applied to

restrict CA's contact with the second and third respondent and I have found it necessary to conduct a fact-finding hearing because the factual basis upon which I am asked to make best interests decisions - under the Mental Capacity Act 2005 or in the parallel inherent jurisdiction - application are disputed. The first part of this judgment deals with the fact-finding aspect, before turning to capacity, best interests, the inherent jurisdiction and injunctive relief.

Law on fact-finding

14. The second and third respondents are litigants in person so I will explain to them the approach a court takes to allegations made by a party in a Court of Protection case.
15. At an earlier hearing I ordered that the many allegations made by the applicant to show a pattern of control and influence, be limited to eleven.
16. The following is a distillation of the principles which the Court will apply to the evidence that I have heard:

    a. The burden of proof is on the NCC which makes the allegations in this case. It must prove that the events set out in the schedule of allegations took place.

    b. The respondents do not have to prove that they did not do what they are said to have done. They do not have to prove an alternative case to the one put forward by NCC.

    c. The standard of proof is on the balance of probabilities. If NCC does not prove on the balance of probabilities that a event or he various events described took place then the court will disregard those allegations in the future.

d. Findings must be based on evidence placed in the context of all the evidence. Evidence cannot be assessed in separate compartments. Findings cannot be based on anything less than that. Inferences may be drawn from the evidence, but speculation, suspicion, surmise or assertion are not proof.

e. Findings can be drawn from the account and demeanour of a party or a witness or an assessment of the family, but the court should bear in mind that memories fade and change with time, sometimes matters are remembered that were not remembered initially but the court should be careful that it is not imagination that is becoming more active or memory being affected by strong emotion or mental health challenges.

f. I must bear in mind that a witness may come to honestly believe something happened or did not happen when it bears either no or little relation to the events that occurred at the time.

g. I am reminded that in assessing and weighing the impression which the Court forms of all the witnesses, the Court must also keep in mind the observations of Macur LJ in *Re M Children* [2013] EWCA Civ 1147 at paragraphs 11 and 12:

> *"Any judge appraising witnesses in the emotionally charged atmosphere of a contested family dispute should warn themselves to guard against an assessment solely by virtue of their behaviour in the witness box, and to expressly indicate that they have done so".*

h. Hearsay evidence is admissible but the weight to be given to that evidence is a matter for the Court. The Court will look to see for example if it is receiving multiple hearsay or whether the evidence is contemporaneous with the events it describes, whether there was a motive for the witness to falsify their evidence or whether from other evidence it is clear that the hearsay is or may be wrong or mistaken. This is a particularly relevant consideration for the Court where a number of allegations are not directly from witnesses but are taken from hospital complaints which were set out in local authority records.

i. When it comes to hearsay, allegations 11, 12, 15, 19 and 20 related to a period before Ms X started caring for CA. The evidence was to be found in local authority notes and a number of allegations were made by hospital staff or the hospital social worker.

j. I did not find it would have been reasonable or practicable to produce the original staff who had made observations about the way DA was treating her mother, some were unnamed. On the whole the hearsay statements were recorded contemporaneously and I could not see that the hospital staff had any motive to misrepresent what they had observed.

They became so concerned about the way DA was treating her mother that they raised three safeguarding alerts over two years. What they told social services was then recorded in a log which was produced by the witness Ms Haverson. I had no reason to think what the log said was untrue, particularly as it showed a pattern of

behaviour of DA that has continued for a number of months if not years with the majority of the behaviour accepted by DA.

Lies

17. The guidance in *R v Lucas* [1982] QB 720 and *R v Middleton* [2000] TLR 293 is that a conclusion that a person is lying or telling the truth about point (a) does not mean that he or she is lying about or telling the truth about point (b). There are many reasons why a person might lie including (as examples given by Lord Lane in *Lucas*) an attempt to bolster up a just cause, shame, or an attempt to conceal disgraceful behaviour from their family.

18. As to the application of the *Lucas* direction in family proceedings, the Court of Appeal has been explicit that the Court must go beyond reminding itself of the principle and McFarlane LJ (as he then was) has set out in *Re H-C (Children)* [2016] EWCA Civ 139, and in particular at paragraph 100 onwards, the way in which the Court must properly apply the principles in *Lucas*. In *Wakefield Metropolitan District Council v R & Others* [2019] EWHC 3581 (Fam) at paragraph 109 Lieven J summarised the approach to be taken as follows:

'The Court should first determine if the alleged perpetrator has deliberately lied. Then, if such a finding is made, consider why the party lied. The Court should caution itself that the mere fact an alleged perpetrator tells a lie is not evidence that they are culpable of the incident alleged. The Court should remind itself that a person may lie for many reasons, including 'innocent' explanations in the sense that they do not denote culpability of the incident alleged.'

19. The court must bear in mind that lies told by a witness can be told for a number of reasons. A witness may lie about one matter and be telling the truth about another.
20. This is a particularly apt direction in this case which I have borne in mind at all times when considering the evidence I have read and heard.
21. The second respondent DA gave the impression that the police dropped a case of assault against her when she was alleged to have poured food over her mother on 21st September 2024. In two Court statements she gave a misleading impression. In March 2024 in response to the allegation she said "the CPS realised through the cameras this never happened and I was never charged", on 23rd August 2024 she said "justice prevailed after the CPS seized the cameras, my phone and found no evidence of this unfounded allegation by [Ms X]". She agreed in her oral evidence that this was misleading. The cameras installed were never there to record but to be a live feed into an app on DA's telephone. She said she did not mean to mislead the court. She told a lie, but I accept she told it because of her inaccurate approach to facts. This was not a lie to cover up an assault. It does not help me one way or another in determining the allegation of assault.

Allegations and findings

22. There were eleven consolidated allegations, but I shall use the original numbering of the 36 allegations.
23. Allegation 11 was that on 2nd November 2021, CA told ward staff that she wished DA would leave her alone. This was recorded by a ward clerk in the evidence. After DA had shouted down the phone, CA was in tears and said she wished her daughter to leave her alone.

24. This was not disputed by DA although she made general allegations that there was a conspiracy between the local authority and others which led to complaints being made and also that the hospital were under great pressure at the time. She also said that her mother would play-act and this was part of her personality. I cannot see how it can be said that these reports by the hospital staff are untrue. It would involve too many staff who had no motive to lie.

25. I find that allegation proved.

26. Allegation 12 was also not in dispute. This was reported by a healthcare assistant. DA accepted shouting at her mother and calling her a "drug addict" and then telling her her dog had died, which was a lie. In her explanation to the court, DA said she had said this because she wanted to get a reaction from her mother who had nearly died on various occasions. It was out of love for her that she had been cruel. She explained the lie she told to her mother. It was an unpleasant thing to have done and her mother found that very upsetting. She was crying until her cleaner told her it was not true. I make that finding.

27. Allegation 15 was a safeguarding referral made to the local authority by the hospital. It was said that "we had multiple concerns as a team". Dated from 9th February 2023, it alleged various behaviours by DA. She made her mother walk around the ward when she was reluctant to, she told her she was not drinking enough, she was verbally aggressive to her mother and shouted at her, she called her "a senile old woman". These behaviours were accepted by DA. She said she was trying to keep her alive. Her mother had lost her appetite and any abuse reported was the typical banter between the mother and daughter.

28. DA disputed the allegation, 15(f) that she held her mother's wet pad to her face and said, "have you pissed yourself again, mum". She said she would never have said such a thing or done that. Her mother was not incontinent.

29. In my judgment, it is just the sort of thing DA would say and do. This was reported by hospital staff. It is the sort of action that hospital staff would remember as it is an unusual and shocking thing to happen. It is of course hearsay, but looking at the overall picture, on balance I find this happened. I cannot say what sort of pad this was and why this happened but on balance I find it did.

30. The allegation at 15(g) that DA had she encouraged her mother to self-discharge was partially accepted by DA. She said in evidence that her mother was medically fit and she suggested that she discharge herself as they were threatening to put her in a home. DA's view was that her mother had capacity whilst the hospital was saying she had no capacity. Mr Chisholm for the Official Solicitor observed the contradiction between on the one hand the way DA approached her mother suggested that she was exercising her lasting power of attorney for health and welfare whilst on the other hand she was saying she considered her mother had capacity.

31. DA accepted allegation 19 of 16th May 2023 that when she was asked to switch off the camera app system she refused to. The social worker had wanted to speak to CA privately.

32. DA explained that she did not trust social workers but that she had suggested that the social worker could take her mother to the spare room where there were no cameras. DA also accepted that she told the social worker that her mother played to the gallery and exaggerated things. She said her mother needed a robust approach.

33. I find allegation 19 proved.

34. Allegation 20 was based on events in May 2023 before Ms X's arrival in June. These were a list of complaints made about DA by the carers who were looking after CA. The complaints came via the manager of the care agency.

35. DA did not accept she monitored the care being provided by the carers to her mother but she admitted that she checked "in on the carers periodically to advise them how best to approach mum". She said in evidence she woke the carers before their shift because she did not know they were due to start work at 8am. She said she insisted in being present for her mother's personal care because that was what her mother expected. It was not early for her own convenience. She did not accept she was controlling and putting demands on the carers. She denied calling the carers "stupid", "useless" or "sitting on their arse". She said that may have been a misunderstanding. That she was referring to a stupid situation. The fact that these comments were recorded hearsay did not undermine them to the extent that I did not think I could rely on them. First, they were mostly admitted by DA, second, they recorded behaviours that had been seen in the hospital and by professionals as well as about to be seen by Ms X.

36. It was clear from the partial admissions made by DA in evidence that she was monitoring her mother and her care. She used the app to tell the carers to do certain things. She was controlling of them and her mother. She and her mother exchange abusive words, and I thought it likely that DA, who has little or no self-control or anger management, would insult the carers looking after her mother. It is what she does.

37. Direct evidence of allegations 23, 27, 29, 31 and 35 was given by Ms X, the carer who said she witnessed DA's troubling behaviour. Allegation 26 was witnessed by another carer. DA also gave evidence about what she said happened.

38. Two events in particular were denied by DA.

39. The first was allegation 23 on 29th August 2023, that of DA's attempt to force feed her mother pizza. This was wholly denied by DA. It was not for her to prove anything, but she said for the first time on day one of the four-day hearing that she had an alibi for that evening. She had seen her mother twice that day already and had not seen her in the evening. She was playing in a pool competition. This was not mentioned in her three statements or indeed in her position statement for the four-day hearing. This is surprising as she has known the date of the allegation since March 2024.

40. Undermining Ms X's account of a scratch having been caused to CA in the fracas was the fact that the body map produced by her in copy form had no such scratch showing. Ms X said the original did. In any event I did not consider that the scratch was caused necessarily during the pizza incident. It may well have been caused in the night as it was not seen until the morning. In any event it was an accidental injury even on Ms X's account.

41. Ms X was robustly challenged by DA but appeared to me to be a credible witness. It was hard to say why she would have invented the pizza incident. DA suggested it was a plot (my words, not hers) set up by the local authority because they wanted to put her mother in a care home.

42. One of the most effective parts of the evidence, was when Ms X pointed out to DA that she (DA) used to get angry and that there was a difference between encouraging her

mother to do so and forcing her to do something. Ms X gave the example of CA's personal trainer who encouraged her to take exercise by joking, whilst DA forced her to do things she did not want to.

43. I find the pizza incident took place. DA shook her mother afterwards by the shoulders. The force feeding generally was as a result of her near anorexia and DA's concerns that her mother did not eat properly.

44. Allegation 26 was made by another carer on 7th September 2023, namely that DA was forcing her mother to walk unaided when she was in pain and also made her do exercises which were painful to her back and neck.

45. DA denied that she would ever do something to cause pain to her mother.

46. It was not a complaint from Ms X but from another carer. I had no reason to think that it had not happened. I did not accept that the local authority was somehow plotting with the carers to make these false complaints. I find that allegation proved.

47. Allegation 27 was that DA was abusive to her mother on 8th September 2023 and called her names. This was partially admitted to by DA who accepted that they may have spoken of Dignitas in Switzerland but that is how they discussed things. The trouble was that it made CA cry. DA said this discussion happened particularly after she got dementia when they discussed assisted dying in Switzerland. I find this allegation of abuse and threats to take CA to Switzerland which upset CA proved.

48. A hotly contested allegation was number 29 (the sixth of the consolidated allegations pursued by the local authority). It was said that on 21st September 2023 DA threw lasagne over CA's head. This led to DA's arrest. DA, yet again no doubt concerned

about her mother's eating, tried to spoon feed her lasagne. AC closed her mouth, and the lasagne spilt.

49. Ms X went into the kitchen to get a cloth. When she came out, she could see DA smearing the lasagne on the face and hair of her mother. This was denied by DA who said it was her mother who when raising her arms threw her lasagne all over herself. What DA was doing was picking the lasagne out of her hair.

50. The evidence in relation to this allegation was not only a nearly contemporaneous note but also a photograph of CA's face covered in lasagne. She also looked upset. Ms X said she had asked her to take a photograph of her. I did not doubt that that was the case.

51. As I said, DA denied doing this to her mother, but I found the allegation all too likely. DA's anger at her mother's refusal of food got the better of her. She lost her temper and threw it at her mother. Ms X's description was accurate. Without being an expert, it seemed to me that the photograph which showed a spread of lasagne above and below CA's chin confirmed Ms X's explanation of what had occurred and not DA's.

52. Ms X was criticised for saying in her statement of 4th October 2023 that she was assisted in preparing by the local authority, that she had seen the food being poured over CA by her daughter. She explained that the statement was taken in a question-and-answer manner. Her statement said, "[CA] was refusing to eat the lasagne meal that DA was forcibly telling her to eat. [DA] tipped the meal over [CA]'s head. I went to the kitchen to get cleaning equipment and on my return to the room I saw [DA] smearing the spilled food over CA's face in a rough manner".

53. The ambiguity in the statement as to whether Ms X saw DA tip the bowl of food over CA's head did not in my judgment undermine her evidence. The differences in account seemed to me understandable and caused by the way the statement was taken. Her first report of the incident was in short form.

54. DE said that Ms X had misinterpreted what she had seen. She said it was a vile and repulsive accusation. I could see no room for error. The distance was short, the lighting was good and there were no obstructions to Ms X's view of CA. This was all about a lack of self-control exhibited, again, by DA.

55. What was striking about DA and EA's attitude to this allegation was to blame others for her having to go to court to get her bail varied so she could see her mother at Christmas. It is a constant refrain in this case, that everyone else is wrong but that DA is always right.

56. I do understand though for this close family how difficult it would have been for DA not to see her mother or indeed for CA not to see her daughter for three months. I would describe their relationship as enmeshed.

57. I find the attempted force feeding happened. Ms X's evidence was unambiguous. I found Ms X was being clearly truthful about what she had seen. It had happened before with a pizza and with a sandwich. Ms X had no reason to lie. There is no room for misinterpretation on the evidence. That allegation is proved.

58. Finally are the two allegations, numbered 31 and 35 made against EA. They were the tenth and eleventh allegations in the consolidated list. It was alleged that on 28th September 2023, whilst his daughter was on bail not to have direct or indirect contact

with her mother, EA went to see his ex-wife and was said to have persuaded her to tell the carers she did not need them any longer.

59. EA denied doing this at the behest of his daughter DA, although he accepted that he took CA away from the carers to speak to her privately in the car. It might have been his own idea out of a misguided concern for his daughter, he was probably hoping to ensure the prosecution of his daughter was dropped. I have no doubt that he spoke to CA privately in his car as he could not say what he wanted to say in front of the carers. He was trying to influence her and was interfering. What else could have happened just before CA made complaints about the carers and told them to leave. I find allegation 31 (the tenth allegation in the consolidated list) proved.

60. Then there is the second one against EA (allegation 35) where it was said that on two dates on 16th and 20th November 2023 he tried to persuade CA, his ex-wife, to get rid of Ms X, that he influenced CA into contacting social services asking for a change of carer, and told her to get rid of Ms X if she wanted to see her daughter again.

61. I have found Ms X to be a credible honest witness, with no axe to grind. However, it was right that Ms X should not have remained a carer after the allegations that had been made by her. There was a conflict of interest. I find that EA said those things to CA and tried to persuade her to get Ms X removed as a carer. This was inappropriate. I find allegation 35 proved (the eleventh in the consolidated list).

62. On balance, I found all the allegations Ms X made had occurred.

Conclusions on fact-finding

63. Overall as I look at the evidence as a whole, I find that DA fails to make any allowances for her mother's age and frailty. She is hoping that by force of her

personality she can keep her mother healthy and able to look after herself. There is no doubt in my mind that mother and daughter love each other deeply and DA has certainly cared for her mother as much as she is able to.

64. I am concerned too that DA has persuaded her mother that she is lazy and stubborn and that her failure to look after herself better is her own fault. I consider that that view has arisen from what CA has been told repeatedly by DA in the same way that CA's fear that she will be moved into a care home comes from her daughter and indeed EA on 20th November 2023, when the court and the local authority have been at pains to make it clear that that was not – and is not – the intention.

65. To that end, DA bullies and forces her mother to do the things that she believes will keep her alive for longer. When she force-feeds her it is because her mother is not eating enough and she has had anorexia. Their relationship of verbal abuse is mutual, but CA is ageing and getting increasingly frail and deserves a different approach from an adult daughter.

66. I am no expert, but after seeing DA in court in the four-day hearing and on other occasions before this, it is the daughter's personality issues that lead her to treat her mother in the way she does. She lacks self-control and in particular she is unable to control her anger at times. CA describes her daughter as bullish and brutish, and I agree with that description. It is a dysfunctional, volatile relationship with a mother and daughter who are enmeshed and depend on each other emotionally.

67. I have carefully considered DA's argument that the local authority are "out to get her" (my words, not hers). This is simply not the case. The safeguarding concerns originated from the hospital where any number of different staff reported DA's

concerning behaviour towards her mother. These complaints then continued via the care agency. The social work team have primarily gathered the information together to get a picture of the relationship and the way this elderly lady is treated by her daughter.

68. There is no protection for CA from other members of the family. EA leads his own life and to the extent he steps in, he has swallowed his daughter's story that the local authority is prejudiced against her and wants to put her mother in a home. CA's son has only a limited involvement with his mother, and I suspect is only too glad to leave everything to his sister. DA's partner is one step removed from CA, but there is no evidence he would mistreat CA.

69. Finally, at times CA has told the court that her daughter did not force-feed her. Indeed, in court on 2 October 2024, she said the force-feeding had not happened, but in the near past including to Dr Barker on 20 August 2024, she was less certain and has complained of her daughter pulling her hair. I certainly do not consider her accounts help me to determine either way the truth or otherwise of these allegations.

70. It was clear that CA is subject to the undue influence of her daughter in a number of different ways. One example is above, what CA said in court on 2 October 2024 when her daughter was next to her, it is clear (and on a number of other occasions) that CA says what she thinks her family would like her to say.

71. On the balance of probabilities, I find the allegations proved.

Capacity

72. Having made the findings in the morning of day two of the four-day hearing, the parties were given time to reflect. The case then proceeded with evidence from Dr

Barker, the court's independent expert. He is a Consultant in Old Age Psychiatry and gave evidence about CA's capacity in relation to various areas, including whether CA had capacity to make or revoke two Lasting Powers of Attorney ("LPAs"). DA is the attorney in respect of her mother's property and affairs which was registered on 28th May 2022 and in relation to health and welfare registered on 10th June 2022.

73. After his evidence on 3rd October 2024 and submissions on 4th October 2024, I gave a short *ex tempore* decision in relation to the first respondent's capacity.

74. The proceedings continued as NCC had made an application under the inherent jurisdiction for certain protective measures in relation to contact between the first respondent and the second and third respondents. NCC re-called Ms Haverson, the team manager in the Adult Social Work team, who gave evidence about the positive effect *supervised* contact was having on the risks to CA.

75. On Monday 7th October 2024, I heard submissions from the parties and gave an *ex tempore* decision in relation to NCC's applications under the inherent jurisdiction. I decided under the inherent jurisdiction that CA was vulnerable, that it was necessary and proportionate for CA to be protected by having supervised contact with DA and the third respondent EA. In terms of the LPA for health and welfare, the LPA remained in force but the attorney's powers are circumscribed by way of an injunction under the Mental Capacity Act 2005 as CA lacks capacity to decide on her care. The injunction contained eleven terms that I consider will ensure that CA is protected from her daughter, and the parties reached agreement, in relation to the terms which are as follows:

    a. DA shall not install any camera, listening equipment or loudspeaker in CA's property, whether live-feed only, or live-feed plus recording.

b. DA shall not tell or suggest to CA's carers how to meet CA's care needs, or purport to hire or dismiss carers
c. DA shall not lie to, threaten, harass or intimidate CA.
d. DA shall not force CA to exercise.
e. DA shall not force-feed CA.
f. DA shall not mention or threaten to send CA to a care home, or to Switzerland.
g. DA shall not deny CA access to healthcare assessments or interventions.
h. DA shall not take steps to prevent CA from being administered prescribed medication.
i. DA shall not seek to discharge CA from hospital against medical advice.
j. DA shall not take steps to prevent social services and other social care, or healthcare practitioners from visiting or speaking with CA alone.
k. DA shall not take steps to move CA to another place of residence.

76. I must say at the outset, that DA was assisted by a McKenzie friend, Mr Stokes, a retired solicitor. His help was invaluable. I cannot thank him enough for all the assistance he gave DA and the parties as well as the Court over the course of the four days.

Law - Capacity

77. Dr Barker had written three reports and was jointly instructed by the parties. His reports were paid for by NCC. At the time of his instruction, EA was not a party. He was instructed to assess CA's capacity (a) to conduct proceedings, (b) to decide on care, (c) to decide on contact with others, (d) to make and revoke a Lasting Power of Attorney, and (e) to manage property and affairs.

78. In his first two reports dated 11 April 2024 and 28 May 2024, Dr Barker concluded CA had capacity in all assessed areas. In the report dated 30 August 2024, he said she lacked capacity to conduct proceedings, to make decisions about care and to manage

her property and affairs, but had capacity to make decisions about contact with others and to enter into or revoke an LPA.

79. By the end of the hearing, the second and third respondents made it clear that they accepted that the first respondent lacked capacity in relation to conducting proceedings, making decisions about care needs and managing her property and affairs.

80. Mr Lewis for NCC and Mr Chisholm for the Official Solicitor argued that although it was a fine balance, Dr Barker was wrong and the balance came down in favour of the first respondent lacking capacity to decide on unsupervised contact with the second and third respondents and to make or revoke the LPA for health and welfare.

81. The second and third respondents are litigants in person so I will set out the law in summarised form which they have received in a note on the law produced by Mr Lewis for NCC.

82. The definition of people who lack capacity is set out in sections 2 and 3 of the Mental Capacity Act 2005 ("MCA").

> ***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.*

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.

83. The principles that must be applied have been set out in numerous, now well-known, cases. In summary they are as follows:

a. A person is assumed to have capacity unless it is established that they do not.

b. The burden of proof is on the body asserting the lack of capacity here NCC.

c. The standard of proof is the balance of probabilities.

d. Determination of capacity is always 'decision specific' at the time the decision has to be made, it is not that the person's capacity to make decisions generally that is in question.

e. A person is not to be treated as unable to make a decision unless all practical steps have been taken to help her to do so have been taken unsuccessfully.

f. A person is not to be treated as unable to make a decision merely because she makes a decision which is unwise.

g. A person lacks capacity in relation to a matter if at the relevant time she is unable to make a decision for herself in relation to the matter because of an impairment of, or a disturbance, whether permanent or temporary in the functioning of the mind or brain

h. A person is unable to make a decision for herself if she 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) communicate her decisions whether by talking using sign language or any other means. It is (c) which is of particular relevance to the decisions in this case.

i. An inability to undertake any one of these four aspects of the decision making process will be sufficient for a finding of incapacity as long as the inability is because of an impairment of, or a disturbance in the functioning of, the mind or brain. There should be a causal connection between one of the four aspects and the impairment or disturbance.

j. The information relevant to the decision includes information about the "reasonably foreseeable consequences" of deciding one way or another. Mr Chisholm for the Official Solicitor contended this was particularly relevant to the first respondent.

k. The Court should proceed first to identify "the matter" in respect of which the Court must evaluate whether the person can make a decision. Then the Court should move to identify the "information relevant to the decision". That is to be done on the specific facts of the case.

Best interests

84. So far as it is relevant to these proceedings, section 4 of the MCA 2005 sets out the approach the Court should take.

> *4* ***Best interests***
>
> *(1) In determining for the purposes of this Act what is in a person's best interests, the person making the determination must not make it merely on the basis of—*
>
> *(a) the person's age or appearance, or*
>
> *(b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about what might be in his best interests.*
>
> *(2) The person making the determination must consider all the relevant circumstances and, in particular, take the following steps.*
>
> *(3) He must consider—*
>
> *(a) whether it is likely that the person will at some time have capacity in relation to the matter in question, and*
>
> *(b) if it appears likely that he will, when that is likely to be.*
>
> *(4) He must, so far as reasonably practicable, permit and encourage the person to participate, or to improve his ability to participate, as fully as possible in any act done for him and any decision affecting him.*
>
> *(5) …*
>
> *(6) He must consider, so far as is reasonably ascertainable—*
>
> *(a) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity),*
>
> *(b) the beliefs and values that would be likely to influence his decision if he had capacity, and*
>
> *(c) the other factors that he would be likely to consider if he were able to do so.*
>
> *(7) He must take into account, if it is practicable and appropriate to consult them, the views of—*

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

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

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

(d) any deputy appointed for the person by the Court,

as to what would be in the person's best interests and, in particular, as to the matters mentioned in subsection (6).

(8) The duties imposed by subsections (1) to (7) also apply in relation to the exercise of any powers which—

(a) are exercisable under a lasting power of attorney, or

(b) are exercisable by a person under this Act where he reasonably believes that another person lacks capacity.

(9) In the case of an act done, or a decision made, by a person other than the Court, there is sufficient compliance with this section if (having complied with the requirements of subsections (1) to (7)) he reasonably believes that what he does or decides is in the best interests of the person concerned.

(10) ...

(11) "Relevant circumstances" are those—

(a) of which the person making the determination is aware, and

(b) which it would be reasonable to regard as relevant."

85. The Court of Protection must take a person's wishes and feelings into account when making a best interests decision. This is a significant factor. The Court should consider matters from the person's point of view and have regard to all the circumstances including the extent that the person's wishes and feelings can be accommodated within the overall assessment of what is in the person's best interests.

Evidence

86. I turn to the evidence of Dr Barker. He has been a Consultant in Old Age Psychiatry since 1997 and is immensely experienced in this field. He has been involved in various guises with the Court of Protection for a number of years and had given expert evidence on a regular basis.

87. For his first report of 12th April 2024, he had visited CA at home on 4th April 2024 and interviewed her for about an hour and a half. He also spoke to the second and third respondents as well as the social worker Ms Neill.

88. Dr Barker commented in evidence that he had spoken to the carer on duty on 4th April 2024 and in retrospect now considered that she had been painting a rather more positive picture of what CA could do for herself than was actually the case.

89. In terms of what documentation he had been provided with, as well as the letter of instruction, he had the Court bundle for a hearing on 17th January 2024, various witness statements from CA's family, the allegations bundle (which was used as evidence in the fact-finding hearing) and various health and social care records. What he did not have were the day-to-day records which were produced by the carers looking after CA.

90. He concluded CA had capacity in all areas.

91. His conclusions contradicted the adult social worker's findings, and NCC sent him thirty six questions in response to his first report.

92. The second report he produced was dated 28th May 2024. He had been provided with the Official Solicitor's attendance notes from two meetings with CA in April 2024. Dr Barker had said that CA's main problem was with spontaneous recall but that her presentation was more in line with normal ageing than dementia or Alzheimer's

disease. The mild cognitive disorder was not sufficient to 'significantly' interfere with CA's functioning in important living tasks.

93. Dr Barker considered the attendance notes where it was clear that CA did not recollect meeting her barrister the day before one meeting, nor did she remember the Official Solicitor's representative a week after meeting her. Dr Barker answered the further questions provided by NCC and concluded again that CA had capacity in all areas.

94. This matter came to Court on 26th July 2024 and the matter was listed as a two-day hearing to determine capacity. I heard evidence on capacity from Ms Neill, CA's allocated social worker, on the first of the two days. Her evidence was that CA lacked capacity to decide on care, contact with others and entering into and revoking an LPA, based on capacity assessments she had conducted in October 2023. Dr Barker was present during some of her evidence. I had asked that he be provided with the day-to-day care records produced by the carers that he had not seen before. He then read them overnight and the following day he explained that what he had read had led him to the view that he wanted to re-interview CA.

95. The proceedings were adjourned and Dr Barker was instructed to meet CA again and to consider further the documentation he had not seen before 26th July 2024. He was also provided with the care records for July 2024.

96. His third report was dated 30th August 2024 and was written after Dr Barker had had a further lengthy interview with CA on 20th August 2024.

97. His conclusions were as set out above in paragraph 74. In the third report he had said CA lacked capacity to conduct proceedings, to make decisions about her care and to

manage her property and affairs, but had capacity to make decisions about contact with others and to enter into or revoke a LPA. He noted CA's vulnerability.

98. He gave evidence and was cross examined by the parties. In her cross-examination, DA understandably concentrated her fire on the three areas he had changed his mind about. CA's capacity to conduct proceedings, to make decisions about care needs and to manage her property and affairs. At that stage she did not agree with Dr Barker's conclusions about these areas.

99. Dr Barker explained it was a complex case but that his change of mind had been due to the new documentary records he had been provided with, including the day-to-day care records kept by the carers and CA's legal representatives' attendance notes.

100. Dr Barker said the most recent interview with CA was not of such significance. During the proceedings I had seen that CA is clearly articulate and able to express herself with conviction. Dr Barker's report set out the particular records that he relied on, and I would observe showed clearly why they had led to him to change his mind. As for the diagnostic test, he said that CA had an impairment of, or disturbance in the functioning of, the mind or brain due to the combination of CA's mild cognitive impairment and increasing memory loss.

101. In argument, NCC submitted that CA did not have capacity to make decisions in relation to contact with others or to revoke the health and welfare LPA. Mr Lewis submitted that decisions on contact overlapped with decisions on care. He said it would be strange on these facts to find that CA lacked capacity in relation to her care yet had capacity to decide on contact. Her weekly showers and vitamins are given to her by her daughter during contact, but she is helped to the toilet by her carers and they

administer her medication: these are aspects of her care. He relied on recent authorities in which Courts were warned not to take an overly-siloed approach. He pointed out that CA could not retain the precise details of why her daughter posed a risk to her. That affected her capacity to decide on contact and on the making or revocation of the LPA given that the court had found that DA had abused CA which had caused CA harm.

102. In her submissions, DA accepted that her mother lacked capacity in relation to the conduct of the proceedings, to make decisions about her care and to manage her property and affairs, but relied on the evidence of Dr Barker and contended that her mother could make decisions on contact and to enter into or revoke an LPA for health and welfare.

103. DA pointed out that her mother had gained weight and there were no longer any issues with food. The implication of this submission was that there was no longer a risk of DA force feeding her mother. DA relied on the presumption of capacity; she said it was for NCC to rebut it.

104. DA also relied on the evidence of Professor Fox, a psychiatrist who had been treating her mother and had met her every eight months or so. He had first seen her about four years before and he had found she was unlikely to have Alzheimer's or dementia because of her continuing cognitive improvement. He had not considered that she lacked capacity in any domain. I observed that Professor Fox had not seen the extensive papers seen by Dr Barker and had not been instructed in these proceedings.

105. Mr Chisholm for the Official Solicitor said the crux of the decision was whether CA was making an unwise decision with capacity, or an incapacitous decision. The

Official Solicitor accepted that CA lacked capacity in the three fields identified by Dr Barker but disagreed with him where he had found she had capacity around contact and to revoke or make the LPA on health and welfare. When it came to contact, Mr Chisholm said the decision being considered was whether unsupervised contact should take place. There were negative aspects to contact. The abuse that the Court had found could be repeated.

106. He relied on the Supreme Court authority of *A Local Authority v JB (by his Litigation Friend, the Official Solicitor)* [2021] UKSC 52. The balance to be struck was between CA's right to autonomy and self-determination against the risks of unsupervised contact predicated on the facts that the Court had found. Mr Chisholm submitted that CA was not able to see the foreseeable consequences of a decision to have unsupervised contact which must include the risk of being further exposed to physical and emotional harm based on the findings the Court had just made.

107. Ms Haverson, the Adult Team Manager from NCC gave evidence as the allocated social worker Ms Neill was on maternity leave. She gave two significant pieces of evidence. First, that since contact had become supervised the incidents of abuse against CA had reduced considerably. She produced a graph which made this point clearly and this was not disputed by DA. The second piece of evidence was that the care agency had told the witness that if DA re-installed cameras and audio system into CA's home to monitor the carers and her mother, they would not be prepared to continue caring for CA due to privacy concerns for the carers. When questioned by Mr Chisholm, she agreed that if the cameras were reinstalled, the care package would collapse.

Capacity - conclusions

108. The first area I consider is CA's capacity to conduct proceedings. This is no longer in dispute. In relation to this area, Dr Barker said that CA lacked capacity. There were no practical steps that he could identify which could be taken that would enable her to regain capacity in this area. Dr Barker gave examples in his third report: CA had no idea why he was there and only knew in the most vague terms that the proceedings related to her 'capacity'. She had little real grasp of what the proceedings were about. This was despite the family having repeated conversations with her about the proceedings. There was clear evidence that she was unable to make a decision for herself as she was unable to understand the information relevant to the decision. She could not remember either her representatives from one day to the next. CA does not have capacity to conduct the Court proceedings.

109. Dr Barker considered whether CA had capacity to make decisions concerning her care. Dr Barker considered she did not. This is not disputed by the second and third respondents. CA minimised her care needs and believed wrongly that she could manage her care without carers. She was contradicting what the care records showed clearly which she that she needs care.

110. Dr Barker set out a number of examples from the records where she had forgotten that she had just eaten or had taken her medication. To him she denied she took medication or had a foot problem that was taking her to specialists. She could remember that she required assistance with shopping and cooking but considered that she could adapt to not having carers.

111. I agreed with Dr Barker. It was clear to me that CA did not have capacity to make decisions concerning her care. She was not able to use or weigh the information as part

of the process of making the decision. At times she had thought she did not need carers when it was clear from the records that she did. She needed carers to ensure she was eating appropriately and taking her medication.

112. In terms of CA's capacity to manage her property and affairs, Dr Barker's evidence was that she lacked capacity to manage a bank account and keep an eye on her expenditure. All parties agreed. This involved keeping a day-to-day eye on her spending. Dr Barker said CA would not recognise that she needed help and would not know where to get that help or how to use it. CA would not be able to do this on a day-to-day basis.

113. I found that she lacked capacity in this area because her short-term memory problem would prevent her from retaining information in relation to her finances. CA would be unable to use or weigh up information as part of the process of managing her finances.

114. The best interests decisions arising out of the findings of a lack of capacity were not disputed by the parties. CA's wishes and feelings were that she was content to be represented in the proceedings but she questioned from time to time whether she needed 24 hour care. She accepted that DA should be in charge of her finances. Her wishes and feelings in relation to her care needs were in the context that she minimised her needs and also that DA in the past had not supported always the need for carers. I gave weight to CA's wishes and feelings whilst considering that her approach to her care was not realistic, and if her carers were removed, she would be at substantial risk of not being able to look after herself.

115. It was in CA's best interests to be represented by the Official Solicitor. While the local authority's evidence was that her needs were such that she did not need 24-hour care,

and that a live-in care arrangement was in place only because of the risk that DA posed to her, I found that the current care package met CA's needs and that it was in her best interests that DA continued to manage her property and affairs. By agreement, the LPA in relation to property and finance was to remain unchanged; and for the avoidance of doubt, NCC's case has always been that DA has not financially abused or exploited CA and NCC made no application to disturb the arrangements for management of CA's finances.

116. I found the decision about unsupervised contact the most difficult one to make. There was a fine line between CA lacking capacity to make the relevant decision and capacitous but unwise decision-making. Dr Barker had found that CA had capacity, his view was that CA could understand the risks and benefits to contact.

117. He said she was able to use and weigh information about contact. The relationship of CA and DA probably had been like it was for decades. It had shifted with CA's increasing frailty but she had an understanding of her daughter's personality and behaviour.

118. Dr Barker said in his report, that CA had said the following when he put to her the incidents I have found proved: "It's so traumatic that I can't even remember what happened now, but we've always had arguments". Dr Barker considered that CA could not remember specific incidents but CA knew the "tone and style" of the relationship with her daughter. CA had an issue with her short-term memory and although she could not remember the specific abusive events, she did say that that was the sort of thing that happened all the time between DA and herself. Dr Barker described it as her "emotional memory" being better than her memory of the individual abusive events.

119. CA described DA as “brutish” and “bullish”. Dr Barker pointed out that CA sees her daughter every day and knows DA can get very angry. Dr Barker had described the many positives for CA of her relationship with DA, and the positives were acknowledged by Ms Haverson in her evidence on behalf of NCC, and in submissions on behalf of the Official Solicitor.

120. CA and DA are devoted to each other but have at times a fiery relationship punctuated by abuse. At times when CA had been seriously ill, it has been DA’s devotion which has kept her alive. It seemed to me that they had had a tempestuous relationship for decades as Dr Barker described. DA’s issue is that she had not adapted to her mother’s increasing frailty, and she needed to learn to soften her approach to her mother.

121. Dr Barker recognised the difficulty in distinguishing lack of capacity from capacitous but unwise decision-making. He dealt with the decision making around contact and the LPA for health and welfare as linked matters at paragraph 5.2 of his conclusion to the third report. There, he said that although he had to partially remind her, CA retained and recalled that “[DA] had been brutish in persuasion, force fed her, poured food over her and pulled her hair”. He said that CA went on to say that she would still “prefer [DA] to make decisions in her best interests”.

122. I accepted Dr Barker’s next point that while “it could be argued that she cannot recall the intensity of the distress caused by such behaviours, it would be expecting an unreasonably high standard of evidence for using and weighing information that would conclude that she lacked capacity to make a decision on DA acting as her attorney, particularly on the basis of mental impairment”.

123. I found that CA understood that in the past her daughter had been abusive, even if she could not remember the detail of what DA had done and in response to Mr Chisholm's argument, I considered that CA *could* foresee to a sufficient extent, based on what she found her daughter to be (brutish etc), the foreseeable consequences of a decision to have unsupervised contact with her. It would be demanding an unreasonably high standard to expect her to retain all the detail of the abuse, but she had an understanding of the risks to her. She balanced the risks and benefits of the relationship and wanted unsupervised contact.

124. I agreed with Dr Barker that applying the presumption of capacity, CA was making unwise but capacitous decisions about contact with DA. It is a relationship that is of great importance emotionally to CA and although DA is as CA says "brutish" and "bullish" she is doing her best to keep her mother alive and as healthy as she can persuade her to be. CA recognised the relationship had negatives but considered the positives, outweighed these. I found in this finely balanced case that she had capacity to decide on unsupervised contact.

125. Dr Barker's had questioned CA about her LPA. He found that CA had capacity to enter into or revoke the LPA. CA understood what an LPA was, she understood the risks of her daughter's behaviour, could weigh them and come to the decision that she would prefer DA to have the LPA rather than have decisions taken by doctors or other professionals. CA understood that if she was not able to do things, DA would be able to step in and make decisions for her in her best interests. I find that CA has capacity to enter into and revoke an LPA for health and welfare.

126. Dr Barker said that he did not believe CA's views were caused by coercion but said she was "likely to be vulnerable to influence". If the Court took the view that CA was a vulnerable adult he would agree and whether DA had acted in CA's best interests and is a suitable attorney was a matter for the Court.

127. There is no doubt that the lack of capacity in the areas set out above are due to an impairment of or a disturbance in the functioning of CA's mind or brain.

Inherent Jurisdiction

128. The next question for the Court to consider whether CA was a vulnerable adult in need of protection, especially so given the court's findings that she has capacity in relation to deciding about contact with others, and in relation to making or revoking the LPA for health and welfare.

129. The principles were set out by Mr Chisholm in his excellent position statement filed on behalf of CA, by her litigation friend, the Official Solicitor. Mr Lewis on behalf of NCC had very helpfully produced a note on the relevant law to assist DA and EA.

130. The powers of the High Court over those who have capacity but are vulnerable derives from powers vested in the High Court under its *parens patriae* jurisdiction. The powers remain available despite the implementation of the MCA 2005 and extend to those vulnerable persons who do not fall within the categories covered by the MCA 2005.

131. Vulnerable adults include those with capacity but are or are 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" (*per* Munby J (as he then was) in paragraph 77 of *Re SA (Vulnerable Adult with capacity: Marriage)* [2005] EWHC 2942 (Fam)).

132. The meaning of coercion or undue influence was considered by Munby J at paragraph 78 ii) of *Re SA*.

133. "*ii) Coercion or undue influence: "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 a 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 ... 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."*

134. DA disputed her mother was vulnerable, but agreed she was frail.

135. I had found CA had a very poor memory and considered she would do what her family suggested she do even if it is not in her best interests, an example of this was when she went along with the family's suggestion that she get rid of her carer. She has been influenced by her daughter DA in particular. This was undue influence. Mr Chisholm correctly described CA's family relationships as having led to a paradigm case of vulnerability. I noted the power imbalance. DA still thought of her mother as she was when she had all of her faculties and her strength intact. She had not adapted her approach to her mother.

136. CA was physically unable to stand up to her daughter when she physically assaulted her by pouring lasagne over her and then smearing it into her face and hair. There was an inequality of power between CA and DA. My findings showed her vulnerability. Dr Barker who interviewed her twice and looked at the carers' notes in detail considered

she was vulnerable, physically and emotionally. CA described herself as vulnerable to Dr Barker. It was abundantly clear to me she was.

137. The next question was whether there was any other statutory scheme which could be used to protect CA who retained capacity from the contact risks posed by her family. It was not suggested there was.

138. The test which must be met before the inherent jurisdiction could be engaged to regulate contact is whether the proposed intervention, here supervised contact, is necessary and proportionate.

139. I heard evidence from Ms Haverson, NCC's Adult Team Leader. She provided a graph which showed that DA's behaviour towards her mother had improved markedly in recent months since their contact had been supervised, since proceedings had been on-going and since allegations of breaches of undertakings DA had given had been made.

140. The risks of future harm to CA remain at present. CA needs to be protected from the harm particularly from DA but also from EA, CA's ex-husband. Another risk to CA is from DA's misuse of the LPA for health and welfare. As Mr Lewis observed in his position statement on behalf of NCC, such was the extent to which DA sought to exercise control over CA, that she purported to make best interests decisions for DA as health welfare during a long period of time when DA believed CA had capacity to decide on her care, knowing that she had no lawful authority to make these decisions.

141. The proportionality of any proposal had to be considered. I noted that the number of times that DA and EA can see CA and the time they spend with her is not limited in any way. There are no restrictions on DA's partner's contact with CA. The

continuation of supervised contact is the least intrusive measure commensurate with the risks I have found in CA's relationship with DA.

142. It should not remain in the long term but I have decided to direct the parties to jointly instruct an independent psychological expert to consider the family relationships and how they can be managed so that CA remains safe when she sees her family. It may then be possible for unsupervised contact to take place. Using the inherent jurisdiction to impose a supervised framework around contact is a temporary way of ensuring that CA can be safe. All contact that CA has with DA and/or EA will accordingly be supervised by one of CA's professional carers, but, at NCC's suggestion supported by the Official Solicitor, I will impose no limit as to frequency or duration.

143. In terms of the LPA, Mr Lewis for NCC submitted that there were three approaches that could be taken by the Court now the Court had found that CA had capacity to make and revoke the LPA. The Court could revoke the instrument which he contended would be the "smoothest and clearest remedy". It would avoid arguments between DA and NCC when DA was constantly suspicious of NCC's motives and thought she was in a battle with the local authority and would avoid the risk of satellite litigation about the terms of an injunction.

144. The second route would be for the Court to "edit" the instrument itself and direct the Office of the Public Guardian to register the Court's amendments. This would be analogous to the powers in section 23 of the Mental Capacity Act 2005 concerning LPAs and which are most commonly deployed when the attorney is, for example, directed not to sell P's house.

145. The third route was the Official Solicitor's preferred route and in the event the Court's. The instrument would be left intact, but a series of injunctive directions would be made against DA. Mr Lewis relied on a case where similar circumstances, elder abuse by a son against his parents had led to this happening: *DL v A Local Authority* [2012] EWCA Civ 253. Theis J's approach was approved by the Court of Appeal, although it was noted that there was no LPA in that case.

146. DA and her father initially opposed the Court limiting the powers of the LPA but after discussion, particularly assisted by Mr Stokes, DA's McKenzie friend, all the injunctive orders were agreed. One direction that caused DA the most concern was that she and her mother were used to have screaming arguments with each other involving insults and abuse. There was evidence from the carers that CA was more than capable of swearing and shouting at her daughter in exchange. In the circumstances, I asked NCC to amend one of the directions to ensure that DA could not use threatening behaviour towards CA.

147. The second matter raised by DA was that of private telephone calls. DA asked that she be allowed to have private telephone calls with her mother which have to be on speaker phone. I was particularly conscious that DA has recently been diagnosed with a serious medical condition and may want to speak to her mother privately about this. Nevertheless I accepted NCC's and the Official Solicitor's argument that DA would use private phone calls to pressurise her mother as she had done in the past. Likewise, I directed that all telephone calls between CA and EA should be supervised, at least for the time being and until Professor Dubrow-Marshall (see below) has reported.

148. Mr Chisholm for the Official Solicitor, supported the third route (namely the making of injunctive orders) but on the basis that the injunctions could and should be made under section 16(2) of the Act to support best interests decisions relating to DA's care, the Court having found that DA lacks capacity to make decisions concerning her care needs.

149. It seemed to me the third route respected CA's wishes for DA to be her LPA, and having found that CA had capacity to make or revoke the LPA, I did not consider that the inherent jurisdiction could or should be used to revoke the LPA. The injunctive directions which were discussed by the parties and for the most part agreed would protect CA from further physical and emotional harm. These were a proportionate response to the risks CA faces.

150. The use of the inherent jurisdiction to impose the continuation of supervised contact between CA and DA/EA in circumstances where CA has capacity pursuant to the MCA 2005 decide on contact with others, was compatible with Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (the European Convention), namely the family's rights to respect for private and family life. The interference with the Article 8 rights was justified to protect CA.

151. In the circumstances, the injunctions would allow DA to continue to be health and welfare attorney under the LPA whilst her use of it would be compatible with ensuring CA's safety.

Conclusion

152. CA lacks capacity to conduct the Court proceedings, to make decisions about her care and to manage her property and affairs. She has capacity to make decisions about contact with others, and to enter into or revoke an LPA.

153. The inherent jurisdiction applied to protect CA in her contact with others in her family and in relation to the use of the LPA by DA.

154. An injunction is granted with conditions which are to protect CA.

155. The terms of the injunction and the consequences of any breach were explained to DA.

156. Other directions will be made which include the instruction of a psychologist, Professor Rod Dubrow-Marshall, to work with the parties and advise the court with a view to reducing the level of supervision if that is consistent with CA's best interests. Professor Dubrow-Marshall has wide experience in cases of this sort, and he is ideally suited to advising in this difficult case. He can report by the end of November 2024; and I will list this matter for further consideration on 10 December 2024 for directions, and for two days in April 2025 for final hearing.

157. Finally, CA faces an application for committal for contempt for alleged breaches of undertakings given to the Court in February 2024. That application will be listed before me in January 2025.

158. That is the judgment of the Court.