



Neutral Citation Number: [2024] EWCOP 67 (T3)

Case No: 13974361

IN THE COURT OF PROTECTION

Date: 21 November 2024

Before :

MR JUSTICE POOLE

Aberdeenshire Council v SF (No.4) (Residence)

Between :

ABERDEENSHIRE COUNCIL

Applicant

- and -

**(1) SF (By her Litigation Friend, the Official
Solicitor)
(2) EF**

Respondents

**Joseph O'Brien KC (instructed by DWF Law LLP on behalf of Aberdeenshire
Council) for the Applicant**

**Sophia Roper KC (instructed by Simpson Millar on behalf of the Official
Solicitor) for the First Respondent**

The Second Respondent was unrepresented

Hearing date: 31 October 2024

JUDGMENT

This judgment was handed down remotely at 10.30am on 21 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....
This judgment was delivered in private and a transparency order is in force. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be 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.

Mr Justice Poole :

Introduction

1. The Court is required to make a finely balanced best interests decision about residence for SF, the subject of these proceedings, who lacks capacity to make that decision for herself.
2. This is my fourth judgment in these proceedings. SF is a Scottish woman in her 40s who has moderate intellectual disability, autism spectrum disorder, associated periods of severe anxiety, and a diagnosis of difficult to treat schizoaffective disorder (bipolar type). In an earlier judgment in this case, handed down on 30 June 2023, *Aberdeenshire Council v SF & Ors* [2023] EWCOP 28, I held that SF was habitually resident in Scotland, notwithstanding that she had been living in England and Wales for a number of years, first as a patient detained in hospital under the Mental Health Act 1983 and then, from 2022, in a supported living placement in the community. At the time of that judgment, because of her condition and the circumstances of her care, SF was not integrated in a social or family environment in England. In a second judgment, *Aberdeenshire Council v SF (No. 2)* [2024] EWCOP 10, I held that a Scottish Guardianship Order made on 16 June 2021 (the SGO) which authorised SF's mother, the Second Respondent, EF, to consent to the deprivation of SF's liberty, should not be recognised and enforced in this jurisdiction. In a third, ex tempore judgment given on 27 June 2024, which I have agreed should be published, I made a finding that SF had then become habitually resident in the jurisdiction of England and Wales. She had made astonishing progress under the care of Orbis at her current community placement and had become integrated into a social environment in England.
3. No party disputes that SF lacks capacity to make decisions for herself about where she should live and her care. I agree, and shall now make final declarations to that effect. There is ample evidence that the presumption of capacity is displaced in SF's case and, notwithstanding the progress she has made, there is no prospect of her regaining capacity in the foreseeable future. After years of searching for suitable accommodation and care in Scotland there is now available to SF a choice of residence and carers but because she cannot make the decision for herself, the Court is required to make the decision on her behalf in her best interests.
4. There are two options: SF can either remain in her current placement, "X", in the Northeast of England, or she can be moved to a new placement, "Y", nearer to her family in the Northeast of Scotland. She has been at X for over two years now. After an initially difficult period of settling in at X, she has made considerable progress. All agree that she has benefitted hugely from the care at that placement, provided by Orbis. However, her mother, aged 74 and with health problems, finds it increasingly difficult to make the long journey from her home in Northeast Scotland to visit SF at X and SF is also located far from her brother and the rest of her family and old friends who live in the same area as her mother. If she remains at X, SF will be likely to continue to receive excellent care and to live a life of activity far beyond what was imaginable just two years ago but contact with her family would be likely to diminish. If she were to move to Y, she would be much closer to her mother, brother and the rest of the family, but there would have to be a carefully managed transition period and it cannot be known how she will settle in and progress at Y. All accept that SF

would struggle with the change. The offer at Y is of accommodation, provision of care, and the availability of activities similar to those at X, but SF would be in the hands of a new and unfamiliar team in new accommodation. The connections she has made at X would be lost and she would have to start over again. There would be a risk that she would not respond well to the new carers and environment.

5. There are risks, benefits, and disadvantages from either option and neither choice is obviously the right one for SF. In approaching this difficult choice, the Court must apply the relevant statutory provisions under Mental Capacity Act 2005 (MCA 2005) s4, guidance from caselaw, and do its best to make a decision in SF's best interests.
6. I have had considerable assistance from Counsel who have provided me with Position Statements of the highest quality, statements from Mr A of Aberdeenshire Council, Ms B, a registered Nurse for Learning Disability with the Cumbria, Northumberland Tyne and Wear NHS Foundation Trust's Community Treatment Team, and Miss H, a Chartered Legal Executive with Simpson Miller, solicitors instructed by the Official Solicitor. I have also received written evidence from EF, and oral evidence from her and her son, GF. I have enjoyed a meeting with SF who was keen to meet the person who was going to make this decision on her behalf. She was delightful company: plain-speaking but smiling, courteous, and with an enthusiastic disposition.

Legal Framework

7. MCA 2005 s16(3) provides that the court's powers to make decisions on behalf of those who lack capacity are subject to sections 1 and 4 of the Act. Section 1(5) and (6) provide that a decision made under the Act for or on behalf of a person who lacks capacity must be done, or made, in their best interests. Before 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 their rights and freedom of action.
8. MCA 2005 s4 sets out the factors relevant to the assessment of a person's best interests:

“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,

(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. The statutory term “best interests” has “an inherent optimism” but there are cases where “every option is problematic and even the best outcome is troubling.” *Re: A Covert Medication: Residence* [2024] EWCA (Civ) 572, Peter Jackson LJ, at paragraph 6. The Court may only choose between available options. It cannot oblige, and should not exercise, its powers so as to put pressure upon, a service provider to offer an option that would not otherwise have been available to P to choose for themselves. P’s wishes and feelings are always important but the weight to be given to them is case- and fact-specific, depending for example on the degree of P’s incapacity and the strength and consistency of their expressed wishes and feelings - *TW v. Z and others* [2009] EWCOP 2525. After applying the section 4 ‘checklist’ the Court should ask whether the conclusions amount to a violation of Article 8 ECHR rights and if so, whether this is necessary and proportionate.

Background

10. SF has never had capacity to make decisions for herself about where she should live. She was born and grew up in Scotland and lived there until January 2016 when she was transferred to a hospital in England because no suitable placement could be found in Scotland. At that stage, SF’s contact with her family was not generally discussed with her but at times she did not wish to see them. Her parents and brother remained in Scotland and hoped that she would eventually return. SF maintained telephone contact with them and saw them regularly whilst in hospital. After almost two years, in December 2017, SF was ready for discharge from hospital. Aberdeenshire identified a possible placement for her in November 2018 but that was abandoned in June 2019. Later options did not come to fruition. In May 2021 an application was made to renew SF’s Scottish Guardianship Order.
11. In June 2022, SF was discharged to her current community accommodation. In November 2022, Aberdeenshire was “not actively looking at service providers within Scotland”. Professionals considered that “moving SF back to Scotland would be detrimental to SF at the present time, as she is still getting to know her new staff and her new home.” In November 2023, Aberdeenshire finally identified a potential placement in Northeast Scotland which is the placement Y to which I have referred.
12. EF and her son, SF’s brother GF, gave oral evidence. In addition EF provided the Court with a statement and letters. Their evidence was powerful. EF is in her mid-70’s and has suffered declining health. She is now a widow. She does not drive. It takes her a full day to travel to see SF in X and she has to stay over for three nights nearby. She told the Court that she could not do this any longer as it was just too tiring for her. The journey to the proposed Scottish placement would be about one hour on the bus from her own home. EF has told Aberdeenshire Council that she would visit SF twice a week if she moved to live at Y. GF says he would be able to visit weekly. GF pleaded with the Court not to let his mother effectively suffer the loss of her daughter having already lost her husband. They both told me that there were other family members and old friends who would be able to see SF if she moved to Scotland who can currently only have video or telephone contact with her.

13. X is a three bedroom bungalow. Y also has three bedrooms. Y has been purchased by Aberdeenshire but would need some adaptations before it could be occupied by SF. These adaptations would take some months to complete. There are other potential residents and Y cannot indefinitely be left open for SF to use. At X, SF has access to the community and she now takes part in many activities: visiting the cinema, theatre, and local community centre, going bowling, swimming, dancing, and shopping, and attending events organised by her carers. Recently, having being encouraged to save up money for the purpose, SF made a day visit to Scarborough. I have seen a lovely photograph of SF enjoying her day out at the seaside. She plans to save for a future trip to the theatre in a nearby city. Similar activities might well be available were SF to move to Y but the transition to Y would take several months: not only are there physical adaptations to be made to the property, such as the creation of a wet room, but the recruitment and training of staff would be required and SF would have to be introduced to the placement and new staff. Staff for Y are yet to be recruited but once recruited they would have to travel to see SF and X and staff from X would probably have to travel to Y. Her condition means that SF finds change very difficult and so the process of change would have to be staged and would require careful management.
14. After some doubts about the funding responsibilities of the relevant Integrated Care Board, it is now accepted and settled that Aberdeenshire Council will remain responsible for funding SF's residence and care whether she remains at X or moves to Y. Currently Aberdeenshire also funds EF's travel and accommodation when visiting SF. Such funding is very unusual and its continuation is not guaranteed.

SF

15. I have set out SF's conditions in my previous judgments. At paragraph 8 of his witness statement of 2 August 2024, Mr A states that SF's needs are identified as:
 - (a) to be supported with her physical health
 - (b) to be supported with her mental health
 - (c) to be supported to access activities she enjoys
 - (d) to be supported to have time and contact with her family
 - (e) to be supported to have time and contact with her peers and friends
 - (f) to be supported with her personal care needs
 - (g) to take her medication

She still requires a high level of care. SF requires two to one support and until recently received 343 hours care for each week with a third person working during the day shift. A small reduction in the number of hours of care has been discussed and recently implemented. The doors at X may be locked and physical restraint is still required to keep SF safe, but the picture has changed dramatically over the last 12 months or so. On her initial move to X, and even at the time of my first judgment in June 2023, the use of restraint and seclusion was frequent. By contrast, the use of

restraint is now much reduced. Episodes of restraint now average once a week and the restraint used is mainly handholds or 1:1 or 2:1 guiding SF back to her pod. In my June 2023 judgment I recorded that SF had little engagement in the community. Now, she is involved in many activities, she “takes centre stage” and is well known in her local supermarket and community centre. She messages with a friend who attends the disco with her. She has made a presentation to a conference of about 100 people and recently attended an awards ceremony where she was nominated for and won an award.

16. The recent note made by Miss H of an attendance on SF on 5 September 2024 paints a picture of a happy, active, sociable woman who is currently enjoying life. She enjoys visits from her mother and brother and those visits are clearly of benefit to her. Miss H has visited SF on a number of previous occasions in 2024 during which meetings she has tried to ascertain SF’s wishes and feelings about her residence and care. In addition I have evidence from other sources including Mr A of Aberdeenshire Council and care records referred to in position statements from the parties.
- i) On 25 January 2024, SF said to Miss H, “I definitely want to live in England” and that she thought home was “here”. She said she would not be happy if Aberdeenshire found her a house in their area . SF said she would like to go back to [Scotland] to visit her mother and brother but did not want to live there, nor visit anyone else there; she did not want to go back to her mother’s house even to visit. In February 2024 she was again clear that she wanted to live in the Northeast of England and not return to her home town or Aberdeenshire. She said that she intended “to tell the judge that she wanted to live in [the Northeast of England]” because she “loves going to the shops, going to the pub and to the cinema. In March 2024 SF told Mr A from Aberdeenshire Council that she wanted to stay “down here” in England, saying “I am happier here than I would be up the road” and “my heart says to stay here”.
 - ii) Then on 25 March 2024 SF’s support manager reported to Mr A that when they had visited a few days earlier, EF and GF had “told SF that [Aberdeenshire Council has] purchased the house in Scotland and that SF needs to tell you and ... that she has changed her mind.”
 - iii) Notes record the following during March and April 2024:
 - (a) 10 March: SF rang her mother to wish her a happy Mother’s Day and said she missed her and wished she could spend the day with her; EF is reported to have said “well this is why you need to move back to Scotland then you would see me, but if you stay in [the Northeast of England], I won’t visit”, upon which SF became agitated and said she wanted to stay in [the Northeast of England].
 - (b) 22 March: EF and GF visited SF, arriving late at 8.45pm; she was very pleased to see them. GF told SF that they had come down as there was a lot to discuss, and then (although he initially agreed to leave it till the morning), told SF about the house in Scotland. He went on to tell her repeatedly that she should tell Miss H she wanted to move back to Scotland, because the Judge had been told that she wanted to live in England. GF is also reported to have

told SF that their mother is getting old, and that a time will come when neither of them will come down to visit her if she chooses to live in England.

(c) 23 March: the next day, GF is reported to have been pressing SF to discuss the house, to have reiterated that “you need to tell Miss H and Mr A that you want to move”, and to have said “SF if you tell Miss H or Mr A you want to stay in England, we won’t be back”.

(d) 24 March: GF is again reported to have told SF multiple times that she should tell Mr A and Miss H that she wants to live in Scotland, and to have said “if you want to see mam in the next five years, you have to move” .

(e) 26 April: SF reported to staff that when she told GF that Miss H was coming, he told her again she must tell Miss H that she wants to move to the house in Scotland.

(f) 1 May: SF was heard on the phone to EF saying that “she knows the words she has to say”. The note continues: “SF was saying to her mam that she knows the words that she has to say. EF told SF that she won’t be seeing her or GF no more as they won’t be travelling down again if she doesn’t come back to Scotland. SF said I know what to say, mam, EF continued to say, well remember what me and GF told you to say and you need to tell Miss H tomorrow exactly what we told you to say. SF responded by saying yes mam I remember exactly what you told me to say and I will say it tomorrow at Miss H. EF continue to say that she won’t have a new house or me and GF or your family, so you need to say what we told you to SF. SF once again agreed then change the subject.”

iv) On 2 May 2024, SF told Miss H that she would like to move to Y. She did not know anything about Y at the time other than that it was close to her mother and brother. Even then, SF said that if her mother and brother came down to visit her more often, she would prefer to live in England, but said her mother was no longer able to come.

v) On 20 May 2024, SF was again focused on Y, but also said that she “loves this house” and “love the life I have now”.

vi) On 12 July SF came to court to meet me. Almost immediately after I had introduced myself she told me that she wanted to live in Scotland but she also spoke very positively about her life at X and the activities she enjoys.

vii) Miss H visited SF again on 5 September and recorded,

‘Without prompting SF said, “My family want me to be in Scotland” and I asked her what she wanted to happen. SF said, “I’ve been told to tell you that’s what I want”. I asked SF who had said that she should tell me she wants to live in Scotland and SF said, “Mam and GF”. I explained to SF that I knew what her mum and GF wanted but that it was my job to find out what she wanted. I explained that it is okay to disagree with someone and not have the same view.

SF said, "I'll miss it here, and Northumberland but I want to be in Scotland". I told SF that I was surprised with what she had said because she had always told me that she wanted to live in England and that being back home had sad memories. SF said, "I am happy living here for the time being and I'll stay here if I have to and my mam can come and see me when she can". I asked SF again what it was she wanted. SF seemed to think about this and then said "I'm not sure what I want. Could they come more often?" I asked SF if she meant her mam and GF and she said yes. SF added "I want to go back to Scotland because of my family" adding "I don't want them not to visit me." SF then said that her mum had told her that one of her carers in Scotland is called J. She asked me if that was right. I told SF that I didn't know and that I thought they were going to find some carers when the judge had made his decision about whether she should stay in England or go back to Scotland. SF then added "I think it's time to move on."

17. SF has written two letters to me. In one she expressed the view that she would like to move to Scotland but in the other she said she wished to stay in the Northeast of England. The evidence is that, day to day, if not asked about a possible change of residence, SF does not raise the issue herself.
18. EF and GF told me that in their view SF wants to move to Scotland to be near her family and because that is where she belongs. In her home country.
19. Ms B has provided a very helpful statement in which she commends SF's current placement and the progress she has made there. She remarks on the skilled care from Orbis, the low staff turnover, and the high level of staff morale. She then turns to the impact on SF of a move to Y in Scotland:

"If SF were to move to an alternative placement in [Northeast Scotland] this could take a long while to build trusting relationships with a new staff team. Although unclear how long this would take, history shows this was at least 18 months building these relationships. In that time SF can communicate distress through behaviour that can be very challenging which could be very distressing both for SF and staff supporting with these behaviours. Historically this has led to high numbers of restraints which can have psychological impact on SF and on the caring relationships between staff and SF.

If SF moves to an alternative placement in [Northeast Scotland] a transition period would be needed. This will involve long trips to and from Y for both SF and carers. The logistics of the transition and impact on physical and mental health need to be considered. The transition from hospital to current placement was for approximately 8 months. This consisted of staff from ORBIS working directly into the hospital for 6 months, then hospital staff working in the current property for 2 months when transitioned.

Having a change in activities with different people in a different place could have a significant impact on SF. Impact from previous change in activity are physical aggression to staff by way of kicking, hitting with force, biting, spitting. It has taken a substantial amount of time and consistency from staff to provide a fulfilling quality of life with a variance of activities explained above, which continually change.”

20. Mr O’Brien KC for Aberdeenshire Council summarises SF’s contact with her mother and brother:

“SF has regular facetime contact with EF. SF texts and telephones for contact multiple times each day with EF. SF calls, texts and facetimes GF much less. EF and GF have visited SF some 16 times between August 2022 and the beginning of August 2024.”

There is no doubt that SF enjoys contact with her mother and brother. There is no doubt that SF recognises herself as Scottish.

Submissions

21. Mr O’Brien KC refers the Court to Mr A’s fifth witness statement in which he identifies the advantages and disadvantages of the placement at Y. He notes the advantages as being:

- (a) That SF would be in Scotland where she was born and identifies as being from.
- (b) SF will have greater contact with her family.
- (c) SF will be closer to her social work and social care team.
- (d) SF will receive a high quality of care.
- (e) SF will access the community and embark in activities with her family on a regular basis.
- (f) The placement is designed primarily around SF’s needs.
- (g) The move is consistent with her EF and GF’s wishes.
- (h) The move will enable SF to engage with and make friendships with other service users who will reside in other properties close to the one that she will live in.

The disadvantages are:

- (a) The move is likely to be contrary to SF's wishes and feelings.
- (b) That it may involve expectation of more family contact which SF may not want.
- (c) That this will involve a long transition period; the move and the transition period are likely to cause increased anxiety.
- (d) This will be a recently established care package so success in the implementation of this is entirely speculative.

The advantages of the current placement at X are:

- (a) That this has been SF's home for almost two years unquestionably providing care and meeting her needs.
- (b) Remaining in X is more consistent with her recently expressed wishes and feelings.
- (c) SF likes her carers and has excellent relationships with them.
- (d) SF has insight into how she has established her own home in X.
- (e) SF's mental health has remained stable and the success of the current placement is a reason for this.

The disadvantages are:

- (a) It is not in Scotland and there are no family links.
- (b) Further, contact with the family is likely to be restricted.
- (c) The property is in a residential area not near peers in comparison to the Scottish placement which will be.
- (d) SF's contact with her social worker will inevitably be reduced.

22. Mr O'Brien KC refers to three significant factors relevant to SF's best interests as identified by Mr A:

"2(a) The first is SF is from Scotland, her family live in Scotland and SF identifies as being Scottish.

(b) SF's contact with her family is important to her and it is clear she will have more contact with her mother and brother if she returns to live there. Equally, there is a risk that SF's contact with her family will reduce significantly if she remains in X.

(c) SF's wishes and feelings. Mr A notes that over time SF's wishes and feelings have varied. He notes that determining SF's wishes and feelings has been compromised by family members telling SF what to say. Mr A noted, however, that his last visit to SF was important. SF was clear that she wanted to stay in X. Mr A states that standing back, whilst it remains difficult to say with certainty that SF wants to stay in X, the vast majority of recent discussions suggest that these are SF's true wishes and feelings. He notes that understandably SF may want to stay there because of the excellent support and care provided to her. In contrast, a move to Y could detrimentally affect her mental health which has remained relatively stable since her discharge."

Even though Mr A acknowledges that if SF remains in X, her contact with her family is likely to be adversely affected, he concludes that if the court is satisfied that SF's wishes and feelings are that she wants to remain in X, it would appear to be in SF's best interests to continue to reside at her current placement there."

23. Mr O'Brien KC identifies that this is a finally balanced case with no outcome which is obviously in SF's best interests, but that if the Court determines that SF's wishes and feelings are to remain in X then on balance her wishes and feelings should take precedence.
24. Ms Roper KC, instructed on behalf of the Official Solicitor, submits that:

"The strongest factor in favour of a return to Scotland is the opportunity which SF would have for more contact with her mother and brother (there is no wider community in Scotland of people who have kept in touch with SF in the 9 years since she left Scotland). Even with the risks of transition, and SF's understandable refusal to visit her mother at home, she would almost certainly see more of them if she moved to a place [in the Northeast of Scotland], and that would almost certainly be a positive experience for her the vast majority of the time.

Against that must be set both the concrete positives of SF's life in England, and the risks of another move, bearing in mind past experience. The positives have been set out above and elsewhere by the Official Solicitor: SF is flourishing at X. The fact she has recently joined a new club shows there will be further opportunities for her to develop her interests and skills if she remains where she is.

The risks of transition are great: it is likely to impose on SF a prolonged period of anxiety and disruption, and to cause a deterioration in her behaviour which will lead to greater

restrictions by staff and greater levels of restraint over a period of potentially many months, both while SF remains in England and for a further lengthy period while she settles into Y, even if that goes as well and is managed by staff as positively as the move to X (which can by no means be guaranteed).

Taking all the above into consideration, the Official Solicitor considers that on the evidence as it is currently known, it is in SF's best interests to remain at her placement in X, to receive the same care and support which she has been receiving to date, and which has proved so successful, assuming that she can still maintain regular contact with her family.”

25. Nevertheless, Ms Roper KC suggests in her written submissions that if contact with the family significantly reduces then the question of SF's best interests would need to be revisited. Mr O'Brien KC reminded the Court of the great difficulty Aberdeenshire have had in finding a suitable placement for SF and that if Y is not taken up by her then it will be used for someone else.

Analysis and Conclusions

26. It is clear and undisputed that SF lacks capacity to make a decision for herself about her residence and care. The Court must make a best interests decision on her behalf applying the provisions of MCA 2005 ss1 and 4 and the caselaw briefly reviewed earlier in this judgment. There are two options available – either the court decides that SF shall remain at X or it decides that she should move to Y whereupon the transition process will be planned and begun. A third option of waiting to see what happens in the next twelve months or so is not open to the Court – the placement at Y may well not then be available. However, as in all cases, if there is a significant change of circumstances in the future and there are options available to SF that require a decision at that time, then a further best interests decision might then have to be made in the context that then applies.
27. SF's needs, her circumstances, and the broad advantages and disadvantages of the two available choices have been set out above. I have referred to the strongly held views of EF and GF, and the submissions on behalf of Aberdeenshire Council and the Official Solicitor.
28. A key issue is the wishes and feelings of SF. The evidence shows that she has expressed different wishes and feelings about moving back to Scotland at different times. The evidence also shows that she has been influenced by EF and GF to express her wishes and feelings in favour of a move to Scotland. Having heard from EF and GF, I am sure that they sought to persuade SF to say that she wants to move to Y because they believe it is best for her. They have not acted maliciously but rather in what they believe to be her best interests. Nevertheless, their influence has been quite strong and has made it harder to discern SF's true wishes and feelings. Having given this matter very careful consideration I have concluded that:

- i) SF is conflicted – she loves living at X and being supported by the Orbis carers. She greatly enjoys the activities in which she participates in the community around X. She has a good life at X. She does not want to leave X. On the other hand she wants to see her mother and brother. She has been given to believe that she will see more of them if she moves to Scotland and may not see them if she remains in England. Naturally she wants to see them more rather than less. If she could both stay at X and see more of her family, that is what she would choose. She struggles to accept that she cannot have both.
 - ii) Day to day, SF does not think about moving to Scotland. She does not pine for Scotland. She has some unhappy memories of living there.
 - iii) She can make plans for the future – as demonstrated by her saving up for her trip to Scarborough with the encouragement of staff – but largely she lives in the present. She does not ruminate on moving to Scotland or to Y. It is only when prompted that she applies her mind to the issue. She would like to see more of her family but when she does not see them, she gets on with the day and enjoys her life at X and in the community around X.
 - iv) SF is easily influenced and wishes to please her family. Before EF and GF sought to influence SF, she had consistently said she wanted to stay at X. I recognise that she might have been influenced by her carers at X and that at that time no-one around her was advocating for a move to Scotland, but there is no evidence that she was influenced in the way in which EF and GF have sought to influence her. My judgement is that SF's own wishes, before she was influenced to say otherwise, were to stay where she was living. She may not have appreciated the implications for contact with her family members, but she wanted to stay where she was.
29. Assessing all the evidence relating to SF's wishes and feelings, I find that SF's wish is to remain living at X and to be cared for by her current care team. She does not want to leave X but she does want to continue seeing her mother and brother there. She has no great desire to return to Scotland itself and is very happy living at X in England.
30. I take seriously the evidence of EF and GF about the reduced frequency of visits to X were SF to remain there. I would have thought that GF could continue to visit SF and X. He is in his early 50's and works as a driver. EF and GF told me about the network of family and friends who live in Northeast Scotland who would be pleased to see SF if she lived at Y. I do not wish to speculate but perhaps that network could give some support to EF to sometimes travel to England to spend time with SF however there is little to no evidence of any of them having travelled down to England to visit SF.
31. I note that any transition plan to Y would involve SF visiting it before her move. It must be thought possible therefore for SF to travel to Scotland if needed. I accept that it is very difficult for SF to travel far, although she recently made the trip to Scarborough, but with commitment, support, and some imagination, it should be possible to avoid face to face contact between EF and SF ending were the decision made for her to remain at X. Nevertheless, the evidence is that the opportunities for face to face time will diminish due to EF's age and declining health.

32. Just as I have to take into account EF's age and declining health in relation to her ability to travel to X, so I have to take them into account in relation to contact she might have with SF if she were to move to Y. EF would have to take an hour long bus journey to see SF at Y and she may not always be fit enough to do that. To be frank, I also have to consider the reality that EF is about thirty years older than her daughter and so will not always be around for her. There is a possibility that SF might move to Y and then not be able to spend time with her mother in any event.
33. Whilst I am told that the accommodation, care package, and availability of activities at Y will be similar to those at X, they would not be the same. SF likes where she is living now. She enjoys going to the local disco. She might not like a disco near Y. The same risk applies to other activities. Most obviously, she has a team of carers with whom she has a very positive relationship. That cannot simply be replicated at Y. There would be a new team. Of course, SF might have an even better relationship with that team, but it could be worse. There are risks involved in changing the care team, the residence, and the location where SF lives. SF might not thrive at Y as she is doing at X.
34. The care regimes at either X or Y will involve restrictions on SF's liberty but the restrictions to which she is currently subject are modest compared with those she previously endured. There is a risk that greater restrictions will be required during any transition period were she to move to Y. It cannot be known with any certainty whether she would settle at Y so as to need the minimal restrictions now required, or whether a more restrictive regime would be necessary.
35. I remind myself that the Court's role is not to do the best for EF or the family, but to make a decision on SF's behalf in her best interests. There is a loss to SF whichever choice is made. That has come about because of the need to transfer her care to England several years ago and the delays in finding a suitable placement in Scotland. Such an opportunity to move back to Scotland might not arise again for a number of years. Scotland is SF's home country and all her family live there; none lives in England. Nevertheless, SF does not want to leave X and she has no great desire to return to Scotland itself. The placement at X works very well for her and she is happy there. She may not be happy at the alternative placement, Y. She does not deal well with change, indeed it is liable to cause her distress. Until she settled in to X she was much more frequently agitated and distressed, and she frequently required restraint and seclusion. It may be that a change in medication has assisted her to achieve stability, but it is also quite clear that the excellent care she has received at X has been instrumental in transforming her life. The process of removing her from X and transferring her to Y risks a significant deterioration in her condition and her welfare. It cannot be known that the combination of factors that have so enhanced her life at X will be replicated at Y.
36. In her day to day life what matters most to SF is the place she lives, the people she has around her when she wakes up, when she eats, and when she goes out, the places she visits and the people she meets there. She has shown herself to be a sociable person who delights in the company of her current care team and in activities out of the home. Her family mean an awful lot to her too and she loves seeing and spending time with them. I recognise the sacrifice of time with her mother and family that will be suffered by SF if she remains at X but in my judgement what is more important to her and to her welfare are the care, support, and experiences she has between visits –

they are what give her life the character that it now has. It is a life that she enjoys and wants to continue. Placement X is working for SF and it would be contrary to her best interests to remove her from it. She has stability in her life for the first time for many years and the funding for her current placement is secure. I am satisfied that whilst this decision interferes with her right to a family life, it respects her right to a private life and that any interference with her right to a family life is proportionate and justified as being in her best interests.

37. I conclude that it is in SF's best interests to remain living at X.
38. This decision will be hard for EF and GF to accept. I am sorry that there is no solution that suits them as well as SF's best interests.
39. I have written a letter to SF to explain my decision. She has written to me and we have met at her request. It is a courtesy to respond and by doing so I can give her my decision directly and in language suitable to aid her understanding.