Neutral citation number [2023] EWCOP 16

IN THE COURT OF PROTECTION SITTING AT OXFORD

HEARD ON 25th, 26th & 27th APRIL 2023

HANDED DOWN ON 4th May 2023

Before

HER HONOUR JUDGE OWENS

Between

READING BOROUGH COUNCIL

Applicant

- and -

P
(by her litigation friend, the Official Solicitor)

First Respondent

-and-

SS

Second Respondent

-and-

HS

Third Respondent

-and-

KS

Fourth Respondent

Representation:

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| For the Applicant: | Mr Boukraa, Counsel |
| For P, First Respondent: | Ms Kirkbride, Counsel |
| SS, Second Respondent: | Litigant in Person |
| HS, Third Respondent: | Litigant in Person |
| KS, Fourth Respondent: | Litigant in Person |

1. This judgment is being handed down [in private] on 4th May 2023. It consists of 34 pages and has been signed and dated by the Judge. The Judge has given permission for the judgment (and any of the facts and matters contained in it) to be published on condition that in any report, no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name, current address or location [including school or work place]. In particular the anonymity of P and the members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court. For the avoidance of doubt, the strict prohibition on publishing the names and current addresses of the parties will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain.
2. This is the second set of proceedings concerning P who is an 87-year-old woman. She was born in Iran and moved to the UK in 2002 to live with her family. She has two sons, HS and SS, and one daughter, KS. P suffers from Alzheimer's dementia and a number of other physical health conditions including double incontinence. She has a history of falls and injuries and requires support in all aspects of her care needs, with the assistance of two members of staff for any transfers. Although she is reported to have spoken some English in the past, having grown up speaking Farsi, as a result of her dementia it appears that she has lost the ability to communicate in English.
3. P lived with her daughter, KS, from 2017 to 2020. In August 2020 she was admitted to hospital. Having undergone several operations to her hip, P

developed an infection and contracted Covid-19. Agreement could not be reached about where she should live following discharge from hospital. In January 2021, P was transferred to a less acute ward at a different hospital. On 3rd January 2021, following agreement within her family and with the Local Authority, she moved to a nursing home where she was deprived of her liberty.

4. In light of disputes between P's children about her care and residence, in March 2021 the Local Authority commenced welfare proceedings. Upon the parties reaching agreement that it was in P's best interests to continue to live and be cared for at her then nursing home, I approved an order on 28th May 2021 permitting withdrawal of the proceedings.

5. In July 2021, however, that nursing home served notice because of allegations concerning KS's behaviour which she denied. Further welfare proceedings began on 14th July 2021. After extensive enquiries, P's current care home was identified and, by consent, on 15th September 2021 P moved there. Disputes remained about whether it was in P's best interests to remain there, though, so the matter remained before the Court.

6. In May 2022, I concluded those proceedings determining that it was in P's best interests for her to remain in a residential care setting and to continue to receive a package of care and support which by that point had been in place for some time. All parties except KS had agreed with the expert evidence showing that P's best interests were better met by her remaining in her then residential placement rather than going home or having a trial placement with a family member. In my judgment, I noted *"the relationship between KS and the [previous] care home broke down with allegations being made both ways…As a result, conditions were attached to contact arrangements between KS and P to preserve P's placement*

*at the previous care home whilst a replacement care home could be found" (G17/362).* I also noted that *"it was not in dispute that a previous attempt to provide P with a package of professional support at KS's flat broke down within a week, with the agency alleging that this was because of KS's behaviour and KS making allegations about the care agency" (G17/362).* I also found that *"more often than not there is an extremely challenging and difficult relationship between KS and professionals providing care for P with allegations being made of inappropriate behaviour on both sides. Frequently behaviour contracts have had to be put in place to manage this" (G18/364).*

7. In the normal course of events those last proceedings should have resolved matters for P, but unfortunately for P further allegations about KS's conduct when visiting P or communicating with the current care home (which had been a feature of the previous proceedings as noted) arose. These led to the current care home saying that they could not continue with the placement and thus led to these further proceedings being issued in November 2022.

8. KS does not accept that she has behaved inappropriately in the way alleged by care home staff and the Local Authority, or that her behaviour poses any risk of harm to P, including any risk of harm arising from P having to move placement as a result. KS also did not accept that she should have restrictions placed on her contact with P, though she did agree to provide the court with undertakings about this in the relatively short-term and pending the court considering the issues. Very unusually, because of the complete absence of acceptance by KS that she had done anything wrong or should moderate her behaviour in any way to protect P from harm, the applicant applied for there to be a separate fact-finding hearing to determine the allegations about KS's behaviour and to therefore enable best

interests decisions about contact and placement for P to be determined by reference to what the court did or did not find proved about the allegations. KS opposed this course of action, though the other parties supported it. Direct contact between P and KS has been suspended in light of the allegations about KS's behaviour, though indirect video contact has been established twice a week between P and KS. P's placement is under threat as a result of the allegations and a search to find a new care home has commenced. Since KS did not accept any of the allegations or any suggestion that she may need to change her behaviour in future, it has thus far not been possible to persuade the current care home to agree that P could continue to stay there or determine how contact between P and KS could safely be managed. Applying the principles in Re AG [2015] EWCOP 78 (which itself endorsed the approach in the London Borough of Newham v BS and Anor [2003] EWHC 1909), I therefore determined that a separate fact-finding hearing was necessary in this case, and this has been the listed fact-finding hearing.

9. During this fact-finding hearing, I have read the Bundle and heard evidence from the following witnesses: A, B, C, D, E, F, G, H and KS.

10. The hearing has proceeded wholly remotely, with the consent of all concerned, given the geography of the various participants in relation to my court base, a previously expressed preference on the part of KS to avoid personal attendance at court, and given that the previous proceedings were conducted wholly remotely without difficulty. It is true that the connection from the care home set up by the Local Authority for the care home witnesses was not without occasional issue for this hearing. A combination of this, witnesses having to articulate their evidence when English was not their first language (though I was not asked to

direct that interpreters be provided and it was clear that they understood English and could communicate in English), and some witnesses not realising at first that they needed to sit a bit closer to the microphone did mean that there were some points when their oral evidence had to be repeated. There were a couple of occasions when the sound quality dropped so I directed that the laptop at the care home should disconnect and reconnect to secure a better-quality wifi connection, and this also worked to improve sound quality. At times I checked that everyone had heard something that had been repeated too, reading out my note of their evidence to check that was what the witness had said and everyone else had heard. It seemed that all of us had been able to hear what was said even when answers were repeated, and nobody indicated otherwise until I came to hear closing arguments at which point KS complained that she had not been able to hear some of the evidence. She had not raised any issue with this previously, despite having clearly felt able to raise other questions and issues throughout the hearing. She was also vague as to which, if any, parts of evidence she thought she had not been able to hear and certainly seemed to have been able to hear what was said so as to be able to challenge the various witnesses about it when she questioned them, and it did not affect her ability to make her case that all the witnesses were, in essence, lying.

11. Mr Boukraa for the Local Authority and Ms Kirkbride for the OS produced comprehensive and helpful position statements, which included reference to the relevant law. It is, of course, for the Local Authority to adduce sufficient evidence to seek to prove the allegations. The allegations are broadly disputed by KS, and I will return to the details of her responses when I consider each allegation in turn. SS and HS both accept that they were not present for any of the alleged

incidents, were not informed of them at the time, and have made it clear that their only concern is to ensure that P is not exposed to any risk of harm. The OS, as is usual, has adopted a neutral stance in relation to the fact-finding but has noted that, if the allegations involving incidents in the presence of P are found proved, this would cause her significant concern in relation to the potential impact on P.

12. The key principles governing fact-finding hearings in the Court of Protection were summarised by Baker J (as he then was) in *A Local Authority v M* [2014] EWCOP 33; [2015] C.O.P.L.R. 6, in particular:

> *"82. First, the burden of proof lies with the local authority. It is the local authority that brings these proceedings and identifies the findings that they invite the court to make. Therefore, the burden of proving the allegations rests with them.*
>
> *83. Secondly, the standard of proof is the balance of probabilities: Re B (Children) [2008] UKHR 35. If the local authority proves a fact on the balance of probabilities, this court will treat that fact as established and all future decisions concerning M's future will be based on that finding. Equally, if the local authority fails to prove any allegation, the court will disregard that allegation completely. In her written submissions on behalf of the local authority, Miss Bretherton contended that the court should apply the principle that*
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> > *"the more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it."*

*This principle, originally stated by Ungoed-Thomas J in Re Dellows Will Trust [1964] 1 WLR 451, was at one time applied by the courts considering allegations of child abuse in family proceedings under the Children Act 1989. In Re B, however, the House of Lords emphatically rejected that approach. Baroness Hale of Richmond, with whose judgment the other four Law Lords agreed, having analyzed the case law, stated at paragraphs 70 to 72:*

> *"70 I would announce loud and clear that the standard of proof in finding the facts necessary to establish the threshold under s.31(2) or the welfare considerations of the 1989 Act is the simple balance of probabilities — neither more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant in deciding where the truth lies.*
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> *71. As to the seriousness of the consequences, they are serious either way. A child may find her relationship with her family seriously disrupted or she may find herself still at risk of suffering serious harm. A parent may find his relationship with his child seriously disrupted or he may find himself still at liberty to maltreat this or other children in the future.*

*72. As to the seriousness of the allegation, there is no logical or necessary connection between seriousness and probability."*

*In my judgment, the same approach must surely apply in the Court of Protection where the court is carrying out a similar exercise in determining the facts upon which to base decisions as to the best interests of an incapacitated adult.*

*84. Thirdly, findings of fact in these cases must be based on evidence. As Munby J (as he then was) observed in Re A (A Child: Fact-finding hearing: speculation) [2011] EWCA Civ 12:*

> *"It is an elementary proposition that findings of fact must be based on evidence, including inferences that can properly be drawn from the evidence, and not on suspicion or speculation."*

*85. Fourth, the court must take into account all the evidence and, furthermore, consider each piece of evidence in the context of all the other evidence. As Dame Elizabeth Butler-Sloss, President, observed in Re T [2004] EWCA Civ 458, [2005] 2 FLR 838, at paragraph 33:*

> *"Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence to the other evidence and to exercise an overview of the totality of the evidence in order to*

*come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof."*

*…*

*89. Eighth, it is not uncommon for witnesses in these cases to tell lies, both before and during the hearing. The court must be careful to bear in mind that a witness may lie for many reasons — such as shame, misplaced loyalty, panic, fear and distress — and the fact that a witness has lied about some matters does not mean that he or she has lied about everything — see R v. Lucas [1981] QB 720. The assessment of the truthfulness is an important part of my function in this case.*

13. In *Re D (A Child) (Fact-finding Hearing)* [2014] EWHC 121 (Fam); [2014] Fam. Law 421 at §31.vii), concerning care proceedings but containing principles of more general application, Mostyn J described the relationship between witness evidence and contemporaneous documents as follows:

*"The assessment of credibility generally involves wider problems than mere 'demeanour' which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. With every day that passes the memory becomes fainter and the imagination becomes more active. The human capacity for honestly believing something which bears no relation to what actually happened is unlimited. Therefore, contemporary documents are always of the*

*utmost importance: Onassis and Calogeropoulos v Vergottis [1968] 2 Lloyd's Rep 403, per Lord Pearce; A County Council v M and F [2011] EWHC 1804 (Fam) [2012] 2 FLR 939 at paras [29] and [30]."*

14. In Re A (Children) (Findings of Fact) (No.2) [2019] EWCA Civ 1947, the Court of Appeal described a number of additional principles, also concerning fact-finding in care proceedings but applicable by analogy, at §§93-99. In particular:

    a. The court is not bound by the cases put forward by the parties, but may adopt an alternative solution its own (§96). Where the evidence justifies it, judges are entitled to make findings of fact which have not been sought by the parties, but they should be cautious when considering doing so. Per Wall LJ in Re G and B (Fact-Finding Hearing) *[2009] EWCA Civ 10; [2009] 1 FLR 1145 at §§15-16,* a judge *"is not required slavishly to adhere to a schedule of proposed findings placed before her by a local authority";* however, if the judge is to make findings of fact which are not sought by the local authority or not contained in its schedule, *"then he or she must be astute to ensure; (a) that any additional or different findings made are securely founded in the evidence; and (b) that the fairness of the fact finding process is not compromised."*

    b. Per the Court of Appeal in B (A Child) *[2018] EWCA Civ 2127 at §15,* it *"is an elementary feature of a fair hearing that an adverse finding can only be made where the person in question knows of the allegation and the substance of the supporting evidence and has had a reasonable opportunity to respond."* See, to similar effect, the Court of Appeal's guidance in Re W (A Child) *[2016] EWCA Civ 1140; [2017] 1 WLR 2415* at

§95 on the approach to adopt where, *"during the course of a hearing, it becomes clear that adverse findings of significant outside the known parameters of the case may be made against a part of a witness".*

15. As submitted by Ms Kirkbride, it is also worth bearing in mind the point made by Peter Jackson J (as he then was) in Lancashire County Council v C, M and F [2014] EWHC 3 (Fam):

    *"9…one possibility is of course that they are lies designed to hide culpability. Another is that they are lies told for other reasons. Further possibilities include faulty recollection or confusion at times of stress or when the importance of accuracy is not fully appreciated, or there may be inaccuracy or mistake in the record keeping or recollection of the person hearing or relaying the account. The possible effects of delay and repeated questioning upon memory should also be considered, as should the effect on one person of hearing accounts given by others. As memory fades, a desire to iron out wrinkles may not be unnatural – a process that might inelegantly be described as "story-creep" may occur without any necessary inference of bad faith".*

16. The full schedule of allegations in this case are appended to this judgment at Appendix A.

17. The first group of allegations relate to 30th December 2021. KS does not dispute that she visited P in the care home on this date and accepts that she asked staff why P had not used the commode, that she challenged staff about P being in the lounge, that her voice was loud and that she stated there was a risk that P would catch Covid from being in the lounge. She disputes all other aspects of this allegation, including that she became verbally abusive, shouted and did not

accept what the care home staff told her about why P had been placed in the residents' lounge and given medication.

18. I heard evidence about this allegation firstly from A who was the unit manager at the care home during the period of the alleged incidents. A's written evidence about this is in the Bundle at D25 and D91. Her oral evidence was consistent with the recordings that she made at the time, D25. A's written statement is at D91 and confirmed the accuracy of the note at D25. KS disputes that the care home was toileting P as regularly as she needed, which A refuted and stated clearly P was toileted as required and hoisted by staff for these purposes. A also confirmed that any incidents involving P and KS were properly recorded and reported to the care home manager, J.

19. KS's case is that she may have raised her voice towards A but this was because of wearing PPE and noise in the lounge at the time. A was quite clear that what she experienced was KS shouting and told me very clearly that this was louder than would have been simply because of needing to be heard over PPE and background noise. KS accepts that she did say something about P being at risk of catching Covid by being in the lounge area, but does not accept that she shouted *"do you want to kill my mother, do you want to give Covid to my mother?"*. The written record about this at D25 was completed by A at 16.37 hours that same day and clearly shows that A went to find KS to explain to her about P being restless and noisy in the lounge earlier that morning. It records that *"Immediately she (KS) shouted at me with out any provocation and she did not allow me for speaking anything and asked me that 'why did you not toileted her? (sic)".* Given that KS herself seems to accept that she was concerned about whether P was being toileted appropriately, it is consistent that she would have

raised this and in fact she accepts that she did raise it. The way in which she raised it is the issue, and whether KS subjected A to shouting and verbal abuse. A gave consistent and credible evidence about this, accepting when questioned by KS in this hearing that she had initially had a good relationship with KS. A described being shouted at by KS without provocation and being made to cry as a result at time, though she was clear that she had never cried in front of KS so KS may well have been unaware of this. KS's evidence about this is at D122-D123 of the bundle. In this she accepts that she had concerns about *"inadequate infection control"* which she had raised with the management of the care home before (D122), and that she *"had expressed concern about my mother being exposed to the virus when taken to the communal areas, while other residents were isolated in their own rooms for safety"* (D122-123). KS's starting point that day also seems to have been that because P was shouting and in apparent distress that this meant she had not been toileted in accordance with the care plan (E2), and that because KS knows P best, she can tell when her distress means she needs to go to the toilet.

20. It is not in dispute that P is not capable of verbalizing that she needs to use the toilet. It was not disputed by A that when P became agitated care staff would first try giving her paracetamol in case she was in pain, then try toileting her if paracetamol did not work in case she needed that, and then ultimately to administer an antipsychotic if toileting did not calm her. I found A to be a credible and compelling witness about toileting having already been tried in relation to P before KS arrived on this date. I also found it credible that, given how concerned KS was about the possibility of P catching Covid on her own evidence (which includes emails to the care home at the time), it is likely that KS would have

reacted strongly to what she perceived as her mother being placed at risk. The fact that she had previously had a good relationship with A also makes it less likely that A would lie about what happened on this date, I find. I know that KS told me that she believes the care home staff, possibly led by managers or possibly somehow simply banding together to protect each other, had been influenced by previous reports of KS being challenging and this somehow led to the contemporaneous reports being concocted to present her in a bad light. However, there are numerous entries in the records appended to the allocated social worker's statement in section D which simply record relatively mundane or uncontroversial interactions between KS and care home staff, some of which involve KS making legitimate enquiries about P's care (for example medication changes (D22), letting her know that one of her brothers was visiting P (D24), KS being updated about P and being told that she was sleepy and had had poor food and fluid intake so KS requesting that a UTI test be carried out (D24)). It is not true therefore, as KS seemed to allege, that staff had universally tried to portray her negatively in these records. I will return to this point later in this judgment when looking at the evidence overall.

21. KS also alleged that her own recollection of events was better now and thus more accurate than the records completed at the time by individual staff members. Clearly, as was accepted by the various witnesses when they gave evidence to me, their memories today have not been helped by the passage of time and some did accept that they simply could not recall all the details now. However, A clearly did recall most of the important details about this alleged incident when giving me her evidence, and made consistent, credible notes at the time. A was also very clear when questioned by KS that she knew the difference between KS

having a loud voice normally and shouting, and that KS *"shouted"* at her without provocation. I therefore found A to be the more credible witness about this allegation and find it proved on balance of probabilities.

22. The second group of allegations relate to 8th May 2022. The evidence in support of the applicant's case about these allegations is from A. Again, KS does not dispute that she visited P on this date. She accepts that she had a conversation with carers in which she was asked to wait outside P's room whilst she was toileted and then had a conversation with A about this. She does dispute that she challenged staff including A about the care being provided to P, refused to remain outside P's room while she was toileted, shouted loudly to the care worker in P's presence and that this caused visible upset to another resident.

23. The trigger for KS having a conversation with staff on this day seems to have been KS being surprised at being asked to wait outside P's room whilst she was toileted. That is not in dispute. It is also not in dispute that the care plan dated 9th September 2021 (E5) records that *"when personal care is delivered to P by care staff then KS can remain in the room and can assist although not with moving and handling for safety reasons".* There had thus been a change to ask KS to wait outside the room whilst personal care was given to P, but that is hardly surprising given that care and support plans can change and there have been various restrictions placed upon KS's contact at the care home and the previous care home. It was clear from A's evidence about this that she did not witness the first part of the incident and she was only involved when KS and staff came to her with concerns arising from it, though she is the one who completed the record at D28 based on the reports from staff. It seems to have been a decision taken by a manager to require KS to wait outside the room, though KS does not accept that

this was the case (D122). I should note that at this point that, on KS's own evidence at D125 she did act in breach of the previous care and support plan expectations by becoming involved in handling P: *"I helped staff with moving her gently"*, though I accept (as she says) she probably did this with good intentions to make her mother more comfortable and help staff. KS's oral evidence to me that she stood back and did not get involved in handling P during personal care is therefore not credible, I find.

24. Regardless of whether KS was aware of the change in plan to require her to wait outside P's room, the key issue here is about her behaviour when asked to wait outside the room rather than the reasonableness of the requirement. A was quite clear that if KS had legitimate concerns about P, including the risk of her contracting Covid, she is quite entitled to raise those, and this is something that she had a lot of experience of family members doing over her career. She was also quite clear when questioned by Ms Kirkbride about this that this sometimes included people becoming passionate and expressing their views in a passionate way, but this was different to the sort of behaviour that she witnessed from KS. Her words were *"the way that KS has communicated on the dates concerned, it was beyond the limit. Without provocation she has got very angry, shouting, which is unusual compared to other families".*

25. KS seems to accept that another resident of the care home was present for the latter part of this incident (D126). She disputed in the course of this hearing that he said he wanted to slap her and became upset and that is also what she put in her response to the schedule at D134. However, her written statement at D126 also makes it clear that she *"did not hear him say that he wanted to slap me. I cannot comment if he became upset as I had left the situation".* Her evidence

about this was therefore inconsistent because on the one hand she seemed to be saying that this did not happen, but on the other that she could not say if it happened because she did hear it or see it. KS also said in her written evidence at D125 *“my memory around this is quite hazy but following my discussion with A I think I might have gone back to the room to calm mum down and support her”.* This is at odds with her subsequent claim when being questioned by Mr Boukraa during this hearing that her memory now is more likely to be reliable than the care home written records produced at the time, and that she cannot be mistaken now. On balance, I found A’s evidence about this, particularly the contemporaneous written record D28 which was completed at 17.16 hours that same day, to be more credible and compelling. Although the initial part of the incident in P’s room was not witnessed by A (and in fact the Local Authority have not sought to pursue a finding that KS interfered with P’s sling whilst being hoisted on this date considering the absence of primary witness evidence), A did see her immediately afterwards when KS accepts she came to seek her out. It is consistent and credible that, as A described, A attempted to explain to KS why she could not go into P’s room and what was being alleged by staff and KS reacted strongly to those allegations, I find. It is also credible that the other resident, present for the latter part of this incident, did become upset by the shouting as A described. I’m not sure that it adds much to this finding to consider if he tried to slap her or said he wanted to slap her, though it does perhaps add to a conclusion that KS’s behaviour was clearly adversely affecting other residents in the care home and that would not be in their best interests. The most significant aspect is instead that her behaviour was unacceptable and caused upset to staff and another resident, I find.

26. The third group of allegations relate to an incident in two parts on 2nd June 2022. Again, KS does not dispute that she visited P on this date. She accepts that she was upset because she thought P had been left unattended for too long and raised her voice but said that she did so to be heard over P and accepts that she disagreed with B about how long P had been left. She accepts saying to B that she was not good at care and that another member of staff should support P and admits that she was frustrated and that this may have been perceived by B as anger (D136). She disputes that she repeatedly shouted angrily and aggressively at B, causing B to be frightened and distressed. It is also alleged that on the same date, KS entered the nurses' station, pushed a chair on which D was sitting and repeatedly shouted that staff had not attended to P. D viewed KS as rude and found this frightening and distressing. KS accepts that she entered the nursing station and shut the door but denies pushing the chair that D was sitting on however does admit that she moved a chair that was holding the door open (D137). She denies being rude and did not intend to cause fright or distress.
27. The contemporaneous note of this incident is at D29 in the bundle and was completed by C because the two carers directly involved did not have access to the care home system as C told me. She gave credible and compelling evidence about being called to the unit by B who she saw was very distressed and crying after the incident. C confirmed when questioned by KS that she had only ever seen KS briefly in reception before this and did not really know her. She also told me that, although D (who was in charge of the unit on the day) was very new as a registered nurse, she had been a nurse for a long time before that and she did not think that D or B over-reacted. She also gave very compelling evidence

about the appropriate procedures that family members should follow to raise concerns including the efforts made by the care home to make people aware of this by leaving leaflets around with telephone numbers for managers on them. She was also very clear that both D and B were visibly distressed after their interaction with KS on this date, and in answer to my question about this explained that she had had to spend time with them talking to them and trying to reassure them before she could try to find out what had happened. In my view that is very powerful evidence of how distressing D and B found this incident, which in turn supports the contention that KS's behaviour was unacceptable to have caused such a strong reaction.

28. D, who told me that she did not really know KS before this incident, was new at the care home at the time. She was very clear when questioned by KS that she was not mistaken about the date and that she was the nurse in charge on that day. She told me that KS came to see her to allege that KS had been with P in her room and had pressed the call bell for somebody to come and take P off her commode but there had been a very, very long delay in answering that call. D was in the nurses' station at the time and had been on the phone so told KS that she was not aware as a result and would try to sort it out. D very fairly accepted in her evidence to me that initially she had no problem with KS coming into the nurses' station and shutting the door so that the two of them could have a private conversation. She was also very clear when questioned by KS and then Ms Kirkbride that she had never experienced any problem with KS before, but that KS came in and really shouted at her and scared her though she did not cry in front of KS. Given the level of anger that I find both witnesses have clearly described KS exhibiting, it is credible that KS pushed D's chair as she alleged

and caused her to drop the ‘phone that she was holding (D106 and orally in evidence to me).

29. KS was very focused in this hearing on whether P had been left for 45 minutes on the commode during this incident. She pointed out in closing submissions that the timing of the care home record at D29 which is 16.12 hours proved this because that entry started with a note that *“at 1530 hr [another member of staff] came into Pirbright lounge to inform staff that P’s daughter when suddenly to her office”.* I think that KS has confused several things here – the log entry was made after the incident overall as C told me; the reference to 15.30 hours in the log is the time when the member of staff who is not a witness told other staff that KS had arrived at her office shouting and demanding that she find staff to hoist P off of the commode; the time that KS first called for someone to come and remove P from the commode is not recorded anywhere by anyone including KS. On KS’s evidence and in fact that of the other witnesses, by 15.30 hours KS was already alleging that P had been left for too long and the time of the log at 16.12 hours when everyone agrees that the incident was over is thus wholly irrelevant to this aspect.

30. E also witnessed part of this incident. On 2nd June she was in the lounge and saw the member of staff who had been asked by KS to ring the care staff to get someone to hoist P off of the commode, and she saw that this staff member was visibly distressed because of KS being rude to her. She also saw B coming out of P’s room crying and saying that KS had told her to get out. She gave credible and compelling evidence about KS coming and going from P’s room and the heavy fire door slamming each time that she did this, though she very fairly accepted that she could not say that KS did this on purpose. Her main concern,

as she told me, was that the heavy door slamming repeatedly, whether KS meant this happen or not, caused P distress as did KS shouting. E, in answer to questions from Ms Kirkbride, described seeing KS in the nurses' station shouting at D which corroborated the account given by D, though she fairly accepted her view did not allow her to see if KS pushed D's chair.

31. On balance, I found the care home witnesses to be more credible about this allegation than KS and I find this allegation proved.

32. On 8th September 2022, KS again visited P and does not dispute this. KS accepts that she asked why P was in the conservatory and may have raised her voice but says that she did so to be heard over music. She denies being aggressive. She also admits that she pushed P in her chair but denies that she did so intentionally towards a group of residents, and denies demanding that they move, or being impolite. She denies that her tone was rude or threatening and does not accept that her actions caused a member of staff, F, to be upset and frightened for her safety.

33. The main evidence about this allegation comes from F. F was very clear in her evidence to me that KS did shout at her in an aggressive manner and not just in a raised voice because of the music and other background noise and whilst wearing PPE. Curiously, KS seems convinced that somehow P was being sidelined in the conservatory unnecessarily, but F's explanation about P being distressed by loud music and thus not being placed too close to the live musician was reasonable. P was also not on her own even on KS's account since F was there and it appears that one or two other wheelchair users may have been there too since this was the edge of the wheelchair users' area as F told me. On balance, I found F more credible than KS about how KS pushed P's chair

towards the other residents and that she used words to the effect of ‘move, please move’. This is what was recorded by F on 8th September and appears at D54. In fact, in that initial, contemporaneous account, the fact that KS told the residents to move is not necessarily concerning, what is more concerning is what appears to be KS moving P with undue haste and perhaps without due regard for what was safe for all concerned because F described advising her to use a wider doorway and having to move a chair out of the way. This note also records KS making allegations that P was being segregated, shouting at F and F finding her rude and threatening. KS tried to put to F in cross-examination that there was no way that F could have found her threatening because of the difference in their relative sizes. I obviously stopped this as it was not an appropriate line of questioning, pointing out that whether someone can be threatening or someone else feels threatened is not necessarily related to relative size. However, as was submitted by Mr Boukraa in closing, this does demonstrate a real lack of awareness on KS’s part about the potential impact of her behaviour on other people. It is also significant that KS accused F of lying when she questioned her about this allegation and, as was submitted by Mr Boukraa, this does support a finding that KS does tend to accuse people of lying, often without foundation and in circumstances where she herself feels under threat, I find. Part of the allegation on 8th May 2022 was that KS accused A of lying, so this is consistent with such a finding. On balance, I preferred the evidence of F about this incident to that of KS and thus find that this allegation is proved.

34. The penultimate allegations relate to 16th September 2022. Again, KS accepts that she visited P on this date. On the same date, KS accepts that she entered the nurses’ station when A and F were in there but denies that she interrupted a

conversation between them about P’s care, or that she shouted at A and took the phone from her whilst saying words to the effect that she was not going to call anyone. She denies that her manner was intimidating and frightening, or that she tried to prevent A leaving, or refused to leave the nurses’ station when asked to. She also denies that she pushed the chair in which A was sitting and in so doing A was struck in the abdomen. She also denied later interrupting staff when they tried to describe the incident to the care home manager, or that she accused the staff of lying and asked for A to be removed from the care home.

35. A’s evidence about this was clear, credible and compelling. As I have already noted, she accepted that her general relationship with KS had initially been good and there had been times when she had seen KS as friendly and supportive despite the times that she also clearly described KS shouting at her without provocation and making her cry. She gave very powerful evidence about the impact on her of experiencing this, including having to have lots of support from her managers, being unable to concentrate properly for 2-3 weeks and having to be prescribed medication for the stress, something that she also told me she had never experienced before. She also told me that she was eventually so traumatized by it all that she was regularly in tears for 2-3 weeks and needed to call the police. She described how small the nurses’ station was and how, as a result, KS standing between the chairs she and F were sitting in, inevitably blocked them in the room, though there was still space for a person to walk behind their chairs unless one of the chairs rolled back. It is not disputed by KS that she went into the nurses’ station to ask about P’s UTI, and A agreed that initially KS waited for her to finish talking to F and for F to leave before KS raised this. KS agrees that she then sat on the chair that F had just vacated and that

this was right next to the computer on which P's file was open with her picture, because A had been showing F something in the file to show her where to document something from the Thursday before. A was very clear that she was not annoyed as KS alleges, that she also spoke to KS in a perfectly pleasant way, but KS immediately demanded to know why P's file was being shown to somebody else (though I cannot for the life of me see that it was unreasonable for two members of staff to be viewing P's file in the way that A described). It is not disputed that A tried to call one of her managers and that KS seems to have wanted a manager to come down to assist. A was very clear that KS then tried to stop her getting help and told her not to call anybody and that A raised her voice to ask G to get help. G, it seems agreed, was a little way away in the dining area. Unlike the 2nd June incident when the witnesses concerned accepted that KS may not have mean to trap D in the nurses' station deliberately, A was very clear that KS meant to stop her calling for help and leaving because KS said to her "you are not going to call anybody". A also told me that, because this incident was very significant, it resulted in an incident and accident reporting form which is at D34 in the bundle. She told me in answer to questions from Ms Kirkbride that the way KS moved her chair back and the force with which it struck her in the abdomen was over and above what she would expect from someone just moving their chair out of the way. F saw part of this incident, telling me when asked questions by Ms Kirkbride that she saw from outside the room (which everyone agrees had a large glass window in the wall) KS had her hand on the door and one hand on a chair, though she did not see her push the chair. She also described hearing KS shouting but decided not to intervene because she was not

A's manager and she was worried that it would not have helped if she, F, went in there.

36. In her evidence to me, KS accepted that, as she put to A in cross examination, what had happened between them in the nurses' station could have been described as an argument. She accepted that she had rolled her chair back but said that she did not know that A was behind her and went on to describe (as she said) *'something out of a movie'* where A jumped over her by putting her foot on the seat where KS was sitting. This is not supported by the evidence of F and, frankly, is wholly lacking credibility having heard and seen A give her evidence. KS accepted that there were records made at the time by different staff members about this incident and went on to allege that A tried to put words into G's mouth at the time of the alleged incident, something that is conspicuously absent from KS's written evidence at D130-D131. It is also curious that KS accepted at D131 that *"in hindsight I accept that I should have left when she asked me to"* – this acknowledges that A asked her to leave and seems to accept that KS remained for longer in the nurses' station than was reasonable, though KS gives no other detail beyond this.

37. KS was very critical of the evidence of G about this incident. It is true that G really appeared to struggle in her evidence to me during this hearing, though I am not clear about the reasons for that. KS alleged that some witnesses, I think including G, were clearly uncomfortable because they felt under pressure to give evidence and were (bluntly) somehow coerced into making the various recordings and giving evidence. In fact, I need to remind myself that there can be a variety of reasons for witnesses appearing uncomfortable, as Mr Boukraa submitted in closing. Giving evidence in a court is probably alien to most people

and can be a stressful and frightening experience, especially where they are being asked to try to remember things that happened some time ago and which caused some of them quite profound upset and distress on their accounts. It is also worth remembering that, as I noted earlier, for most of them English was not necessarily their first language and, whilst they did not need an interpreter, this can also mean that they may need longer to work out what they are being asked and how to respond. This is precisely why contemporaneous records can be so helpful, and why it is not terribly helpful to try to assess someone's credibility by reference to their demeanour when giving evidence. I have also borne in mind that there can be other less obvious factors affecting a witness's demeanour in court, including upbringing, cultural inheritance, education and neural atypicality.

38. On balance, I found that the evidence of the witnesses from the care home in writing and in person about this incident was both credible and compelling and that of KS was not credible and thus find this allegation proved on balance of probability including that KS pushed her chair back and thus struck A in the abdomen with more than minimal force.

39. The final group of allegations relate to 18th September 2022. Again, KS does not dispute that she visited P on this date. It is alleged that she told K in an aggressive tone to "shut up" and leave P's room, that she grabbed the sling of the hoist being used to transfer P to the commode and threw it, causing its straps to strike P and causing her to scream in fright. It is also alleged that she pushed K forcefully from behind as K and H went to leave the room and H had to hold K's arm to stop her from falling and striking her head on the wall. Later in a corridor it is alleged that KS used abusive and offensive language towards K. None of this is accepted by KS.

40. It is important to consider at this stage that the Local Authority have not called K, although there is an unsigned statement from her in the bundle. She has apparently left the employment of the care home and the Local Authority did not seek to try to compel her to come to court. Her statement can stand as evidence, though the weight which can be attached to it is fairly accepted by all to be the real issue for me. KS in closing asked me to attach no weight to it at all, and the OS also submitted that little weight could be attached to it given that it was unsigned. There is a clear dispute between K's evidence and that of H in relation to whether K was pushed by KS from the front or the back and where the hoist sling landed on P if at all. H was very clear in her evidence to me, repeating twice that she recalled KS pushing K from the front, despite the notes at D36 recording that it was from the back, H not mentioning this at all in her handwritten note at D58 completed on 18th September and only referring to KS pushing *"K on the shoulders, towards the door"* in her statement at D95. H could not be sure if the hoist sling made any contact with P's body when she gave me her evidence and acknowledged that it could well have been an accident because of KS intervening. KS accepted in her evidence to me that she may have touched K's shoulders to guide her out of the doorway, and conceded when asked by Ms Kirkbride about this that it would not be acceptable to touch a member of staff in any way. Neither H nor G have provided any supporting evidence in relation to the allegation that KS swore at K in the corridor, though this is recorded on the care home contemporaneous record at D36. As was submitted by Ms Kirkbride, I agree that there is clear and credible evidence that there was a dispute in P's room on 18th September which involved KS and members of staff attempting to provide personal care for P. It is not actually disputed that KS became visibly

distressed during this incident which, as Ms Kirkbride noted, is accepted by all as not good for P because exposure to conflict is distressing and thus potentially harmful for her. The evidence of the care home witnesses who have given evidence during this hearing is credible and compelling about this incident, and I find that KS was aggressive as alleged and demanded that K leave P's room. KS seems to accept that she was not happy about K, who was an agency member of staff, being involved in caring for P though it is not clear why she had such a problem with this. I also find it proved that KS attempted to physically interfere with P being hoisted by picking up the sling (and thus in breach of the personal care plan), but not that she deliberately threw the strap of the hoist sling at P or that the strap landed on P's body, though I do find it is more likely than not that both the aggression from KS and her interfering with the hoist would have been likely to cause P fear and distress. I also find that KS did want H and K to leave Ps room and, in so doing, she made inappropriate physical contact with K on K's shoulders, though not that she pushed K with sufficient force to cause her to fall into the door frame. It does seem more likely than not that even inappropriate physical contact from KS, in the context of her aggression and interference with the hoisting process, would have come as a shock to H and K, though. I also find that it is more likely than not that KS was abusive to staff members during this incident including calling them idiots, though do not find it more likely than not that she deliberately told K to *"fuck off"* and *"go to hell"* given the absence of clear evidence from H about this.

41. I have also looked at all the evidence overall and have been very struck by the pattern of behaviour by KS that these allegations disclose, and also that this is consistent with complaints made about KS in the past by the previous care home.

The various witnesses from the care home had a variety of degrees of knowledge of KS from virtually none before an incident to extensive involvement with her when she was visiting P. Those who had any prior involvement with her invariably said that they thought they had a good relationship with her until an incident arose and seemed genuinely shocked and puzzled by the behaviour that KS had subjected them to. KS herself seems to have recognised that she should have handled things differently, noting in her email to the Local Authority in February this year at D164 that *"I do appreciate why the staff felt distressed or intimated (sic) when I felt frustrated about my mother's situation. On reflection, I fully accept that I should have been more patient, controlled my emotions, and frustrations much better. I should have talked to them calmly, and should have apologised for upsetting them instantly…It is regrettable that my behaviour on certain occasions has had such an impact on staff, and for that I am truly sorry".* As was submitted by Ms Kirkbride, it is also significant that KS told her in answer to a question from her that there were times when she accepted that she should have stepped back or walked away for a while. It was, however, disappointing, that she could not accept in her oral evidence that she might have frightened staff on occasions and, whilst she accepted that they may have been intimidated, she alleged that this was because of knowing that she was going to complain about them. It is also, as Ms Kirkbride submitted, inherently unlikely that this many witnesses, who are professional carers, with such a variety of levels of knowledge of KS, would fabricate or embellish their evidence about what they say they saw. KS tried to allege that somehow the fact that staff would have seen that she was already noted to be challenging when P moved to this care home led to them colluding in their evidence. Her logic is very difficult to follow

about this, especially when I consider how many of them honestly said that they either had no knowledge of her before an incident or had positive experiences of her before an incident.

42. There is a clear distinction between a caring family member who raises legitimate concerns about the care of their loved one and does so in an appropriate way, and what KS has done which is to become convinced that staff were not caring for P appropriately (often despite the actions of staff in her presence, it seems) and to constantly raise her concerns about this but to do so in an aggressive and sometimes threatening manner, especially if staff do not immediately agree with her interpretation of events. I fully accept that KS clearly loves her mother very much and, I think, believes that she is the only one capable of understanding her and interpreting her actions. I also accept that it is abundantly clear that KS feels very passionately about ensuring P receives appropriate care and that this is not necessarily a bad thing. However, what is not acceptable is for KS to allow her passionate commitment to P to result in her challenging those attempting to provide care for P in a way that is inappropriate, includes aggressive and threatening behaviour and whereby P is exposed to conflict as a result. KS accepted in her evidence to me that she did think it would be appropriate to behave in the way alleged if she had concerns about her mother's care. It is deeply concerning, as the OS pointed out through Ms Kirkbride, that KS seems to have failed to appreciate that her actions exposed her mother to increased distress and this was potentially deeply harmful for P. I am forced to conclude, as Ms Kirkbride submitted, that KS has little insight into her behaviour and its impact on P and, until she accepts that she cannot behave in this way in future, there is a risk of her continuing to expose P to conflict. The tragedy of this case

is that nobody disputes that KS clearly loves P very much and that P derives great benefit from having regular contact with KS when there is no conflict. It is also not in dispute that, aside from her complaints, KS generally accepts that P is well-cared for at the current care home and that a move to a new care home may be very risky for someone as frail as P now is. I would urge KS to reflect upon my findings and whether she can change her behaviour in the future even if she thinks that P is not being cared for appropriately.

HHJ Eleanor Owens
4th May 2023

APPENDIX A

| Date | Findings sought | Finding |
|---|---|---|
| 30-Dec-21 | **a**: KS rejected A's explanation that P had been placed in the lounge at the care home and given medication as she had been restless.<br>**b**: KS shouted at A words to the effect, 'do you want to kill my mother, do you want to give Covid to my mother?'<br>**c**: Despite A's explanation that P could not safely be left alone in her room and had been placed in the lounge at a distance from other residents, KS continued to shout and became verbally abusive, accusing the nurses of having a 'bad attitude'. | **a, b & c proved in all respects** |
| 8 May2022 | **a**: In answer to KS's question why she had been asked to remain outside her mother's room while P was toileted, A explained that relatives were not permitted in a resident's room while the resident was receiving personal care, manual handling or continence care.<br>**d**: KS shouted loudly at A that A was lying and that KS was permitted to be present | **a, d and e proved in all respects** |

| Date | Findings sought | Finding |
|---|---|---|
| | whilst her mother was being cared for.<br>**e**: This shouting caused visible upset to another resident. | |
| 2 June2022 (1) | Asserting that her mother had been left unattended, KS repeatedly shouted angrily and aggressively at B, instructing B with words to the effect ‘get out of here right now’ and describing her and a colleague as ‘useless people’, causing B to be frightened and distressed. | **Proved in all respects** |
| 2 June2022 (2) | **a**: Entering the nurses’ station, KS pushed the chair in which D was sitting, and repeatedly shouted that staff had not attended to her mother.<br>**b**: KS came across as rude, and D was frightened and distressed. | **a & b proved in all respects** |
| 8-Sep-22 | **a**: KS demanded in a raised voice to know why her mother was sitting in the conservatory at the care home.<br>**b**: KS then pushed her mother in a large armchair towards a group of residents, with words to the effect, ‘move, please move’.<br>**c**: KS’s tone was rude and threatening, and F was upset and frightened for her safety. | **a, b & c proved in all respects** |
| 16 Sept2022 | **a**: KS entered the nurses’ station at the care home, interrupting a conversation between A and F about P and her care.<br>**b**: KS shouted at A and took the phone A was holding with words to the effect, ‘You are not going to call anyone’.<br>**c**: A found KS’s manner intimidating and frightening, and tried to remove herself.<br>**d**: KS blocked A from leaving the nurses’ station, using words to the effect, 'you are not going anywhere and you are not going to call anybody and nobody will come here '.<br>**e**: From outside the nurses’ station G asked KS to allow A to leave the station. | **a, b, c, d, e & f proved in all respects** |

| Date | Findings sought | Finding |
|---|---|---|
| | However, KS pushed the chair in which A was sitting and A was struck in the abdomen.<br><br>**f**: Later, G and a colleague found care home manager J, and were in process of describing the incident to him when KS interrupted and accused staff of lying and (referring to A) asked J in words to the effect 'Please send this lady from here'. | |
| 18 Sept 2022 | **a:** In an aggressive tone KS told K to 'shut up' and to leave her mother's room.<br><br>**b:** KS grabbed the sling of the hoist used to transfer P to the commode and threw it, resulting in the sling landing in P's lap and its straps striking other parts of P's body and causing P to scream in fright.<br><br>**c:** As K and H made to leave P's room, KS pushed K forcefully from behind. H held K's arm to prevent K from falling and striking her head on the wall.<br><br>**d:** Later in a corridor at PC, KS called out to K words including "Idiot", "Fuck off" and "Go to hell". | **a proved in all respects. b,c and d found partially proved in that KS attempted to physically interfere with the P being hoisted by picking up the sling, that as K and H made to leave P's room KS made inappropriate physical contact with K on K's shoulders, and that during this incident KS was abusive to staff members including calling them idiots.** |