



IN THE COURT OF PROTECTION

Case No: COP 12981080
Neutral Citation Number: [2024] EWCOP 32

Sheffield Combined Court Centre,
50 West Bar,
Sheffield
S3 8PH

Date: 03/06/2024

Before :

HHJ BADDELEY

Between :

AB

Applicant

- and -

CD (By The Official Solicitor)

First
Respondent

-and-

Sheffield City Council

Second
Respondent

AB represented herself
Miss Francesca Gardner (instructed by **MJC Law**) for CD
Mr Simon Wilkinson for Sheffield City Council

Hearing dates: 8-10 April 2024 and 3 June 2024

Approved Judgment

This judgment was handed down remotely at 10.00am on 3rd June 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HHJ Baddeley:

Introduction

1. These proceedings concern CD, a 27-year-old man. CD has diagnoses of a moderate learning disability and visual and hearing impairments.
2. CD resides in his own flat in South Yorkshire (“EF”) with care provided by a specialist care provider, KL. The package of care is jointly funded by Sheffield City Council (“SCC”) and NHS South Yorkshire Integrated Care Board, with SCC being the lead commissioner and case manager.
3. There are two applications before the court:
 - i) A COPDOL11 annual review of CD’s continued deprivation of liberty at EF, issued by SCC on 1 April 2022 (the third such review of a deprivation of liberty first authorised by District Judge Bellamy in 2019); and
 - ii) A separate COP1 health and welfare application made by AB, CD’s mother, issued on 10 January 2023.
4. The proceedings have been consolidated with AB as the applicant in the consolidated proceedings.
5. Cases concerning CD have been before the court on a regular basis since 2016.

The Issues

6. The issues in this case can be summarised as follows:
 - i) Where should CD live and receive care and support: should he remain at EF with care provided by KL or should he move to South West England to live initially with AB (with support through direct payments funding a personal assistant or assistants).
 - ii) If CD remains living in South Yorkshire what should the contact arrangements be with AB, both in South Yorkshire and in South West England.
 - iii) Should a health and welfare deputy be appointed for CD.

Chronology

7. The Court of Protection first became involved with CD’s case in November 2016 when SCC applied for the authorisation of CD’s deprivation of liberty. The evidence filed in support of that application recorded that:
 - i) as a child, CD was cared for by his mother as a single carer.
 - ii) AB has a visual impairment.

- iii) AB moved with CD during his childhood.
 - iv) CD was moved by AB to Doncaster College in 2013, when he was about 17, staying 4 nights a week at college with the remaining nights spent at home with support from the then care provider, United Response. (AB tells me that CD stayed 2 nights and not 4).
 - v) CD moved into EF in 2015 following his mother advising that he wanted to leave home.
 - vi) At the time of the application in 2016, United Response said that they were unable to meet CD's needs and that a provider specialist in supporting people with dual sensory loss was required.
 - vii) United Response had assessed that there was a 2:1 support need in the community. AB took CD out on her own (her case being that she was unaware of the assessment), causing United Response to make safeguarding referrals.
8. At a hearing in January 2017, DJ Bellamy ordered that:
- "it is in CD's best interests for his contact with AB to be subject to conditions, including that any overnight contact... may only last a maximum of one night save as agreed otherwise in writing by the manager of EF, taking account of staff availability."*
9. Dr Kevin Baker prepared a report in the proceedings in June 2017, concluding that CD has a mild-moderate intellectual disability and that his learning and development have undoubtedly been restricted due to inadequate deafblind teaching practices as identified by another expert, Patricia Gibbons who had prepared an Educational and Deafblind Guidance Assessment Report. Dr Baker said at paragraph 3.1.27 of his report:
- "Even though it is my opinion that [CD] has a mild-moderate intellectual disability, it is important that this does not overshadow his sensory impairments and that everyone working with him is aware of his potential for learning. There is a danger that staff and professionals who are not experienced with deafblindness and its impact on development will presume that [CD] has a lower cognitive ability than he actually has."*
10. Dr Baker's opinion was that CD lacked capacity in relevant areas. On 26th July 2017, DJ Bellamy accepted this evidence and made a final order that CD lacks capacity to:
- i) conduct these proceedings.
 - ii) make decisions in relation to his care.
 - iii) make decisions in relation to contact with others.
 - iv) make decisions in relation to signing and entering into a tenancy agreement.
11. No party has sought to challenge the capacity issue in these proceedings. However, when asked for her comments on a draft of this judgment, AB indicated that she does

consider that CD has capacity to make decisions about contact. This was not an issue explored at the hearing.

12. In August 2017, AB moved from South Yorkshire to South West England but travelled regularly back to South Yorkshire to see her son.
13. The initial proceedings concluded in November 2017 with a schedule confirming the contact arrangements in the following terms:

“Mencap / KL agree to continue to facilitate contact between AB and CD provided the following conditions are adhered to. These conditions will remain under ongoing review, and will be considered at the MDT meetings which are held on a monthly basis:

 - a) AB is to provide the manager of the care provider with 5 days notice in the event that she wishes to take CD away overnight, including details of where they will be going.*
 - b) AB is to provide the manager of the care provider with 5 days notice in the event that she wishes to stay overnight with CD (limited to one night).*
 - c) To provide 48 hours notice that she wishes to take CD away from EF in the daytime.*
 - d) Contact in the community will be accompanied by 2:1 support for CD.*
 - e) AB to care for herself and her belongings when out in the community.*
 - f) AB to engage in [CD’s] activities that have been set for the day.*
 - g) AB to engage positively with support staff.*
 - h) AB to refrain from physical or verbal aggression.*
 - i) AB to refrain from communicating negatively about staff to CD.*
 - j) AB not to disrupt other residents of EF.*
14. These restrictions on AB’s contact have been in place since that time.
15. AB sought permission to appeal DJ Bellamy’s 23rd November 2017 order. That application was refused by HHJ Pemberton in January 2019.
16. There was a second DOLs application made in November 2018. Those proceedings concluded on 24th April 2019 with an order authorising the continuing deprivation of liberty and confirming the November 2017 conditions on AB’s contact.
17. A third application was made in March 2020. Those proceedings concluded on 15th February 2021 with an order authorising the continuing deprivation of liberty and again continuing the November 2017 conditions on AB’s contact.

The Hearing

18. I heard the case by video, at AB's request, on 8th, 9th and 10th April 2024. I handed down this judgment on 3rd June 2024.
19. I have read the papers in the electronic bundle on Caselines (802 pages) together with the additional documents that have been emailed to me. I have also looked at the historic files from the previous proceedings, to assist me understand the chronology.

The Evidence

20. I have heard evidence from:
 - i) Chris Wall, an independent social worker, who prepared an initial report and a final report in this case on 30th November 2023. Mr Wall then responded to some questions on 23rd January 2024.
 - ii) GH, who has been CD's allocated social worker since April 2023. GH has filed six statements in this case.
 - iii) IJ, a manager at KL.
 - iv) AB
21. I have also considered the statements from MN and OP dealing with CD's recent contact with AB in South West England. None of the other parties sought to challenge this evidence so there was no need for me to hear from these witnesses.
22. I have considered the submissions from AB, who represented herself, and from Mr Wilkinson, representing SCC and Miss Gardner, taking her instructions from the Official Solicitor but representing CD.

Chris Wall

23. Mr Wall has prepared an impressive and extremely thorough report in this case, running to more than 80 pages plus appendices. He has also responded to AB's questions presented at a round table meeting on 19th January 2024.
24. Mr Wall considered the relevant papers in this case, including expert reports obtained previously from Dr Kevin Baker and Patricia Gibbons. He visited CD and spoke to two members of staff working with CD at EF. He consulted with AB, CD's advocate, GH and IJ.
25. Mr Wall concluded in his final report that he had a stronger view than when he completed his interim report that CD is well settled where he is now. He felt that CD's support at EF is "*as good as it can be within the constraints of the care climate and the constant court proceedings.*" However, he added a caveat that EF could do more in terms of CD's psychosocial development, saying that "*AB is correct in her claim that CD could do more.*"
26. Mr Wall noted that AB and IJ disagree as to the reasons for the lack of psychosocial development – "*AB appears to believe that KL are not a competent provider and as a result, given the right provider or approach, he could develop a great deal more. On the other hand, IJ feels that delay is caused by constant complaint, criticism and*

pressure not only from AB but as a result of 7 years of Court involvement and resultant pressures from the local authority.”

27. Mr Wall’s view was that *“the impact of the above has been to create significant stress within the staff team, leading to constant turnover in an environment where CD needs consistency and a steady, competent staff team. Furthermore, CD’s needs are so complex that he and staff require a significant introductory period of over 1 year, perhaps 2 before there is a chance of real progress... CD is comfortable and safe but the Court will need to decide on how to move forward in such a way as to facilitate CD’s psychosocial development.”*
28. Mr Wall’s suggestion was that a professional health and welfare deputy be appointed, with a view to meeting the following objectives:
 - i) To prevent the broken relationship between AB, KL and SCC further impacting directly upon CD.
 - ii) To enable CD to remain in his current environment for the immediate future.
 - iii) To enable vital decision making.
 - iv) To facilitate much improved opportunities for CD and AB to enjoy family time together, both in South Yorkshire and in South West England.
 - v) To provide better quality information upon which to review CD’s circumstances and best interests.
 - vi) To make some improvements to decision making around CD.
29. Mr Wall felt that there is a high risk that the conflict between AB and KL will cause KL to give notice on CD’s placement. His view was that the appointment of a health and welfare deputy would reduce the conflict and hopefully litigation.
30. In respect of the key issue of whether CD should remain at EF or move to be with his mother in South West England, Mr Wall said that he *“does not recommend that CD moves to South West England on any permanent basis at this point in time. He is, by all accounts other than those of AB, said to be settled and to have made progress. His complex presentation mitigates against significant changes such as those proposed. What is occurring in South Yorkshire is a known and concrete situation. In this assessor’s opinion it would not be in CD’s best interests to sacrifice this to what would be an unknown and currently abstract situation. This is not to say that it could never happen but the recommended steps regarding contact will assist with any future determination should it be required.”*
31. In evidence, Mr Wall was critical of the risk-averse approach taken by KL to the trip that CD made to stay with his mother after the finalisation of his report and before the final hearing and that this led to him wanting to emphasise that there should be a review of the South Yorkshire vs South West England issue. He said that KL’s negative approach to his suggestions at the round table meeting in January 2024 made him think: *“whose best interests are we considering here?”*

32. Mr Wall was positive about the recent South West England visit noting that it was *“nice to see CD on a climbing wall and not sat by the drier.”* He was concerned about the amount of time CD spends at EF by the drier and this: *“makes me think there is more.”*
33. Mr Wall added that he had been unable to get to the bottom of whether the inertia around CD’s psychosocial development was due to the polarisation and conflict or whether it was due to an inability on KL’s part to actually make things happen.
34. He recommended a review after 6-9 months with a view to the South Yorkshire vs South West England issue being looked at again in 12 months’ time at the next annual review of CD’s deprivation of liberty. He felt that the monitoring of things by a professional deputy was particularly important.
35. As to contact, Mr Wall said that he *“supports keeping KL out of the firing line during contact so they can get on with the job they have to do”* and *“I don’t oppose keeping the contact at EF, keeping KL out of the way as far as possible.”*
36. AB put it to Mr Wall that she only looks like a serial complainer because she has had to complain again and again because nothing changes, and KL never make anything better. Mr Wall’s response was that he does not say that there is no validity in AB’s complaints. He has not adjudicated upon them but it is clear that things are not working. This informed his opinion that a professional health and welfare deputy is required to *“remove the blockages.”*
37. Mr Wall did feel that things had improved for CD during his 7-8 years at EF and that there is now a stable base from which to build. More work is now needed however on the social and developmental side. CD does spend too much time in front of the drier.

GH

38. GH said that she agreed with Mr Wall’s recommendations. She feels that it is in CD’s best interests to remain at EF for now, but not necessarily indefinitely. Whilst she has no personal experience of working with a health and welfare deputy, she supports this. SCC have agreed to fund a deputy for an initial 12-month period.
39. Her view is that there should be more regular and flexible contact between CD and AB and that a 3 day contact every month, alternating between South Yorkshire and South West England would be appropriate.
40. GH said that there needs to be an assessment of whether CD needs 2:1 or 1:1 care during the day and also his night time support needs. This assessment should consider the issue of whether it is safe for CD and AB to spend time alone.
41. She described the different approaches to CD’s support from KL and from AB - KL look at things from the viewpoint of a regulated service / care agency whereas AB takes a more progressive approach to support and enabling.
42. GH said that she has a fairly positive relationship with KL and EF. She said that she had had some difficulties with communication with AB, giving the example of the initial discussion over last summer’s camping trip, where she believed that AB was feeling that she was being over intrusive and scrutinising things too much. As to the

difficulties between AB and KL, GH said that “*AB does have some valid points, but she can become quite frustrated at their responses... I think AB feels that her concerns are not really being addressed.*” She added that this approach does make things more difficult, as KL feel that they are open to a lot of criticism. This makes it difficult for KL to suggest or implement new things. GH said that “*it has broken down on both sides.*”

43. Like Mr Wall, GH felt that KL have established a baseline of stability for CD. A number of CD’s activities were curtailed because of the pandemic but she gave the example of CD’s allotment as a new positive activity for him. She said that she had discussed with KL in November 2023 increasing CD’s activities, for example arranging for him to attend day services, and she said that “*we have picked this up with them again*”. She felt that the delay had been because the focus of activity recently had been around arranging CD’s contact visit to South West England. I got the impression that the pace of change for CD is very slow. I cannot see that arranging a contact visit to South West England would be a good reason for not progressing activities for CD in South Yorkshire. That was certainly AB’s view. GH said that social services will be overseeing CD’s social activities more closely moving forward.
44. GH felt that there need to be improvements in KL’s record keeping and she said that when she looked at this last November / December, she had a different interpretation of some of the notes than KL – sometimes there are misunderstandings.
45. GH accepted that CD’s demonstrated wishes and feelings at the end of the recent South West England trip were that he wanted to stay but she felt that he might have been “*communicating in the here and now, without being able to think through the implications*”.
46. AB asked GH why there was such resistance to her suggestion that she simply accompanied CD to South West England, with the two of them travelling by train, as they had done many times before. She questioned whether this was as a result of prejudice around her visual impairment. GH responded that CD’s assessed need is for 2:1 support in the community and that she needs to know how CD’s needs are going to be met in any given situation.
47. GH agreed that it would be in CD’s best interests to remove KL from the picture during AB’s contact – to try to reduce the conflict. She described the need for a blended approach with KL and other care providers, perhaps 11th Hour who were employed in respect of the recent South West England trip.

IJ

48. IJ has been the manager overseeing CD’s support at EF since 2017. She visits EF weekly. She has supported CD herself on occasions. She feels that she knows him very well and can understand his needs.
49. IJ said that KL tries to retain a consistent staff team to work with CD at EF. She described that KL had a lot of leavers two or three years ago and that the feedback from exit interviews was that the stresses and anxieties of supporting CD when AB was present were factors in staff decisions to leave. Fortunately, CD has a stable team now.

50. IJ described the relationship with AB as “*quite intense*” and said that KL has tried to find a better way and wants that to improve. IJ was critical of AB’s constant emails raising concerns. IJ said that there is constant criticism in AB’s emails, which can come across as rude and offensive, using many capital letters and exclamation marks. She does not believe that this is a way to communicate in a positive way. IJ and AB agreed during IJ’s evidence that the relationship has broken down over the years.
51. AB asked IJ about paragraph 7.6.13 of Mr Wall’s report where IJ was quoted as having said “*She talked about best interest decisions and how difficult these are with AB involved. She described how AB’ insistence on being present at medical appointments can be difficult citing the example of the MRI scan where she accompanied CD and the scan was abandoned. He was later taken by staff successfully.*” AB put it to IJ that this just wasn’t true and that whilst the first MRI scan had to be abandoned, this had nothing to do with AB’s presence.
52. AB asked IJ about the safeguarding referral that KL made last summer when GH authorised the trip when CD went camping with AB and AB’s friend. IJ responded that whilst she agrees that CD is entitled to a life outside KL, as the registered manager, IJ is responsible if something happens to CD so there needs to be a risk assessment. IJ did not agree SCC’s risk assessment that the trip was safe because CD had not seen the family friend for many years and had not been DBS checked.
53. AB’s position was very clear from her next two questions when she asked: “*Do you not accept that there is more to life than being safe*” and “*CD doesn’t like to be wrapped in cotton wool.*”
54. AB cross examined IJ at some length around the lack of social activities arranged for CD over the years. IJ accepted that AB’s criticism of the lack of progress was “*valid to a point*” but that it is a slow process as CD does take a while to process things and, depending on the activity, it can sometimes be one step forward and two steps back. She said that KL are led by CD.
55. IJ said that she felt quite insulted when AB accused her of prejudice on the grounds of AB’s visual impairment.
56. Miss Gardner asked IJ about the reasons behind the pace of progress for CD. IJ said that she accepted that there had been some delay in progressing matters and that this was partly due to the communication problems with AB, partly due to the high staff turnover, given that CD takes time to build relationships with new support workers and that there is a lot of bureaucracy – everything has to be scrutinised and recorded and everyone feels under the microscope. Having said all that, IJ said that CD is generally happy. When he is not, KL can tell and that they just need to be left to get on with it. She said that she understands AB’s view but that KL are not always able to meet her expectations.
57. IJ said “*Sometimes I feel that CD’s interests get overlooked. There is too much consideration of what has happened in the past, rather than planning for the future.*”
58. IJ supports the appointment of a health and welfare deputy, feeling this will have a really positive impact and will help KL and AB build a more positive relationship. It might even take some of the pressure off as someone else will be making decisions.

AB

59. AB said that she doesn't do euphemisms – she *“says things as they are... I'm not British. I say it as it is. I know people see it as brash.”*
60. AB defended the use of her words *“overzealous”, “dictatorial”* and *“prejudiced”* when describing GH's approach in her final written evidence. She said that it is natural for her to react like this if she feels that her judgment as a parent is being undermined by the professionals involved in her son's care.
61. AB accepts being direct and frank but denies being abusive. Her view is that she cannot see that her approach is counterproductive. She described that she was trying to express herself and to highlight a problem – *“I am tired and bored because things don't improve. Things are said that don't happen.”*
62. When asked whether she accepted responsibility for CD's support workers handing in their notice she said that she does not accept full responsibility – people leaving jobs is just part of life and sometimes you need heated discussions to clear the air. She is not prepared to appease KL just to stop them giving notice on CD's placement.
63. AB accepted that, for the most part, GH was fair and balanced in her evidence. She accepted that GH has done a lot of work in the year in which she has been in post, including arranging the recent South West England trip. She said that GH was the first social worker that she has been able to have a dialog with – the two previous ones being intent on proving her wrong and backing her into a corner. Having said that, AB still considers GH to be a *“mouthpiece for the local authority, taking her instructions from her managers.”*
64. AB said that she accepted that the state needs to be involved in CD's life, given his additional needs but it should not be all or nothing and there needs to be a balance. CD should be given the independence to do what he can. She believes that she has been treated like an abusive parent, and that the Court of Protection is *“protecting the perpetrator (SCC) and misusing its power.”*
65. As she put it in her final evidence:
- “The fact Mr. Wall would not mention ‘human rights’ violations in his previously explained points to me; the fact there is no legal framework to back up my son transitioning to my home even temporarily in South West England as a viable option and the court consistently by-passing fundamental elements within my case, suggests an under-current of ulterior motive or agenda on behalf of the local authority and the court to keep those motives and choking agendas in place.*
- In my long years of experience and treacherous journey of this case, what I've learned early on, is the court-of-protection does nothing but protect the perpetrator (in this case Sheffield local authority) and its misuses of power. It sucks away any level of empowerment or agency I have as someone from a marginalised community with protected characteristics and the same goes for my son.”*
66. When asked about this passage, AB said that she said this was monumental and absolute and that she was referring to the discrimination that she has suffered as a

visually impaired person, the discrimination that CD has experienced as a person with complex needs and the breaches of their human rights. AB is looking for financial redress to compensate her for the effect that she says this has had on herself and her son.

67. I explained to AB that the Court of Protection does not have the power to order redress and that she would have to pursue that remedy in other proceedings in the civil courts.
68. AB said that whilst CD's presentation and behaviour have improved at KL and that things are back on an even keel, the opportunities for CD to develop have not been advanced and enabled. He still has sadness and there are aspects of CD's life that are limited.
69. AB said that for the most part, she agrees with the appointment of a health and welfare deputy, but it would have to be someone independent. She has concerns as to the hierarchical nature of the decision making. She feels that the deputy should be someone with experience of multi-sensory impairment.
70. AB told Miss Gardner that she left South Yorkshire for South West England in 2017 without informing SCC because she was desperate to get out of South Yorkshire, having experienced harassment. Things were not going well for her at the time, and she was at breaking point. She has no plans to move from her current home in South West England.
71. AB accepted that some things have improved for CD at EF but that *"two thirds of the time he is sat in his own little world next to the tumble drier because he is not being offered additional stimulation...he should be able to spread his wings but he has had his wings clipped."*
72. AB denied that she demonises the professionals involved with CD's care, saying that if she feels her sense of parental ability and judgment is being undermined, she will be on the defensive. Miss Gardner asked whether she thought that it was time for her to reflect on the way that she communicates with professionals. My note of her response is *"Yes – but the professionals need to see things from my perspective as well. It is a two-way street."*
73. In addition to compensation, AB wants her family life back, saying that no family should have to go through the things that her family has had to endure. She described her son as her whole life, best friend, and soul mate. She described a spiritual bond between them that others do not understand.
74. She wants to be able to get CD out of the situation and arrange care for him in South West England using the direct payments scheme. She spoke of arranging therapies for him to enable him to express himself. She said that no one at EF is looking at CD's emotional wellbeing, including his sexual needs. Her view is that his anxious behaviours, including ripping his bedding are the result of this. *"He needs to be here (South West England) so I can help him to heal and move forward. That is not going to happen at EF / KL- they "look into" things and "see about" things without there being any change. It's not about the last year – it's the last seven years. He has been isolated. He likes people."*

75. AB described having brought up CD in a very alternative way. She spoke of their interests and said that CD is missing out on these things at EF.
76. The evidence of OP and MN dealing with the positive recent contact weekend in South West England was not challenged and I accept the evidence of those witnesses – essentially that the South West England visit went really well and that CD appeared not to want to leave at the end of the visit.

The Law

77. Section 1(5) of the Mental Capacity Act 2005 states that: “An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.”
78. Section 1(6) of the Mental Capacity Act 2005 states that: “Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.”
79. In determining CD’s best interests, I must consider Section 4 of the Mental Capacity Act 2005, which requires me to consider all the relevant circumstances and so far as is reasonably ascertainable—
 - (a) the person's past and present wishes and feelings
 - (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.
80. I 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,as to what would be in the person's best interests.
81. Section 16(2) of the Mental Capacity Act 2005 states that the court may—
 - (a) by making an order, make the decision or decisions on P's behalf in relation to the matter or matters, or
 - (b) appoint a person (a “deputy”) to make decisions on P's behalf in relation to the matter or matters.
82. Section 16(4) states that when deciding whether it is in P's best interests to appoint a deputy, the court must have regard (in addition to the matters mentioned in section 4) to the principles that—

- (a) a decision by the court is to be preferred to the appointment of a deputy to make a decision, and
- (b) the powers conferred on a deputy should be as limited in scope and duration as is reasonably practicable in the circumstances.
83. Section 17 makes it clear that the court has power under Section 16 to make decisions about where a person who lacks capacity is to live and deciding what contact, if any, such a person is to have with any specified persons.
84. Section 21A and Schedule A1 to the Mental Capacity Act 2005 deal with the deprivation of liberty provisions. Paragraph 16 of Schedule A1 deals with the best interest requirement and states that:
- (1) The relevant person meets the best interests requirement if all of the following conditions are met.
- (2) The first condition is that the relevant person is, or is to be, a detained resident.
- (3) The second condition is that it is in the best interests of the relevant person for him to be a detained resident.
- (4) The third condition is that, in order to prevent harm to the relevant person, it is necessary for him to be a detained resident.
- (5) The fourth condition is that it is a proportionate response to—
- (a) the likelihood of the relevant person suffering harm, and
- (b) the seriousness of that harm,
- for him to be a detained resident.

Findings

85. I have set out a summary of the evidence in some detail as it presents a clear picture.
86. I found Mr Wall's evidence to have been comprehensive and well thought through. I accept his conclusions.
87. AB's love for her son was abundantly clear. She has found it very difficult trying to advocate for him for such a long time from a distance. She is clearly acting in what she considers to be CD's best interests.
88. It is entirely understandable that AB wants her son to be with her. That would probably be in her best interests, but that is not the test that I must apply. It is CD's best interests that have to be considered.
89. There is an obvious clash between AB's outlook and values, and the way that she brought CD up during the first 17 years of his life and the cautious, safety-first approach that has to be adopted by professionals.

90. I make the following findings on the balance of probabilities:
- i) CD is safe and generally content at EF.
 - ii) KL could do more to promote different activities and CD's psychosocial development.
 - iii) KL have adopted a risk averse approach and have been slow to implement change.
 - iv) CD enjoys spending time with AB. He did not want to leave South West England on his visit early in the year. However, this may have been his reaction to a lovely weekend rather than the result of a considered analysis of the pros and cons of a permanent move to South West England.
 - v) AB has a very different attitude to risk to the professionals. She believes that risks are worth taking so that CD can fly.
 - vi) The conflict between AB and professionals, particularly at KL, has been harmful to CD. AB must take some of the responsibility for that. Sometimes she has communicated in ways that have increased the conflict, which has worked against her son's best interests.
 - vii) AB's plans for CD in South West England are not fully developed. She plans for him to stay with her in her two-bedroom flat initially with support from personal assistants. She was clear that this arrangement was only to be a "stepping stone." There is a lot of uncertainty around the longer-term plans. Whilst enquiries have been made by AB of potential personal assistants, no supported or semi-independent placements have been identified in South West England.
 - viii) Professionals find AB difficult. It is not known whether AB will be able to develop a working relationship with professionals in South West England that would further CD's interests.
91. I found no evidence of the prejudice against her that AB alleges.

Conclusion

92. I know that AB will strongly disagree with my analysis but when balancing the factors around CD's best interests, I consider that there are too many risks and unknowns at this stage for me to be able to say that the potential benefits of a move to South West England outweigh the risks.
93. Whilst, in my judgment, KL could do more to further CD's development, they have provided a safe, stable environment in which CD is generally happy.
94. I agree with Mr Wall that it is in CD's best interests to remain at EF for another year, with the issue of his potential relocation to South West England to be considered at his next annual review.

95. By that stage, CD will have had several visits to South West England and further detail may be available about AB's proposals for her son's longer-term care in Devon.
96. I am clear that it is in CD's best interests to have regular contact with AB over the course of the next year in both South Yorkshire and in South West England.
97. I do not see that the restriction on AB's contact in South Yorkshire to one night at a time meets CD's interests. I suspect that this restriction was imposed because of the conflict between KL and AB. There is however another way to reduce the potential for this conflict harming CD – namely the introduction of another care agency to support CD during his contact with his mother, as is agreed by all the parties.
98. Whilst harm to CD caused by the conflict between AB and the professionals in South Yorkshire must be minimised, I do not consider that limiting the amount of time that AB can spend with CD in South Yorkshire is the way to achieve this aim.
99. If KL are not the main care provider during any South Yorkshire contacts, then contact visits would not expose CD to any conflict between KL and his mother.
100. AB indicated that her view was that there should be no restriction on the amount of time she spends with her son but indicated that she would not be able to stay in South Yorkshire for more than 3 nights.
101. In the circumstances, and on the basis that there should be some certainty over the arrangements, I shall provide for up to 3-night visits in South Yorkshire.
102. There shall therefore be monthly contact, alternating between South Yorkshire and South West England. These contact visits shall be pre-scheduled on agreed dates and for 3 nights unless otherwise agreed by the parties.
103. CD shall be supported during these contacts on the "*blended basis*" discussed at the hearing with the default position being support in South West England from personal assistants appointed by AB together with a third-party care provider. The arrangements in South Yorkshire should remove KL from the picture during contact visits in so far as this is possible, to reduce the opportunity for conflict.
104. It is time for the restrictions on AB's contact imposed from as long ago as 2017 to be removed. I would hope that the parties will be able to agree the wording of a suitable contact order.
105. It is unusual to appoint a Deputy in health and welfare cases, not least because of Section 16(4)(a) of the Act.
106. I am however satisfied that this is one of those rare cases in which it is in CD's best interests for a deputy to be appointed, for the reasons put forward by Mr Wall. As Miss Gardner put it in her submissions, "*Hopefully, a health and welfare deputy will draw a line in the sand – because the current arrangements are not working.*"
107. I am pleased to learn that SCC is willing to fund a Deputy for an initial 12-month period. Maria Christine Hutchinson has agreed to act in this role. I have considered the COP4 form that has been filed. She appears to be well qualified to act in this role, having a knowledge of the care system and how the Act operates. I understand that

she has no links with any of the parties and so can bring a fresh pair of eyes to this difficult case.

108. No other potential deputies who are willing to act have been identified.

109. I shall appoint Maria Christine Hutchinson as health and welfare deputy.

110. The powers of the Deputy shall be as follows:

“The court authorises the deputy to make the following decisions on behalf of CD that he is unable to make for himself at the time when the decision needs to be made:

(i) Overseeing and consulting with SCC and NHS South Yorkshire Integrated Care Board about arrangements made by them as the responsible s.117 MHA bodies, for his care and support and by KL as the provider of care, to include liaison/consultations with clinical/medical professionals, representatives of bodies with social care and health care responsibilities, and CD’s family about CD’s care;

(ii) Making arrangements for contact between CD and his family including communicating the nature of those arrangements to the providers of CD’s care and the family;

(iii) Making health and welfare decisions not already decided for CD by the court, in consultation with providers of care services, clinical/medical professionals, representatives of bodies with social care and health care responsibilities, and CD’s family;

(iv) Raising any issues of concern or complaints about CD’s care or treatment with the appropriate authority/person for investigation as applicable, and deciding which concerns and complaints raised by others are to be taken forward for investigation by the appropriate authority/person.

(v) In liaison with SCC, KL and AB agreeing and keeping under review a communication agreement setting out a mechanism by which communication will take place between the parties.

The deputy has permission to obtain any medical and social care records held by third parties in relation to CD. Any party (save for CD’s legal representatives) requesting records relating to CD shall make a request to the deputy, who will decide which documents, if any, should be provided.”

111. I shall reserve any future applications in respect of CD to myself. This case needs judicial continuity.

112. I find that it is in CD’s best interests to remain at EF for another year and that the test for his deprivation of liberty there is met.

113. I very much hope, for CD’s sake that relationships between AB and professionals will improve and that the involvement of a Deputy will lead to better communication and decision making.

114. I hope that CD can spend more time on activities that support his psychosocial development and less time in front of the drier.
115. There needs to be regular monthly contact between AB and CD over the next year.
116. There will then need to be a review of the South Yorkshire vs South West England issue when the next annual review is due.
117. I would hope that if AB maintains her position that CD would be better off in South West England, she is able to put the flesh on the bones of her care plan.
118. It seems to me that there now needs to be a comprehensive assessment of whether CD does require 2:1 support or whether 1:1 is sufficient. This is an issue that has been contentious throughout the protracted litigation (see the chronology section above) and does need to be resolved now. This is obviously highly relevant to the issue of whether it is in CD's best interests to be able to spend time alone with his mother, which she dearly wants, for understandable reasons.

Postscript

119. Since preparing this judgment in draft, I have received two emails from AB, one dated 14th April 2024 and one dated 30th April 2024. I am not sure whether the other parties have seen these emails. There is nothing in them that causes me to alter anything said in this judgment (and it would be unfair in any event to alter my judgment without giving the other parties the opportunity to respond, which would be disproportionate after a 3-day final hearing). I will say however that I am pleased to learn that CD has had another successful visit to see his mother in South West England but sorry that there were difficulties at the end.

Guy Baddeley

Circuit Judge