Neutral Citation Number: [2019] EWHC 399 (Fam)

Case No: FD17F00031

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/02/2019

Before :

THE HONOURABLE MR JUSTICE HAYDEN

- -

Between :

Southend-on-Sea Borough Council **Applicant**

- and -

Mr Meyers **Respondent**

- -
- -

Ms K Scott (instructed by **Southend-on-Sea Borough Council**) for the **Appellant**
Mr P Patel QC (instructed by **Bindmans LLP**) for the **Respondent**

Hearing dates: 4 February 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE HAYDEN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

The Honourable Mr Justice Hayden :

1. On 10th December 2018 I made orders pursuant to the inherent jurisdiction of the High Court, sitting in the Family Division, concerning Mr Douglas Meyers. All have agreed that Mr Meyers should be referred to by his full name. He has no wish to be anonymised and he considers, as do I, that the issues raised in this application require fully to be in the public domain. He is however, very keen to protect his son, who will not be named. The December orders required Mr Meyers to reside at a Care Home. To protect the privacy of other vulnerable residents at that establishment I do not intend to identify it. I made further interim orders preventing Mr Meyers from living in the bungalow which has been his home for 40 years. I also expressly prevented him from living with his son, who I intend to refer to as KF.

2. The application came before me in a very busy urgent applications list. In so far as it was truly urgent it had become so because opportunities for more timely and reflective intervention had been missed. Mr Meyers was unable to attend the court in person but participated effectively and in a forthright manner via a telephone link. I was greatly impressed by his contribution at that hearing. Mr Meyers is approaching his 98th birthday. He served throughout World War II in the Royal Navy. He did so with considerable distinction and is decorated. He is rightly proud of his own contribution and has a strong belief in the fundamental principles that were being fought for. Chief amongst those objectives, he reminds me, was the right to freedom. It is his own freedom that he considers he is now fighting for. His additional personal goal is to receive a telegram from Her Majesty the Queen on his 100th birthday. I record this fact because I consider it casts real light on his attitude to the future and life generally.

3. Mr Meyers does not enjoy living in the Care Home. With courteous respect to the other residents he told me that they are *'all suffering from dementia'* of *'one kind or another'*. He finds this rather depressing and retreats to his room to listen to Radio 4 and the World Service. He tells me that he keeps up to date on current affairs and shared with me his views on Brexit. There are members of staff at the home whose company Mr Meyers rather enjoys and whilst he does not rhapsodise about the food he makes no complaint. In simple terms he wanted to go home and in time for Christmas. Though he was in a parlous state when first received in to the Care Home he is now entirely capacitious and, for his age, in rude, indeed, in remarkable health. He is however, blind, a little hard of hearing and diabetic.

4. The Local Authority, Southend-on-Sea Borough Council, were supportive of Mr Meyer's wishes. However, they brought the case before me because they sought declarations that they, as an authority, had discharged their obligations to Mr Meyers, both those imposed by the **Care Act 2014** and the **Human Rights Act 1998**. As is plain from the orders I made, I did not agree with the Local Authority's position.

5. On 21st December 2018 Ms Scott, who appears on behalf of the Local Authority, sought permission to appeal my orders to the Court of Appeal. Mr Meyers had been fortunate enough to secure experienced representation by Mr Parishil Patel QC and Ms Hobey-Hamsher, both of whom act pro bono. They supported the Local Authority's position. The application was dismissed. Today is the return date of my earlier interim order, the matter being listed to hear full argument on the scope and ambit of the applicable law to more clearly identified facts.

6. The Local Authority initiated these proceedings in March 2017, arising from its concern that Mr Meyers was being prevented from receiving care services because of the conduct of KF (his son) with whom he was living. They identified damage caused by KF to the bungalow and the extremely aggressive and intimidating manner in which KF behaved towards carers.

7. On 30 March 2017, Moor J granted injunctions in respect of KF, restraining him from: engaging in aggressive or intimidating behaviour towards health, social care or housing professionals; attending the property; impeding/interfering with repair and remedial works. The matter returned to court on 28 April 2017, as the Local Authority had not been able to get the necessary cooperation either from Mr Meyers or KF in order to carry out repairs to the property. The Local Authority sought a declaration that, having done all that was reasonably practical to provide Mr Meyers with care, it had discharged all duties owed by them to him.

8. At the hearing on 28 April 2017, KF and Mr Meyers finally agreed to move out of the property to enable repair works to be carried out. Moor J. concluded that the Local Authority would be entitled to the declaration sought if Mr Meyers and KF did not vacate the property within 14 days and ordered that the declaration should take effect on 12 May 2017 in the event that either Mr Meyers and/or KF failed to vacate the property. Full renovations on the property were completed on 25 July 2017, including new electrical wiring, fresh plastering and painting and the installation of a new wet-room and kitchen. Mr Meyers and KF returned home following completion of the works.

9. In the event, the Local Authority was not able to secure carers to support Mr Meyers on his return home, due to the problems associated with both his own but primarily KF's behaviour in the past. The extensive enquires taken by the Local Authority to secure a care agency are set out in the third statement of David Gibbons, Adult Social Care Department, dated 9 May 2018. Mr Meyers was offered the opportunity to return to the Care Home until care services could be secured or alternatively to visit the Care Home several times a week to be supported with personal tasks. He rejected both offers. The Authority's social workers therefore commenced weekly welfare visits. At this hearing I have heard evidence concerning those and subsequent visits which I found to be deeply troubling and will return to below.

10. After extensive negotiations, 'START', a care agency which had provided care to Mr Meyers in the past, agreed to re-implement a package of support predicated on the condition that the Local Authority agreed to purchase personal safety devices for 'START' care staff to wear. They did so. 'START' began daily visits to Mr Meyers on 20 November 2017. On 6 December 2017, 'START' advised the Authority that due to *'constant intimidating behaviour'* and *'aggressive outbursts'* from KF and to what they described as *'the uncooperative and disengaging behaviour of Mr Meyers'* they were withdrawing care services. The third witness statement of Mr Gibbons sets out, in detail, the occasions, during this period, when KF was intimidating towards staff and several occasions when Mr Meyers refused care and asked carers to leave the property. I should also record that the property was very cold, without any heating or hot water. There was no money available on the gas meter payment card and the emergency credit had been used. Mr Meyers appeared to be very hungry and his behaviour seemed erratic.

11. Since the withdrawal of services by 'START' the Authority's social workers stepped in to provide weekly welfare visits. Mr Gibbons' third witness statement sets out further instances of intimidating behaviour by KF towards social workers and a description of the deteriorating condition of the property. Pictures of the condition of the property, as at 20 April 2018, have been provided and reveal a very dangerous environment for Mr Meyers. The phrase 'death trap' has been used and, in my judgement, accurately so. By May 2018 it had become clear to the Local Authority that Mr Meyers did not want its help or intervention. In any event, it had not been possible for the Local Authority to secure a contract with another care provider willing to run the gauntlet at the bungalow. Offers of respite, support and placements made to Mr Meyers were all refused. Believing that they could do nothing further, the Local Authority issued an application seeking the declaration, referred to above, i.e. the confirmation by the court that they had discharged all their legal responsibilities. Moor J. was satisfied that he should grant the declaration and did so at a hearing on 5 June 2018.

12. The arrangement put in place, following that hearing, was that the Local Authority would continue to pay for and arrange a meal to be delivered to Mr Meyers daily, and that should Mr Meyers change his mind about wanting to receive services from the Local Authority, he should contact them directly or via the Care Line emergency service.

13. Predictably, by September 2018, Mr Meyers and KF appeared to be struggling to cope. Mr Meyers had a number of hospital admissions and was contacting Care Line on a regular basis, reporting that he had not eaten nor had anything to drink. Matters came to a head on 27 September 2018 when Mr Meyers called Care Line 15 times, prompting a visit from the Local Authority. The description of the scene that confronted the Local Authority is set out in the first witness statement of Helen Cummings, dated 28th September 2018.

14. It is reported that the bungalow had no furniture and that Mr Meyers had neither sheets nor mattress and was effectively sleeping on wooden slats. For reasons which are unexplained, the glass panes from the patio doors had been removed leaving Mr Meyers' room exposed to the cold. Again, for reasons which are unclear but I suspect are a facet of KF's own psychological distress, the boiler had been dismantled and there was, accordingly, neither heating nor hot water. There was no cooker, kettle, cups, fridge. There was very little by way of food. There is evidence of these household items having been burnt in the garden. Mr Meyers had not eaten, he was dehydrated and had a urinary tract infection. His mobility had deteriorated and the extent of clutter throughout the bungalow and on the floor left him in a precarious situation. Instinctively, I resist describing Mr Meyers' circumstances in graphic detail to avoid compromising his dignity, but, in order that my analysis and ultimately my decision can properly be understood, it is important that I record some key facts.

15. Mr Meyers was naked from the waist down. It has emerged, during the course of this hearing, that this was frequently the situation when the Local Authority had visited in the preceding months (see para 9 above). He was surrounded by flies. Under the bed and on the floor, there was food, general clutter, blood and faeces. This desperate situation, I have been told, had been observed on a number of visits. Mr Meyers had trouble sitting and this remained difficult even when he was provided with a pillow. He reported that he had neither food nor drink for two days. He was certainly

dehydrated. The urinary tract infection had led to hallucinations. He had not been taking his antibiotics. He was deeply resistant to returning to the Care Home. It took the social worker five hours to persuade him to do so. Ms Cummings points out that as a diabetic Mr Meyers' skin is always at risk of deterioration. As such, a bed sore which becomes septic can quickly put Mr Meyers' life at risk. In her statement, Ms Cummings makes the following observation which requires to be set out:

> *"I am convinced that if [Mr Meyers] goes home* ***he could or will die*** *(my emphasis) because he is at risk of a significant deterioration to his health. He is at risk of developing pressure areas due to the lack of any soft furniture on which to sit and his additional health complication of diabetes. In the condition which we found [him] last night, it is our view that the lack of pressure area care would be an extreme risk to him as his skin will break down and he is at risk of sepsis…*
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> *[Mr Meyers] is dehydrated, he has a urinary tract infection, he will not be able to take his medication there are no vessels in which he can run his water and he cannot get around as he can do no more than transfer with the assistance of two to three people... he is unable to get water… unable to see as he is blind in both eyes and therefore is unable to manage his medication"*

16. The Local Authority issued an application on 28 August 2018 seeking an urgent ex parte hearing out of hours. The matter came before Francis J, who made an order restraining Mr Meyers from returning to his home or living with KF. Mr Meyers was also required, pursuant to the Court's order, to live at the identified Care Home pending further order. There seems to have been little doubt, at this point, that Mr Meyers lacked the capacity to take decisions regarding his general welfare in consequence of the temporary disabling effects of the dehydration and urinary tract infection.

17. The case came back before the Court on 3 October 2018, at which hearing Mr Meyers stated that he understood that he could not return to his home until, once again, work had been done to the property to make it habitable. Mr Meyers also stated in unambiguous terms that he did not want KF to continue to live with him. He also made it clear that he would not return to live at his home until the next hearing. The injunctive relief granted on 28 September 2018 was continued and the matter was listed for a further hearing.

    Mr Meyers then prepared and the Local Authority served (on 8 October 2018) a notice on KF, terminating his licence to reside at Mr Meyer's property. The plan at that stage was (i) to facilitate KF's move out of Mr Meyer's home; (ii) to assist with KF's access to services to address his various dependencies. The plan was not accomplished. KF continues to live in his father's bungalow.

18. At the hearing before me, on 10 December 2018, Ms Scott distilled the following succinctly expressed facts:

    i) Mr Meyers has capacity to make decisions about his living arrangements.

    ii) He wishes to return to his home to resume living with KF. He first expressed this wish on 6 November 2018 (para 16 of Mr Gibbon's fifth statement) and

has not resiled from it despite being reminded of the circumstances in which he was living by the end of September 2018 (paragraphs 47 – 68 of Mr Gibbon's fifth statement).

iii) *Mr Meyers has been told by the Local Authority that if he returns to his home to live with KF, the Local Authority will be unable to secure any care for him, as a result of the state of the property and KF's behaviour. Mr Meyers has also been told that the Local Authority cannot arrange for any repairs to the property while KF remains living there (paragraph 58 of Mr Gibbon's fifth statement).*

iv) *No repairs to the property have been undertaken as KF remains living there.*

v) *At a visit to the property undertaken by Mr Gibbons on 16 November 2018, despite KF making some attempts to prepare the property for his father's return, Mr Meyer's room remained uninhabitable (with no bed, rubbish piled in the corner and dirt (possibly faeces) all over the floor) (para 38 – 42) of Mr Gibbon's fifth statement]***.**

vi) *A further visit to Mr Meyers's home was attempted on 3 December 2018 (unsuccessfully). Mr Gibbons' notes at paragraph 44 of his fifth statement that on looking through the windows, the living room looked reasonably free of clutter, the kitchen appeared neat and tidy and free of cutter and mess, the appliances were clean with a new microwave in place and a bowel of fruit. Mr Meyers's room however still appeared dirty, cluttered and without a bed.*

19. I heard evidence from Mr Meyers. As I have indicated above I found him engaging, entirely lucid and, I noted, respectful and courteous to the advocates. He spoke plainly and, to my amusement, thanked me for speaking plainly in return. He told me that his son was *"basically a good lad"* and that *"he was not as bad as people made out"*. He explained that he had promised his late wife that he would look after KF and he wished to honour his commitment. When he was asked about the circumstances in which he was found he did not seek to distort the facts or evade the reality of his situation. He emphasised that the decision to go home was his. He told me this was about freedom of choice and that this is what he had fought in the second world war to preserve. I was impressed by the force of his argument and the sincerity of his convictions.

20. The issues in contemplation at the December hearing and at this hearing could not have been more serious. Mr Meyers asserts his own right to freedom of choice as a capacitious adult. The countervailing reality is that a return home would seriously compromise his welfare and, as the Local Authority identified, potentially risk his life. I was not prepared to take a final decision in December in a busy urgent applications list and I made interim orders preventing Mr Meyers residing at the bungalow or with his son. I also ordered that he should reside at the Care Home or any such other address as might be agreed.

21. At this hearing I have heard full argument. I have also read a witness statement from Mr Gavin Wilson, social worker; Dr Francis, a psychiatrist specialising in old age

and, though he was not formally sworn, I heard from Mr Meyers, who confirmed his position to be that which he had advanced before me in December.

22. It is not necessary for me to rehearse the contents of the evidence. The underlying facts of this case are not in dispute. The background history that I have set out above provides the factual framework to the case and is confirmed by the evidence. I do have a note that Ms Jane Dresner, Mr Meyers' 'advocate' proffered the view, which the Local Authority endorse, that Mr Meyers relationship with his son can properly be defined as ***'co-dependent'*** (my emphasis).

23. There are times when Mr Meyers is vociferously critical towards his son. There has been at least one occasion when Mr Meyers has locked his room to keep his son out. KF has regularly attended to visit his father at the Care Home. He is no longer permitted to enter because of his aggressive behaviour but Mr Meyers goes outside and sits in the garden with him. He has done this on most days throughout the winter months. Recently, in January, KF gave his father a shave in the garden. Whilst the staff have properly been concerned about Mr Meyers sitting in the cold for long periods there is, nonetheless, something rather tender in the relationship. Occasionally, KF has brought alcohol and Mr Meyers' behaviour has not always been equable when he has returned. KF's behaviour has continued to be disruptive even in these circumstances. Finally, I note that Mr Meyers' other children have now given up on their father and brother and no longer have any contact.

24. Because it was quite impossible for Mr Meyers to make the journey to London the Court was able to convene at the Southend Magistrates Court. I am extremely grateful to the administrative staff and Judges who were able to make this possible. I record that Mr Meyers was present for the entire morning. If he will forgive me for commenting on his appearance, I should like to note that he was extremely smartly presented. He wore his medals, which I noted were well polished and had been looked after. I was told that though he arrived at Court by wheelchair he insisted on walking in to Court. He is a proud and determined man. He did not stay for the afternoon and was content to leave his case in the hands of his specialist legal team.

25. These starkly identified issues should be cast in the framework of the law. The Local Authority's application is made pursuant to the inherent jurisdiction of the High Court. The reach of the inherent jurisdiction is set out with enviable clarity in the Judgment of Lord Donaldson in *re:* ***F (Mental Patient: Sterilisation)*** **[1990] 2 AC 1, 13** as:

> *"the great safety net which lies behind all statute law and is capable of filling gaps left by that law, if and in so far as those gaps have to be filled in the interests of society as a whole. The process of using the common law to fill gaps is one of the most important duties of the judges. It is not a legislative function or process – that is an alternative solution the initiative of which is the sole prerogative of Parliament. It is essentially judicial process and, as such, it has to be undertaken in accordance with principle."*

26. As Mr Patel properly reminds me, I have previously and, in particular, in the case of **London Borough Redbridge Council v SNA [2015] EWHC 2140 (Fam)** emphasised the parameters of the jurisdiction. I stated that the inherent jurisdiction should not be regarded as:

> "a lawless void permitting Judges to do whatever we consider to be right for children or the vulnerable, be that in a particular case or more generally towards unspecified categories of children or vulnerable adults (para 36)"

27. I went on to note:

> *"The concept of the 'inherent jurisdiction' is by its nature illusive to definition. Certainly, it is 'amorphous' (see paragraph 14 above) and, to the extent that the High Court has repeatedly been able to utilise it to make provision for children and vulnerable adults not otherwise protected by statute, can, I suppose be described as 'pervasive'. But it is not 'ubiquitous' in the sense that it's reach is all-pervasive or unlimited. Precisely because it's powers are not based either in statute or in the common law it requires to be used sparingly and in a way, that is faithful to its evolution. It is for this reason that any application by a Local Authority to invoke the inherent jurisdiction may not be made as of right but must surmount the hurdle of an application for leave pursuant to s100 (4) and meet the criteria there."*

28. The seminal Judgment addressing the ambit of the inherent jurisdiction is that of Munby J, as he then was, in *Re:* ***SA*** **[2005] EWHC 2942; [2006] 1 FLR 867**. That judgment was subsequently endorsed and amplified by the Court of Appeal in *Re:* ***DL*** **[2012] EWCA Civ 253; [2012] CPLR 504.** In his Judgment refusing the application for permission to appeal in this case Baker LJ summarised the applicable principles. Whilst I recognise that such Judgments are not citable, I gratefully adopt his erudite summary of the applicable law.

> (1) The inherent jurisdiction of the High Court for the protection of vulnerable and incapacity adults remains available notwithstanding the implementation of the Mental Capacity Act 2005: *Re DL* per McFarlane LJ (as he then was) at [52] et seq and Davis LJ at [70] et seq. In the memorable phrase first deployed by Lord Donaldson in *Re F (Mental Patient: Sterilisation)* [1990] 2 AC 1, it is "the great safety net".
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> (2) The jurisdiction extends to protecting vulnerable persons who do not fall within the categories of those covered by the Mental Capacity Act 2005: see, for example, *Re DL* itself and *London Borough of Wandsworth v M & Ors* [2018] 1 FLR 919; [2017] EWHC 2435 Fam, and further to providing additional protection to adults lacking capacity within the meaning of the Mental Capacity Act 2005 when the remedy sought does not fall within those provided in the Act: see, for example, *City of Westminster v IC* [2008] EWCA Civ 198 and *NHS Trust v Dr A* [2013] EWHC 2442 COP.
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> (3) As to the definition of vulnerability in these cases, the picture is comprehensively outlined in the judgment of Munby J in *Re SA* at paragraphs 77 and 78:
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> "It would be unwise, and indeed inappropriate, for me even to attempt to define who might fall into this group in relation to whom the court can properly exercise its inherent jurisdiction. I disavow any such intention. It

suffices for present purposes to say that, in my judgment, the authorities to which I have referred demonstrate that the inherent jurisdiction can be exercised in relation to a vulnerable adult who, even if not incapacitated by mental disorder or mental illness, is, or is reasonably believed to be, either (i) under constraint or (ii) subject to coercion or undue influence or (iii) for some other reason deprived of the capacity to make the relevant decision, or disabled from making a free choice, or incapacitated or disabled from giving or expressing a real and genuine consent.

78. I should elaborate this a little:

i) Constraint: It does not matter for this purpose whether the constraint amounts to actual incarceration. The jurisdiction is exercisable whenever a vulnerable adult is confined, controlled or under restraint, even if the restraint is only of the kind referred to by Eastham J in *Re C (Mental Patient: Contact)* [1993] 1 FLR 940. It is enough that there is some significant curtailment of the freedom to do those things which in this country free men and women are entitled to do.

ii) Coercion or undue influence: What I have in mind here are the kind of vitiating circumstances referred to by the Court of Appeal in *In re T (Adult: Refusal of Treatment)* [1993] Fam 95, where a vulnerable adult's capacity or will to decide has been sapped and overborne by the improper influence of another. In this connection I would only add ... that where the influence is that of a parent or other close and dominating relative, and where the arguments and persuasion are based upon personal affection or duty, religious beliefs, powerful social or cultural conventions, or asserted social, familial or domestic obligations, the influence may, as Butler-Sloss LJ put it, be subtle, insidious, pervasive and powerful. In such cases, moreover, very little pressure may suffice to bring about the desired result.

iii) Other disabling circumstances: What I have in mind here are the many other circumstances that may so reduce a vulnerable adult's understanding and reasoning powers as to prevent him forming or expressing a real and genuine consent, for example, the effects of deception, misinformation, physical disability, illness, weakness (physical, mental or moral), tiredness, shock, fatigue, depression, pain or drugs. No doubt there are others."

At paragraph 82 he added this:

"In the context of the inherent jurisdiction I would treat as a vulnerable adult someone who, whether or not mentally incapacitated, and whether or not suffering from any mental illness or mental disorder, is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation, or who is deaf, blind or dumb, or who is

substantially handicapped by illness, injury or congenital deformity. This, I emphasise, is not and is not intended to be a definition. It is descriptive, not definitive; indicative rather than prescriptive."

(4) Insofar as such actions infringe with rights under Article 8 of the Human Rights Convention, the interference may be justified to protect the health of the individual but only if they are necessary and proportionate: see *Re DL*, Mcfarlane LJ at [86] and Davis LJ at [76].

(5) In an appropriate case, orders can be made depriving someone of their liberty under the inherent jurisdiction provided the exercise of the jurisdiction is compatible with Article 5 of ECHR: see *Re PS (Incapacitated or vulnerable adult)* [2007] EWHC 623 Fam per MunbyJ.

(6) In cases involving incapacitated or vulnerable adults, Article 5(1) of the Convention provides, so far as relevant to this case:

"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

….

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants..."

Article 5(4) provides:

"Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

(7) "...[E]xcept in emergency cases, the individual concerned should not be deprived of his liberty unless he has been reliably shown to be of 'unsound mind'. The very nature of what has to be established before the component national authority - that is, a true mental disorder - calls for objective medical expertise. Further, the mental disorder must be of a kind or degree warranting compulsory confinement. What is more, the validity of continued confinement depends on the persistence of such a disorder..." *Winterwerp v Netherlands* [1979] 2 EHRR 387 at [39].

(8) Under Article 5(4), the lawfulness of the detention has to be reviewed under the principles set out in the Convention. It must therefore be wide enough to bear on those conditions that are essential for the lawful detention. In particular, with a view to ascertaining whether there still persists

unsoundness of mind of a kind or degree warranting compulsory confinement: see *Winterwerp* at [55] and *Re PS* at [20.

(9) As explained by Munby J in *Re SA*, the inherent jurisdiction in this context is exercisable not merely where a vulnerable adult is but also where he is reasonably believed to be incapacitated. Munby J added:

"... it has long been recognised that the jurisdiction is exercisable on an interim basis 'while proper inquiries are made' and while the court ascertains whether or not an adult is in fact in such a condition as to justify the court's intervention. That principle must apply whether the suggested incapacity is based on mental disorder or some other factor capable of engaging the jurisdiction." (Paragraph 80)

See also *Re SK* [2004] EWHC 3202 Fam; [2005] 2 FLR 230 and *London Borough of Wandsworth (Supra)* at [84]-[86]. But, as McFarlane LJ pointed out in *Re DL* at [68]:

"Whilst such interim provision may be of benefit in any given case, it does not represent the totality of the High Court's inherent powers."

(10) In exercising its powers as set out above, the court must attach due weight to the individual's personal autonomy. The court must, furthermore, be careful to avoid the so-called protective imperative to which I first referred in the case of *CC v KK* [2012] EWHC 2136 (COP) at [25].

29. Baker LJ distilled five key points from his summary. Again, I adopt them:

(i) The inherent jurisdiction may be deployed for the protection of vulnerable adults.

(ii) In some cases, a vulnerable adult may not be incapacitated within the meaning of the 2005 Act, but may nevertheless be protected under the inherent jurisdiction.

(iii) In some of those cases, capacitous individuals may be of unsound mind within the meaning of Article 5(1)(e) of the Convention.

(v) In exercising its powers under the inherent jurisdiction in those circumstances, the court is bound by ECHR and the case law under the Convention, and must only impose orders that are necessary and proportionate and at all times have proper regard to the personal autonomy of the individual.

(iv) In certain circumstances, it may be appropriate for a court to take or maintain interim protective measures while carrying out all necessary investigations.

30. Ms Scott accepts that Mr Meyers falls within the parameters of 'vulnerable adult', see: **A Local Authority v (1) MA (2) NA and (3) SA [2005] EWHC 2942, [2006] 1 FLR 867**. She submits that, as a matter of law, establishing that a person is a 'vulnerable adult' is not sufficient, without more, to enable a Court to make orders pursuant to the inherent jurisdiction. There must, says Ms Scott, be evidence that the person's capacitous wish is being vitiated before recourse can be had to a jurisdiction which effectively overrides it.

31. Whilst Munby J. was entirely resistant to circumscribing the scope of the jurisdiction, describing such an exercise as "unwise" and "indeed inappropriate" for him "even to attempt", he nonetheless, yielded to the temptation to proffer a description of the concept expressly disavowing any definition, (at paragraph 82). I have already incorporated this passage in Baker LJ's summary (above) but, as Ms Scott places great emphasis upon it, it requires to be isolated and revisited here. Munby J. noted:

> *"In the context of the inherent jurisdiction I would treat as a vulnerable adult someone who, whether or not mentally incapacitated, and whether or not suffering from any mental illness or mental disorder, is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation, or who is deaf, blind or dumb, or who is substantially handicapped by illness, injury or congenital deformity."*

32. Ms Scott repeats this passage in both her oral and written submissions. However, the following sentence in Munby J's Judgment is of crucial importance, it should not be omitted and, indeed, requires to be emphasised.

> **"This, I emphasise, is not and is not intended to be a definition. It is descriptive, not definitive; indicative rather than prescriptive."** (my emphasis).

33. In her written submissions for the hearing on 4 February 2019, Ms Scott states as follows:

> *"Given [Mr Meyers] blindness, it is accepted by the applicant that he is a vulnerable adult."*

Blindness as a 'description' of vulnerability is identified in the passages in Munby J's Judgment above. It appears that Ms Scott concedes that Mr Meyers falls within the category of vulnerability entirely in consequence of this disability. I do not consider, even for a moment, that Munby J's descriptive indications were intended to imply that all those who are blind are necessarily vulnerable and fall within the potential reach of the court's inherent jurisdictional powers. I doubt that Ms Scott is intending to do so either but her reasoning is, if she will forgive me for saying so, too reductive. I do not consider that it is the fact of Mr Meyers' blindness that renders him vulnerable. On the contrary, it struck me that he confronts it with courage and with the characteristic phlegmatism of his generation. The sight of one eye has been lost for medical reasons

but Mr Meyers joked that he had simply '*outlived'* the other eye. This signalled to me a resistance, on his part, to despondency and down heartedness and a resilience both to his blindness and to the privations of old age generally.

34. Moreover, though the bungalow has been strewn with dangerous obstacles that would have challenged sighted people in old age, Mr Meyers has, so far, negotiated the challenges without major incident. The essence of his vulnerability is, in fact, his entirely dysfunctional relationship with his son, to which I will return below. Before I do so however, it is necessary to set this in the framework of the case law.

35. Ms Scott addresses what she terms to be the 'paradigm' applications of the inherent jurisdiction, in her written submissions. For convenience and to do justice to them they require to be repeated:

> *"The paradigm cases concern those who lack MCA capacity (ie are within the scope of the statutory scheme) but where there is a gap in the statutory scheme which leaves them without protection. In such cases the Court has held that it is appropriate to invoke the inherent jurisdiction. Examples of such cases are:*
>
> ***Westminster City Council v C*** *[2008] EWCA Civ 198 at paragraph 55 and 56 in which the Court invoked the inherent jurisdiction to grant relief that could not be granted under the MCA, in respect of an incapacitated adult.*
>
> ***A NHS Trust v Dr A*** *[2013] EWHC 2442 (COP) in which Baker J as he then was, invoked the inherent jurisdiction to make an order authorising the force-feeding and consequent deprivation of liberty of Dr A in circumstances where Dr A lacked MCA capacity to make decisions about his medical treatment but could not be provided with the treatment pursuant to the MCA, because he was ineligible to be deprived of his liberty pursuant to the statutory scheme.*
>
> *The Court has also invoked the inherent jurisdiction to protect competent but vulnerable adults who, despite having MCA capacity, are either (i) under constraint or (ii) subject to coercion or undue influence or (iii) for some other reason* ***deprived of the capacity to make the relevant decision, or disabled from making a free choice, or incapacitated or disabled from giving or expressing a real and genuine consent****: per Munby J in* ***SA*** *at paragraphs 77-78. [Emphasis added].*
>
> *The High Court will in such cases in the first instance seek to exercise the inherent jurisdiction so as to facilitate the process of unencumbered decision-making by the adult, rather than taking the decision for or on behalf of the adult:* ***In re L (Vulnerable Adults with Capacity: Court's Jurisdiction) (No 2)*** *[2012] EWCA Civ 253 (referred to as* ***DL****)*
>
> *The last category of cases in which the inherent jurisdiction has been exercised is where it is exercised on an interim basis and while proper inquiries are made 'and while the court ascertains whether or not an adult is in fact in such as condition as to justify the court's intervention' –* ***Re SA*** *paragraph 80, 89 - 90 and 95."*

36. Mr Meyers, I am satisfied, is entirely capable of and has the capacity (within the definition of the Mental Capacity Act 2005) for determining where he wishes to reside and with whom. The evidence of Dr Francis to this effect merely confirms my own impression. In interview with Dr Francis Mr Meyers was lucid analytical and insightful. He disclosed a number of illuminating facts: he has seven children; his eldest daughter threatened that the siblings would not have any contact with him if he continued to allow KF to live with him. Mr Meyers stated that he misses his children and would like to reconnect with them. He expressed the view that *"because [KF] is here, I lost out on everything, like a fool I still protected him, I wanted to help him but no more"* Mr Meyers reported that KF uses illicit drugs. These were initially, he said, for pain control but has now *"become out of hand"*. He told Dr Francis that KF is *"addicted and needs help"*. He reported an occasion where KF had *"used so much speed"* that he was *'afraid for his safety and he had to lock himself in his room to avoid him'*. This, says Mr Patel, though illustrating the dangers of Mr Meyers' situation, also demonstrates that he effectively asserts his own autonomy i.e. by protecting himself. There is force in the point.

37. Some of Mr Meyers' accounts are disturbing e.g. he claims that KF poured a bucket of water on him and deliberately broke his bed. Further, Mr Meyers articulated that his relationship with his son had cost him his home, his relationship with his wider family and the care provision that he needs to live comfortably and safely. In all this, he is entirely correct. Mr David Gibbons, Adult Social Care worker, is right in his conclusion that Mr Meyers' wish to return home is one made with a realistic understanding of the poor state of the property and the dangerous and erratic behaviour of his son.

38. Mr Gibbons expresses his view that *"the current decisions that Mr Meyers is making are not as a result of any coercive influence of KF or as a result of any influence that I can see that may be vitiating his ability to make capacitious decisions"*. He goes on to say, *"I previously thought that KF may be unduly influencing or coercing [Mr Meyers]. I am certain that, even if that was the case in the past, it is not the case now."* Mr Gibbons supports his reasoning by illustrating that *"over the last few months [Mr Meyers] has demonstrated an understanding and willingness to ask KF to leave the property and has even considered living in the property without KF if he remained under the influence of drugs and alcohol."* This, Mr Gibbons feels, demonstrates Mr Meyers *"articulating his wishes and feelings autonomously and not under any undue influence or coercion."* Though I take this from Mr Gibbons' statement, dated 10 January 2019, his reference *"over the last few months"* does not refer to recent months.

39. Various professionals have insinuated that KF has his own underlying mental health issues. Whilst there is no clear evidence of that I agree that his behaviour points towards it. It was no doubt in recognition of KF's own vulnerability that the younger Mr Meyers promised his terminally ill wife that he would look after him. In recent months and with consistency, Mr Meyers has been clear in expressing a wish to return to the bungalow to live with KF. That was the position articulated by him in the December hearing and again, at this hearing in February. Ms Dresner has described the relationship as *"co-dependent"*. By this, I take her to mean a primarily emotional inter-dependence. Everything that Mr Meyers says about his health and future

indicates a man with a real resolve to live and thrive. His attitude to the diminishment of age is unfailingly positive. With limited sight and mobility, he nonetheless grabs all that is available to him with enthusiasm. He is interested in and engages with the world and the issues of the day. He has participated in these proceedings with real commitment. He displays his medals with pride and responds to the court in a way that reveals a real respect for the rule of law.

40. The history of this case demonstrates that Mr Meyers' attitude to his son vacillates and is essentially ambivalent. I do not doubt that there is strong paternal love, alongside a real dependency on KF as the only family Mr Meyers perceives to be left to him. I have not seen any evidence of KF forcing his father, either physically or verbally to act against his will but I am clear that the intensity of this relationship occludes Mr Meyers's ability to take rational and informed decisions. Mr Meyers, is, as I have said, determined to keep well and strong. His ambition to reach 100 years of age is keenly felt. The life force beats strongly within him. Return to the bungalow, whilst his son remains living there and in the absence of an appropriate package of care, as the Local Authority correctly submits, jeopardises Mr Meyers life in a real and not merely theoretical sense. When Mr Meyers left the bungalow he was malnourished, dehydrated and hallucinating in consequence of an infection. He nonetheless managed to raise the alarm. Next time he might not be so fortunate. Though he says he is, in effect, prepared to take the risk ("*I would rather die as a result of [KF] than live a life without [him]")* I cannot easily reconcile this with Mr Meyers' lusty and vigorous attitude to life generally.

41. KF is needy, irrational, frequently out of control as well as manifestly emotionally dependent on a father who, despite the alarming history of this case, he obviously loves. KF's influence on his father is insidious and pervasive. It triggers Mr Meyers's sense of duty, guilt, love and responsibility. These, in my assessment, are pronounced facets of Mr Meyers's character, reflected in a different way in his sense of duty, love for his country and pride in his medals. In this particular context however, these admirable features of his personality have become confused and distorted in a relationship in which the two men have become so enmeshed that the autonomy of each has been compromised. In reality, KF exerts an influence over his father which is malign in its effect if not in its intention. The consequence is to disable Mr Meyers from making a truly informed decision which impacts directly on his health and survival.

42. I am profoundly sympathetic not only to Mr Meyers's challenging circumstances but to his eloquent assertion of his right to take his own decisions, even though objectively they may be regarded as foolhardy. As I emphasised in **Redbridge London Borough Council v A** (supra), I instinctively recoil from intervening in the decision making of a capacitious adult. However well motivated the State may be in seeking, paternalistically, to protect people from their own unwise decisions, it is a dangerous course which has the potential to threaten fundamental rights and freedoms. Again, as I said in Redbridge London Borough Council v A, the inherent jurisdiction is not ubiquitous and should be utilised sparingly. Here Mr Meyers' life requires to be protected and I consider that, ultimately, the State has an obligation to do so. Additionally, it is important to recognise that the treatment of Mr Meyers has not merely been neglectful but abusive and corrosive of his dignity. To the extent that the Court's decision encroaches on Mr Meyers' personal autonomy it is, I believe, a

justified and proportionate intervention. The preservation of a human life will always weigh heavily when evaluating issues of this kind.

43. Finally, in my order of 10 December 2018, I required Mr Meyers to reside at a named Care Home or such other establishment as was approved by the Local Authority. This plainly raises the question of a deprivation of liberty. Whilst the court undoubtedly has a wide and largely unfettered jurisdiction to grant appropriate injunctive relief this is, nonetheless, constrained by the obligations in Article 5, which provide:

> ***Article 5 of the ECHR. Article 5(1)*** *provide:*
>
> *"Everyone has the right to liberty and security of the person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
>
> *…*
>
> *(e) the lawful detention … of persons of unsound mind."*

44. I am mindful of the Winterwerp criteria: **Winterwerp v The Netherlands (1979) 2 EHRR 387** (see above), which provide that an individual cannot be deprived of his liberty unless it is reliably demonstrated that he is of unsound mind or suffering from a mental disorder which warrants compulsory confinement. It is also emphasised that the criteria must be reviewed to establish the persistence of such a disorder. In the light of everything I have said it is manifest that Mr Meyers does not satisfy the criteria of *'unsound mind'* or *'suffering from a mental disorder…'.* On the contrary, I have been very clear that he has a lively engagement with the world generally.

45. The objective here, which the Court's order should reflect, is that Mr Meyers be prevented from living with his son, either in the bungalow **or** in alternative accommodation. I do not compel him to reside in any other place or otherwise limit with whom he should live. For the avoidance of any doubt, Mr Meyers may live in his own bungalow, with an appropriate package of supportive care, conditional upon his son's exclusion from the property. This, to my mind, is the desirable outcome to this case. In this way I restrict Mr Meyers's autonomy only to the degree that is necessary to protect him, a measure which I have concluded is a proportionate interference with his Article 8 rights. As I have analysed above, it is the dysfunctional relationship between Mr Meyers and his son that serves to occlude his decision-making processes, concerning where and with whom he should live. The real issue is whether the framework of an order, giving effect to this, constitutes a deprivation of liberty at all. I am clear it does not. Both Mr Patel and Ms Scott agreed, during exchanges, that the proposed approach of the court 'would not amount to a deprivation of liberty'.

46. In a short, written submission, following the hearing on 4 February 2019 Ms Scott revisited her position in these terms:

> *'The second issue this document addresses is in respect of the proposition put to the applicant during the hearing that if the Court*

> *were to discharge the injunction requiring Mr Douglas Meyers to live in a particular care home, but kept in place the injunctions preventing him from returning to his own home or living with KF, he would not be deprived of his liberty. In oral submission, it was accepted by the applicant that* ***this would not amount to a deprivation of liberty****. (my emphasis)*
>
> *On further reflection the applicant submits that such a situation may in fact amount to a deprivation of liberty:*
>
> *a) 'The objective element for a deprivation of liberty may be made out in such circumstances. Mr Douglas Meyers' concrete situation may in fact be (if for example his only option as a result of the orders was to live in a care home) that he is not free to leave that accommodation and is under continuous supervision and control (this may arise as a result of his care needs or in order to ensure that he does not breach the injunctions).*
>
> *b) The subjective element would be made out, in that Mr Meyers would not be consenting to living in the care home. He would be prevented from living in his own home, where he wishes to live, as a result of the injunctions. He would be forced to live in the care home as he is unable to return to the only other accommodation available to him by dint of the injunctions.*
>
> *c)His residence in the care home would be imputable to the state, because this situation arises only as a result of the Court injunctions.'*

47. Following receipt of the draft judgment, sent to the parties on 20 February 2019 Mr Patel, rather to my surprise, responded (on the 25 February 2019) that he too now wished to resile from his earlier concession. He submits as follows:

> *"(i) DM has MCA capacity to make decisions about his residence;*
>
> *(ii) DM is prevented from exercising that capacity in relation to living with KF by reason of the emotionally dependent relationship they have;*
>
> *(iii) the consequence of (ii) is that DM risks his life in living with KF at the bungalow;*
>
> *(iv) the court can by reason of (ii) and (iii) exercise the IJ to protect DM;*
>
> *(v) any order which the court makes, under the IJ, which either directs DM to live at a particular place or prevents DM from living at a particular place is likely to amount, in concrete terms, to the same thing, which is that DM would not be free to leave the care home and so article 5 would be engaged by either an order directing him to live at a particular place or by an order preventing him from living at a particular place;*

> *(vi) that legal position cannot be avoided by an order that DM is prevented from living with KF (as is suggested by the LA in its suggested amendments to the draft judgment) as in concrete terms that still means he would not be free to leave the care home as KF would remain in the bungalow;*
>
> *(vii) that legal position could be avoided (and article 5 would not be engaged) if the court makes orders against KF instead that he should not live at the bungalow and/or live with DM. That would also accord with (ii)-(iv) above, which are his Lordship's conclusions on the IJ issue."*

48. Neither counsel has sought to root their submissions in the European jurisprudence. It is necessary to do so. It is particularly important to identify that in establishing a 'right to liberty', Article 5 contemplates the physical liberty of the person; its aim is to ensure that no one should be deprived of that liberty in an arbitrary fashion. It is not, of course, concerned with restrictions on liberty of movement, which are governed by Article 2 of protocol No. 4, see: **De Tommaso v Italy [GC] 43395/09, ECHR 2017**;

> *"80. It reiterates at the outset that in proclaiming the "right to liberty", paragraph 1 of Article 5 contemplates the physical liberty of the person. Accordingly, it is not concerned with mere restrictions on liberty of movement, which are governed by Article 2 of Protocol No. 4. In order to determine whether someone has been "deprived of his liberty" within the meaning of Article 5, the starting-point must be his or her specific situation and account must be taken of a whole range of factors such as the type, duration, effects and manner of implementation of the measure in question. The difference between deprivation and restriction of liberty is one of degree or intensity, and not one of nature or substance (see Guzzardi, cited above, §§ 92-93; Nada v. Switzerland [GC], no. 10593/08, § 225, ECHR 2012; Austin and Others v. the United Kingdom [GC], nos. 39692/09, 40713/09 and 41008/09, § 57, ECHR 2012; Stanev v. Bulgaria [GC], no. 36760/06, § 115, ECHR 2012; and Medvedyev and Others v. France [GC], no. 3394/03, § 73, ECHR 2010). Furthermore, an assessment of the nature of the preventive measures provided for by the 1956 Act must consider them "cumulatively and in combination" (see Guzzardi, cited above, § 95).*
>
> *81. As the Court has also held, the requirement to take account of the "type" and "manner of implementation" of the measure in question (ibid., § 92) enables it to have regard to the specific context and circumstances surrounding types of restriction other than the paradigm of confinement in a cell. Indeed, the context in which the measure is taken is an important factor, since situations commonly occur in modern society where the public may be called on to endure restrictions on freedom of movement or liberty in the interests of the common good (see, mutatis mutandis, Austin and Others, cited above, § 59)."*

49. The principles are also considered in: **Creanga v Romania [GC] 29226/03, 23 February 2012; Engel and Others v The Netherlands 8 June 1976, series A no.2.** The essence of the distinction between restrictions on movement, of sufficient gravity to be encompassed within the ambit of a deprivation of liberty protected by Article 5 §1 and mere restrictions of liberty which are subject to Article 2 of protocol no. 4 is one of **'*degree*'** or **'*intensity*'** and not one of **'*nature*'** or **'*substance*'** see **Guzzardi v Italy 7367/76 Chamber Judgment [1980] ECHR 5 (06 November 1980):**

> *"93. The difference between deprivation of and restriction upon liberty is nonetheless merely one of degree or intensity, and not one of nature or substance. Although the process of classification into one or other of these categories sometimes proves to be no easy task in that some borderline cases are a matter of pure opinion, the Court cannot avoid making the selection upon which the applicability or inapplicability of Article 5 (art. 5) depends.*
>
> *94.As provided for under the 1956 Act (see paragraphs 48-49 above), special supervision accompanied by an order for compulsory residence in a specified district does not of itself come within the scope of Article 5 (art. 5). The Commission acknowledged this: it focused its attention on Mr. Guzzardi's "actual position" at Cala Reale (see paragraphs 5, 94, 99, etc. of the report) and pointed out that on 5 October 1977 it had declared inadmissible application no. 7960/77 lodged by the same individual with regard to his living conditions at Force (see paragraph 93 of the report and paragraph 56 above).*
>
> *It does not follow that "deprivation of liberty" may never result from the manner of implementation of such a measure, and in the present case the manner of implementation is the sole issue that falls to be considered (see paragraph 88 above).*
>
> *88.Without losing sight of the general context of the case, the Court recalls that, in proceedings originating in an individual application, it has to confine its attention, as far as possible, to the issues raised by the concrete case before it. Accordingly, the Court's task is to review under the Convention not the 1956 and 1965 Acts as such - the principle underlying them was anyway not challenged by the applicant - but the manner in which those Acts were actually applied to Mr. Guzzardi, namely the conditions surrounding his enforced stay on Asinara from 8 February 1975 until 22 July 1976 (see the above-mentioned Deweer judgment, p. 21, par. 40, the Schiesser judgment of 4 December 1979, Series A no. 34, p. 14, par. 32, etc.; cf. the above-mentioned Ireland v. the United Kingdom judgment, p. 60, par. 149)."*

50. To determine whether someone has been 'deprived of his liberty' de facto, within the meaning of Article 5, the starting point must be a consideration of their *'specific situation'* **(De Tomasso v Italy (supra)).** The approach is also illuminated in **Guzzardi v Italy** (supra) and requires to be stated:

> *"92. The Court recalls that in proclaiming the "right to liberty", paragraph 1 of Article 5 (art. 5-1) is contemplating the physical liberty of the person; its aim is to ensure that no one should be dispossessed of this liberty in an arbitrary fashion. As was pointed out by those appearing before the Court, the paragraph is not concerned with mere restrictions on liberty of movement; such restrictions are governed by Article 2 of Protocol No. 4 (P4-2) which has not been ratified by Italy. In order to determine whether someone has been "deprived of his liberty" within the meaning of Article 5 (art. 5), the starting point must be his concrete situation and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question (see the Engel and others judgment of 8 June 1976, Series A no. 22, p. 24, par. 58-59)."*

51. I note that the phrase *'concrete situation'* used in the passage above is also referred to in the short submissions of Mr Patel. The case law establishes that the court must consider a broad canvas of factual considerations, such as the type, duration, effects and manner of implementation of the measures in contemplation. (see: **Medvedyev and Others v France 3394/03 [2010] ECHR 384 (29 March 2010).** This requirement, i.e. to take account of the *'type'* and *'manner of implementation'* of the contemplated measures, enables the court to survey the specific context and the wider circumstances surrounding types of restriction rather than the paradigm of confinement in a cell. The context in which the measures are taken is an important factor. The European case law identifies how situations commonly occur in contemporary society where the public may be called upon to endure restrictions on freedom of movement or liberty in the interests of a common good. See: **Nada v Switzerland 10593/08 [2012] ECHR 1691**; **Austin and Others v The United Kingdom 39692/09 [2012] ECHR 459.**

52. Whilst it is not necessary here to undertake an extensive exegesis of the applicable European case law, it is important that I note that the purpose of measures pursued by the Authorities, which have the consequence of depriving individuals of their liberty, is not decisive for the assessment of whether there has in fact been a deprivation of liberty. That evaluation is only considered, at a later stage, when examining the compatibility of the contemplated measures with Article 5 §1 (see: **Rozhkov v Russia (No. 2) - 38898/04 (Judgment (Merits and Just Satisfaction): Court (Third Section)) [2017] ECHR 114**:

> *"The Court reiterates that Article 5 § 1 protects the physical liberty of the person (see Engel and Others v. the Netherlands, 8 June 1976, § 58, Series A no. 22; Guzzardi v. Italy, 6 November 1980, § 92, Series A no. 39; and Raimondo v. Italy, 22 February 1994, § 39, Series A no. 281-A). In order to determine whether someone has been "deprived of his liberty" within the meaning of Article 5 of the Convention, the starting-point must be his concrete situation, and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the impugned measure. The purpose of measures by the authorities depriving applicants of their liberty no longer appears decisive for the assessment of whether there has in fact been a deprivation of liberty.*

> *To date, the Court has taken this into account only at a later stage of its analysis, when examining the compatibility of the measure with Article 5 § 1 of the Convention. Article 5 § 1 may also apply to deprivations of liberty of a very short length (see Creangă v. Romania [GC], no. 29226/03, §§ 91-93, 23 February 2012)."*

53. In **P (by his litigation friend the Official Solicitor) v Cheshire West and Chester Council & Anor [2014] UKSC**, Lady Hale made the following, now frequently cited observations which encapsulate both the Court's approach to the rights of individuals with disabilities as well as the nature of the rights guaranteed by Article 5 of the European Convention.

> *"45. In my view, it is axiomatic that people with disabilities, both mental and physical, have the same human rights as the rest of the human race. It may be that those rights have sometimes to be limited or restricted because of their disabilities, but the starting point should be the same as that for everyone else. This flows inexorably from the universal character of human rights, founded on the inherent dignity of all human beings, and is confirmed in the United Nations Convention on the Rights of Persons with Disabilities. Far from disability entitling the state to deny such people human rights: rather it places upon the state (and upon others) the duty to make reasonable accommodation to cater for the special needs of those with disabilities.*
>
> *46. Those rights include the right to physical liberty, which is guaranteed by article 5 of the European Convention. This is not a right to do or to go where one pleases. It is a more focussed right, not to be deprived of that physical liberty. But, as it seems to me, what it means to be deprived of liberty must be the same for everyone, whether or not they have physical or mental disabilities. If it would be a deprivation of my liberty to be obliged to live in a particular place, subject to constant monitoring and control, only allowed out with close supervision, and unable to move away without permission even if such an opportunity became available, then it must also be a deprivation of the liberty of a disabled person. The fact that my living arrangements are comfortable, and indeed make my life as enjoyable as it could possibly be, should make no difference. A gilded cage is still a cage."*

54. Lord Kerr, agreeing with Lady Hale and Lord Neuberger notes the following, at paragraph 76:

> *"Liberty means the state or condition of being free from external constraint. It is predominately an objective state. It does not depend on one's disposition to exploit one's freedom. Nor is it diminished by one's lack of capacity."*

55. Relevant *'objective'* factors which require to be considered when assessing potential deprivation of liberty include the possibility to leave the restricted area, the degree of supervision and control over the person's movements, the extent of isolation and the

availability of social contacts. These are all identified in the case law that I have referred to above and additionally in **H.M. v Switzerland 39187/98 [2002] ECHR 157; H.L. v The United Kingdom 45508/99 [2004] ECHR 471.**

56. Properly analysed, the ambition here is not to confine Mr Meyers to the Care Home, but to protect him from the grave danger that living in the bungalow with his son has already been demonstrated to represent. To safeguard him, by invoking the inherent jurisdiction of the High Court, it is necessary to restrict the scope and ambit of his choices, not his liberty. It is important to highlight that there remain a range of options open to him. The impact of the Court's intervention is to limit Mr Meyers's accommodation options but it does not deprive of his physical liberty which is the essence of the right guaranteed by Article 5.

57. It is also necessary to restrict the extent of Mr Meyers's contact with his son in order to keep him safe. I am bound to say that I do not see that this should represent an insuperable challenge, even anticipating, as I do, that Mr Meyers may not cooperate. To the extent that this interferes with his Article 8 rights it is, again as I have indicated above, a necessary and proportionate intervention. I propose that the Order should be drafted in terms which provide for these restrictions.

58. Because of difficulties that have arisen at the Care Home, it has been expedient, pending this judgment, to grant injunctive orders restricting KF's attendance at the Care Home. The Local Authority must now investigate, whether KF can be removed from the bungalow, by court order, so that Mr Meyers may return with a suitable package of care. Every effort should be made to promote a healthier relationship between Mr Meyers and his son. Finally, I have read that Mr Meyers's youngest daughter may have expressed an interest in seeing her father. I hope so. More than that I regard it as intrinsic to the Local Authority's duties here actively to promote the reunification of this family to support the care arrangements. The State working alone in cases like this can never be as effective as when working constructively and cooperatively with the family. The wider family may be able to unlock the unhealthy interdependency between Mr Meyers and his son, given the time, the space and the support to do so.

59. It follows that, on the facts of this case, I will not make the declaration the Local Authority seek i.e. that it has discharged its responsibilities either under the Care Act 2014 or the Human Rights Act 1998. I do not consider it has done so. I do not intend to be prescriptive as to what the Local Authority should do. Ms Scott however, has asked for clarification and I am happy to assist her. The ideal solution here, it seems to me, would be for Mr Meyers to return to his bungalow with a suitable package of support, his son having been excluded from the property. I should hope that the Local Authority will endeavour, within the framework of appropriate injunctive relief, to make provision for contact between Mr Meyers and his son. I will hear from counsel on the phrasing of the order.