



Neutral Citation Number: [2024] EWHC 1882 (Fam)

Case No: FD23F00055

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 25/07/2024

**Before:**

**MRS JUSTICE GWYNNETH KNOWLES**

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**Between:**

**A Local Authority**

**Applicant**

**- and -**

**P**

**Respondents**

**(by her litigation friend, the Official Solicitor)**

**And**

**Y**

**And**

**X**

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Re P (Vulnerable Adult: withdrawal of Application)  
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**Victoria Butler-Cole KC and Neil Allen** (instructed by **the local authority's solicitors**) for the Applicant

Y did not attend and was not represented

**Joseph O'Brien KC and Hannah Bakshani** (instructed by **Irwin Mitchell LLP**) for X

**Jenni Richards KC and Adam Fullwood** (instructed by **the Official Solicitor**) for P

Hearing date: 3 July 2024  
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**Approved Judgment**

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

Approved Judgment**Mrs Justice Gwynneth Knowles:***Introduction*

1. The application before the court made by the local authority sought protective orders pursuant to the inherent jurisdiction of the High Court in respect of P, a young woman aged 29 years. There was no dispute that P is a vulnerable adult who is under the influence and control of her father, Y. She has, on any analysis, experienced a dysfunctional family life that has left her homeless, isolated from her wider family and her peers, lacking formal education or training, distrustful of authority, and likely to be at risk of harm without support from others which she has consistently refused. P had been compelled by court order to live apart from her father in a placement provided and funded by the local authority since late October 2023. Simply put, the central issue in this case was whether the court should continue to use its powers to compel P to live apart from her father.
2. The first respondent to the proceedings was P, through her litigation friend, the Official Solicitor. Throughout the proceedings, P was encouraged by the court to seek legal representation but did not do so. In March 2024, the Official Solicitor was invited to act as P's litigation friend but P has not engaged with her legal representatives. P's father, Y, was the second respondent. He has not engaged with the proceedings at all and his current whereabouts are not known. He is believed to be living in the local authority's area as P is thought to see him regularly when she goes out from her current placement. The third respondent is X, P's mother. She married Y in 1991 but divorced him in 2017 on the grounds of his domestic abuse. She left the marital home in 2015 and since that time, has had very limited contact with P.
3. By the time of the hearing and for reasons which will become clear in this judgment, the local authority had decided that continuing P's placement was disproportionate and that any other safeguarding measures were unlikely to be effective in helping P extricate herself from a relationship of control and dependence on Y. It applied to withdraw its application, a course supported by both X (albeit with some reluctance) and the Official Solicitor. I approved that course and, by consent, made the following determinations:
  - a) that the proposals put forward by the local authority to offer P support and accommodation were an appropriate discharge of its statutory obligations towards P;
  - b) that, notwithstanding the risks to P's welfare should she refuse the offers of support from the local authority and return to live with Y, it was not appropriate for the court to make further orders regulating her residence or otherwise constraining her choices;
  - c) that concluding the proceedings without further or continuing orders did not constitute a breach of P's Article 3 and Article 8 rights.

The order contained a recital explaining that the local authority would set up a prepaid card worth £500 which would be made available to P via her advocate or the library should she wish to make use of it. With the agreement of the parties present in court, I also invited the local authority to withdraw the claim for state benefits it had made on behalf of P and to inform the DWP that, if any future application was made by P herself,

Approved Judgment

P should not be assumed to lack capacity to make an application. The final order contained provisions permitting the disclosure of this judgment and other evidence to the police should they become involved with P and Y in the future.

4. The consensual resolution to the proceedings meant that I did not have to make factual findings about P's circumstances nor hear detailed legal argument about some of the complex legal issues in this case. Nevertheless, I indicated that I would prepare this judgment given P's unusual and troubling circumstances. What follows makes plain the limit of legal intervention to protect a vulnerable adult who has every intention of re-establishing the living arrangements which sparked the proceedings so many months ago.

*Background*

5. What follows is a summary of the factual background pertinent to the issues in this case.
6. The local authority first became aware of P following a referral from the police in early March 2022. X had reported her concerns to the police, namely that Y exercised control over P; that P lacked access to basic necessities such as heating and food; and that P was financially dependent on her father who lived on a very limited income indeed. P and Y were living together in the family home at this time. The initial police report detailed how P - then aged 27 years - appeared to look like a young teenager, being underweight, and pale with sores on her mouth. Following the referral, the local authority attempted in vain to engage P, making over 17 visits to the family home between March 2022 and May 2023. The social work evidence showed a concerted effort by P and Y to evade health and social care professionals and the police. It is important to note that, at that time, P had never been known to Children's Services and, save for obtaining the Covid vaccine, had last attended her GP a decade earlier for a minor ailment. She left school at 16 without any qualifications and appeared never to have been in paid, formal employment or to have claimed state benefits. She was socially isolated with no friends or contact with other family. P has a brother, Q, who has been diagnosed with a serious psychotic illness and was hospitalised in March 2022. He has never returned to the family home since then and presently resides in a mental health unit as a voluntary patient. Q has said almost nothing about his sister's circumstances in the family home.
7. In April 2023, P and Y were evicted from the family home because Y had failed to pay the mortgage and the property was repossessed. Thereafter, both P and Y slept in a car parked on the property's driveway, using an external mailbox at the property to collect post. There was no evidence that P or Y were trying to find somewhere else to live or making a claim for state benefits to enable them to do so. In May 2023, two separate referrals were received from members of the public expressing concern about P's living circumstances.
8. Concern about P's circumstances was heightened by the information gleaned about X's experiences in the family home before she left in 2015. Both X and P's brother, Q, reported Y to be controlling, paranoid about government, and suspicious of professionals. X described family life as "*cult-like*" with Y assigning family members roles in the family home so that he could concentrate on his health. X gave an account of her life to the local authority detailing prolonged domestic abuse by Y in which P and Q had been required to participate. Neither X, P or Q were allowed to leave the

Approved Judgment

family home unaccompanied by Y, work, or claim state benefits. Shopping was done as a group and Y controlled the family finances, only allowing £1.50 a day for food for the entire family. Food was rationed and measured out in small amounts and the family diet often consisted of bread and jam/mustard. X reported that P and Q had to wear covert recording equipment to school so that Y could monitor their interactions with others. Y had refused to sign a learning agreement which resulted in a B-Tec course for P being terminated. His control over the family appears to have extended to limiting showers; cutting the family's hair himself; and restricting P's access to funds so she could purchase sanitary towels.

9. After much consideration, the local authority made an application to invoke the inherent jurisdiction in July 2023.

*The Proceedings*

10. The proceedings were allocated to HHJ Burrows sitting as a Deputy High Court Judge. On 1 September 2023, he gave the local authority permission to invoke the inherent jurisdiction and joined P and Y as parties to the proceedings. The Official Solicitor was appointed to conduct an enquiry into P's circumstances with a view to advising whether protective orders were appropriate. An independent social worker was appointed and met with P on three occasions from a total of five visits. He concluded that she was a vulnerable adult and that it was probable that her views were informed by a more dominant other. P was unable to provide any information to reduce professional concern about her future welfare, stating that she wished to be left alone. The independent social worker also concluded that P lacked the capacity to conduct the proceedings and to make decisions about her residence and care. He was unable to assess her ability to make decisions about contact. Given the lack of medical evidence, the independent social worker was unable to say whether P's lack of capacity arose from an impairment of the mind or brain but concluded that it was probable she was subject to coercion or undue influence. He recommended that the court obtain a psychiatric report.
11. On 26 October 2023, HHJ Burrows discharged the Official Solicitor and went on to make an order that it was in P's best interests to be accommodated at a care home and to be transported to that place, if necessary, with the use of force. The recital to the court's order explained that the court had concluded, on the available evidence, that P was under the influence and control of Y and that P was at significant risk of serious harm because she was living in a car with Y in cold weather, appearing to be malnourished. In those circumstances, the court determined that the need for protective action was urgent and that the conveying and accommodating of P at the care home amounted to a deprivation of her liberty, authorised in accordance with Article 5(1) of the European Convention on Human Rights (ECHR). HHJ Burrows did not impose restrictions upon P that prevented her from leaving the placement during daylight hours. When the matter returned before the court on 16 November 2023, HHJ Burrows authorised continuation of the placement in circumstances where the car in which P had been living with her father had been repossessed by the finance company, thus depriving P anywhere at all to go should she leave the placement. HHJ Burrows recognised the draconian nature of the orders he made but considered them necessary so that P's circumstances could be assessed away from the influence of her father. He emphasised the critical importance of P being represented and encouraged both her and her father to obtain legal advice. He stressed the court's and the local authority's genuine concern for her welfare but made clear that there may come a point where the

Approved Judgment

court was unable to alter P's mindset and circumstances, rendering the proceedings otiose.

12. In December 2023, the court directed a report from a consultant psychiatrist, Dr Ince, and listed the matter for further review. Y was prohibited from having contact with P at any place other than the residential placement, such contact to be prearranged and supervised; and prohibited from behaving in any way so as to prevent P from attending court or having access to health or social care professionals or to Dr Ince. In order to prepare his report, Dr Ince spoke with P in January 2024 but P refused to leave her room and speak with him on his next visit in early February 2024. Having considered all the material and interviewed P on one occasion, Dr Ince concluded that P did not have a mental disorder or mental impairment. Her behaviour and views were a manifestation of the undue influence of her father arising from coercion and control. As a result, P lacked the capacity to conduct the proceedings and to make decisions about residence, care, contact with her father and state benefits. In his opinion, P did not recognise the impact of Y's beliefs and behaviour upon her own well-being or broader decision-making and Dr Ince drew attention to the positive impact of her relationships with staff at placement as a protective factor, these allowing objective but supportive challenge to P. Though hesitant to make significant comments about P's best interests, Dr Ince suggested that P was developing some confiding and supportive relationships with the current care team together with social connections in the placement. Should the court be satisfied that P continued to require the protection of the inherent jurisdiction, Dr Ince was of the opinion that her continued placement within a supportive environment would be a positive step towards a greater level of independence. Without such a framework or if there were to be a hasty removal of the placement, there would be a significant risk that P would not have developed the relevant and necessary skills to prevent a return to her father's control and a re-establishment of her prior dependence, enmeshment, and coercion.
13. In March 2024, HHJ Burrows declared that P lacked the capacity because of undue influence to conduct the proceedings and to make decisions as to residence, care, contact with her father, and applying for state benefits. The placement arrangements did not any longer deprive her of her liberty but were a necessary and proportionate interference with her rights under Article 8 of the ECHR. He invited the Official Solicitor to act as P's litigation friend, appointing her to act as such if she accepted the invitation to do so. Directions were given for the filing of further evidence and the matter was set down for trial before me on 2 July 2024 with a pre-hearing review on 7 June 2024.
14. At the pre-hearing review, I joined X as a party to the proceedings and made a reporting restriction order at the request of the Official Solicitor as litigation friend for P. I granted the local authority permission to invoke the court's inherent jurisdiction and, for the purpose of a police investigation, permitted the local authority to disclose to the police documents provided to it by X which had been retrieved from the family home prior to its repossession. I identified the issues to be determined at the hearing, namely:
  - a) whether P was a vulnerable adult for the purposes of the inherent jurisdiction;
  - b) as a consequence of any such vulnerability, whether P lacked the ability to conduct the proceedings and make decisions in relation to where to reside, her

Approved Judgment

care and support needs, her contact with her father, her use of a mobile phone, and the restrictions on her movement currently imposed on her at the placement;

- c) to make findings of fact regarding the historical allegations made in respect of Y's behaviour towards P;
- d) whether the local authority had discharged its safeguarding responsibilities;
- e) whether to make protective orders with the aim of empowering and promoting the autonomy of P;
- f) whether to grant any injunctive relief against Y;
- g) and whether any such protective orders might deprive P of her liberty for the purposes of Article 5 of the ECHR.

I also made participation directions so as to enable X, as a victim of domestic abuse, to participate in the proceedings.

*Evidence*

15. None of the parties invited me to hear oral evidence given the consensus as to the way forward. Nevertheless, it seems to me appropriate that I summarise the evidence available to me about P's circumstances during the time she has been provided with accommodation by the local authority. The expert evidence has already been summarised in this judgement and I do not repeat it here. I emphasise that I have made no findings of fact about P's experiences in the family home; about those of her mother; or about Y's behaviour to either of them.
16. P was conveyed to the residential placement without the need to use restraint or force. Following her move, P was unwilling to provide information about herself but eventually she seemed happy to engage in some activities. She had a set list of food that she would eat which was rather limited. P appeared to spend considerable time researching the law relevant to these proceedings which she explained to staff, appearing to be reading from a script. She was focused on some matters but did not appear to have an understanding of the court order as a whole. By the time of this hearing, P continued to engage superficially with the psychological help provided at the placement but would not take part in formal sessions. She did however engage with staff and participated in planned activities and appeared to have formed some friendly relationships with other residents. She now ate the food provided at the placement and no longer appeared to be underweight. P had declined state benefits despite an application for Universal Credit being made on her behalf by the local authority. She had some engagement with an Independent Domestic Violence Advocate via email and information about controlling behaviour and undue influence was going to be sent to her but P had ended the contact before this could take place. P had declined to meet with the social worker to discuss alternative residential options.
17. The local authority social worker was of the opinion that, during P's residential placement, there had been little progress made in either P's understanding of the risks arising from her enmeshed relationship with her father or her recognition that she had been subject to controlling, coercive and abusive behaviour. P was unlikely to make

Approved Judgment

significant progress unless contact with her father could be prevented, but the only means by which this could be achieved would be placing P in a locked setting and restricting her access to the internet and social media. In those circumstances, the social worker considered it would be disproportionate to require P to continue living in the placement.

18. It is important that I record that, throughout the proceedings, P has challenged the local authority's actions in a series of letters and emails, many of which are in the court bundle. I have read them all. These polite but insistent communications make crystal clear P's consistent refusal to accept help and support to alter her living arrangements. She wants nothing to do with the local authority or any services it might offer her and wants to leave the placement to return to her old way of life. Those wishes are also expressed in all P's dealings with local authority or other care staff involved with her. For example, on 23 November 2023, during a visit from the team manager, P said that she wished *"to get my own accommodation and have my own life and to know you won't be there"*. She added that *"I want to be left alone to be with my dad. I want to be in a house or a flat... You might not be happy with my life choices but it's my life"*.

*Positions of the Parties*

19. The local authority recognised that the hearing marked an important crossroad in P's life. Having spent it all so far under the influence and control of her father, this had been her first opportunity to live a life independently of him. However, P was either unable or unwilling to take that opportunity and had declined all efforts of support. The local authority recognised that safeguarding measures such as the residential placement - though necessary - had with the passage of time become disproportionate and that more draconian measures would be required to cut off all ties between P and her father. Given the strength and consistency of P's will and the limited reason to believe that such measures would be effective, the local authority had come to the conclusion that further protective orders were disproportionate. Given the risk of P returning immediately to her father, Miss Butler-Cole KC submitted that the court needed to be satisfied that neither the local authority's obligations under the ECHR nor those of the court would be violated if the proceedings ended with no ongoing orders. She therefore invited me to determine whether ending the current protective measures would breach the State's positive obligations. On a careful analysis of the future risks in the event of the discontinuation of protective orders, the local authority submitted that there was no real and immediate risk that P would experience degrading treatment by her father such as to engage Article 3 of the ECHR.
20. On behalf of X, Mr O'Brien KC submitted that she would very much prefer the current orders to remain in force and feared that, once lifted, P would return to a life of chaos and coercion. Regrettably, the residential placement had made no obvious difference to P's engagement with services nor had it addressed the concerns of her enmeshed relationship with Y. There was no real prospect of altering the outcome or mitigating the harm sufficient to engage the lawful responsibility of the state.
21. On behalf of P, the Official Solicitor shared the concerns in relation to P's safety and general well-being but was unpersuaded as to the utility or lawfulness of further protective orders. It was highly likely that P would refuse to engage with further assessment or offers of therapeutic or practical support. There was no purpose in making findings of fact against Y when the local authority no longer sought injunctive

Approved Judgment

orders against him and where ongoing restrictions on P's contact with him were unlikely. The allegations made in the documentary evidence were very serious but some related to incidents that had taken place many years ago and many were drawn from documents - some of them incomplete - provided by X which had only recently been disclosed to the local authority and the Official Solicitor. Presently, the Official Solicitor was not persuaded that the discontinuance of protective orders would breach P's Article 3 rights in the circumstances of this case. P had been arguably deprived of her liberty for several months during which time she had steadfastly refused to engage with all attempts to offer her any therapeutic intervention or other formal assistance. That was highly unlikely to change and it was thus difficult to see what more the State could do. In such circumstances, it was likely that the State could not be found to be failing to take measures within the scope of its powers which it might reasonably be expected to take to avoid the risks to P. P would undoubtedly remain vulnerable but her circumstances fell short of engaging the high threshold required to engage Article 3 of the ECHR.

*The Legal Framework*

22. Given the large measure of agreement between the represented parties, what follows is necessarily a summary focussed on P's Article 3 rights. It replicates the analysis contained in the local authority's position statement prepared for this hearing for which I am very grateful to Miss Butler-Cole KC and Mr Allen. Miss Richards KC agreed with Miss Butler Cole KC's analysis of the effect of Article 3 in this case and I note that Mr O'Brien KC did not disagree with that analysis either.
23. A Harbin and Masterman [1896] 1 Ch 351 enquiry was initiated with an independent social worker instructed to consider P's circumstances. The outcome of that enquiry is agreed, namely that P is a "vulnerable adult" as defined in Mazhar v Birmingham Community Healthcare Foundation NHS Trust & Ors [2021] 1 WLR 1207 at [30]-[33]. The Court of Appeal there and in A Local Authority v DL [2013] Fam 1 endorsed the description of the jurisdiction given in Re SA (Vulnerable Adult with Capacity: Marriage) [2006] 1 FLR 867 at [77-80]. In relation to adults who are vulnerable because of coercion or undue influence, Munby J noted in Re SA:

*"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."*

24. In circumstances where the court was being invited to permit the local authority to withdraw its application and discontinue any protective orders, consideration must be given to whether P's Article 3 rights would be breached as a result. There is a three-tier hierarchy of prescribed forms of ill-treatment: (i) torture, (ii) inhuman treatment or punishment, and (iii) degrading treatment or punishment. In this case, the issues are (a) whether the risks of destitution and harm which P might face on returning to live with



Approved Judgment

her father amount to degrading treatment for these purposes and, if so (b) whether that results from the State's failure to discharge a positive obligation to prevent such treatment by her father. For a positive obligation to arise, the European Court of Human Rights held in X v Bulgaria (2021) 50 BHRC 244 at [183] that:

*“... It must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk of ill-treatment of an identified individual from the ... acts of third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid the risk...”*

25. According to AB v Worcestershire County Council [2023] EWCA Civ 529 at [57], the positive obligation contains four elements: (1) a real and immediate risk (2) of the individual being subjected to ill-treatment of such severity as to fall within the scope of Article 3 of the Convention (3) that the public authority knew or ought to have known of that risk and (4) the public authority failed to take measures within their powers which, judged reasonably, might have been expected to avoid the risk. The relevant principles were outlined by the Court of Appeal at [58]-[63].
26. There is no absolute legal obligation on the State to prevent destitution, and living in poverty is not “*treatment*” for Article 3 purposes. However, the common law protects against starvation: “*the law of humanity, which is anterior to all positive laws, obliges us to afford [people] relief, to save them from starving*”: R v Inhabitants of Eastbourne (1803) 102 ER 769, 770; affirmed in R v Secretary of State for Social Security, exp Joint Council for the Welfare of Immigrants [1997] 1 WLR 275.
27. Treatment is “*inhuman or degrading if, to a seriously detrimental extent, it denies the most basic needs of any human being*”. In an asylum context, “*the threshold may be crossed if the late applicant with no means and no alternative sources of support, unable to support himself, is, by the deliberate action of the state, denied shelter, food or the most basic necessities of life*”: R (Limbuela) v Secretary of State for the Home Department [2006] 1 AC 396 at [7]. This case concerned the State's breach of Article 3 for its failure to provide food and accommodation to asylum seekers who had no means of supporting themselves. It illustrated that destitution does not always indicate degrading treatment.
28. Degrading is characterised by treatment which humiliates or debases an individual in such a manner that shows a lack of respect for, or diminishes, their human dignity, or arouses feelings of fear, anguish and inferiority capable of breaking an individual's moral and physical resistance; Price v United Kingdom (33394/96, 10 July 2001, at [24-30]; Valasinas v Lithuania (44558/98, 24 July 2001, at [117]); and Pretty v United Kingdom (92346/02, 29 April 2002, at [52]). The prohibition is irrespective of the victim's conduct.
29. In RR v Hungary (36037/1, 2 March 2021 at [57]), the court concluded that RR's hunger, which left him begging and taking food from dustbins, was a situation incompatible with Article 3, ECHR. He was “*wholly dependent*” on the State for food. In Z and Others v UK (29392/95, 10 May 2001 at [16], [24] and [27]) the European Court of Human Rights found a violation of Article 3 ECHR because the local authority failed to remove siblings from a household characterised by abuse and poor living

Approved Judgment

conditions. The children were stealing food at school and from bins, as well as losing and failing to gain weight.

30. The threshold of severity required to engage Article 3 is relative and depends on the particular circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some circumstances, the age, sex and state of health of the victim: AE v Bulgaria (53891/20, 3 May 2023) at [84-88]. The person's vulnerability is a key factor in the determination. Domestic abuse, which can include economic and emotional abuse often takes place within personal relationships or closed circuits where women make up an overwhelming majority of the victims. The need for active State involvement to provide victims of domestic abuse with effective protection and safeguards is well established. Special vigilance is required as vulnerable individuals are entitled to State protection in the form of effective deterrence, against such serious breaches of personal integrity.

31. As the European Court of Human Rights held in Tunikova and Others v Russia (55974/16, 14 March 2022):

*“73. The Court reiterates that in order for ill-treatment to fall within the scope of Article 3 it must attain a minimum level of severity. An assessment of whether this minimum has been attained depends on many factors, including the nature and context of the treatment, its duration, and its physical and mental effects, but also the sex of the victim and the relationship between the victim and the author of the treatment. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these aspects, treatment which humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or which arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, may also fall within the prohibition set forth in Article 3 (see Bouyid v Belgium [GC], no. 23380/09, at [86-87], ECHR 2015).”*

32. The court went on to hold at [103] that *“the State authorities have a responsibility to take measures for the protection of an individual whose physical or psychological integrity is at risk from the criminal acts of a family member or partner”*. Thus, psychological impact forms an important part of domestic abuse. In certain well-defined circumstances, the state is under an obligation to take operational measures to protect specific individuals against the risk of ill-treatment contrary to that provision: Luca v The Republic of Moldova (55351/17, 17 January 2024) at [60-62]. The court held at [64]:

*“64. The risk of a real and immediate threat which has been brought to the knowledge of domestic authorities must be assessed taking due account of the particular context of domestic violence. In such a situation, there is an obligation not only to afford general protection to society, but above all to take account of the recurrence of successive episodes of violence within a family. In many cases, even where the authorities do not remain totally passive, they still fail to discharge their obligations under Article 3 of the Convention because the measures they take do not stop the abuser from perpetrating further violence against the victim (see Tunikova and Others, cited above, [103], and further case law references in Volodina, cited above in [86].*

Approved Judgment

65. *The Court clarified the scope of the State’s positive obligation to prevent the risk of recurrent violence in the context of domestic abuse in its judgment in the case of Kurt (cited above, [161] et seq.) and Tunikova and Others (cited above. [104]).*

*First, the domestic authorities are obliged to respond “immediately” to complaints of domestic violence and to process them with special diligence, since any inaction or delay deprives the complaint of any utility by creating a situation of impunity conducive to the recurrence of acts of violence. In assessing the “immediacy” of the risk, the authorities should take into account the specific features of domestic violence cases, such as consecutive cycles of violence, often with an increase in frequency, intensity and danger over time (ibid., [165-166] and [175-176]).*

*Second, the authorities have a duty to undertake an “autonomous”, “proactive” and “comprehensive” risk assessment of the treatment contrary to Article 3. The authorities should not rely solely on the victim’s perception of risk but complement it with their own assessment, preferably using standardised risk assessment tools and checklists and collecting and assessing information on all relevant risk factors and elements of the case, including from other State agencies. The conduct of the risk assessment should be documented in some form and communicated to other stakeholders who come into regular contact with the persons at risk; the authorities should keep the victim informed of the outcome of the risk assessment and, where necessary, provide advice and recommendations on the available legal and operational protective measures (ibid., [167-174]).*

*Third, once a risk to a victim of domestic violence has been identified, the authorities must, as quickly as possible, take preventive and protective operational measures that are adequate and proportionate to the risk. A proper preventive response often requires coordination between multiple authorities, including the rapid exchange of information (ibid., [177-183]).”*

33. Whether degrading circumstances amount to “*treatment*” requires some positive action by the State. This will depend on whether there is a positive obligation to prevent the degrading treatment of P at the hands of her father. In Limbuela, it was held that the Article 3 threshold may be crossed if, as a result of withdrawing asylum support, a person was obliged to sleep in the street, or was seriously hungry, or was unable to meet the most basic requirements of hygiene. As Lord Scott held at [66]:

*“It was submitted by... counsel for the Secretary of State, that a failure by the state to provide an individual within its jurisdiction with accommodation and the wherewithal to acquire food and other necessities of life could not by itself constitute “treatment” for article 3 purposes. I agree with that submission, whether the individual is an asylum seeker or anyone else. It is not the function of article 3 to prescribe a minimum standard of social support for those in need (cf Chapman v United Kingdom (2001) 33 EHRR 399). That is a matter for the social legislation of each signatory state. If the individuals find themselves destitute to a degree apt to be described as degrading, the state’s failure to give them the minimum support necessary to avoid that degradation may well be a shameful reproach to the humanity of the state and its institutions but, in my opinion, does not without more engage article 3. Just as there is no Convention*

Approved Judgment

*right to be provided by the state with a home, so too there is no convention right to be provided by the state with a minimum standard of living: “treatment” requires something more than mere failure.”*

34. Usually, the obligation would require the State to adopt positive measures in the sphere of criminal law protection with effective, proportionate and dissuasive sanctions. In addition, *“the toolbox of legal and operational measures available in the domestic legal framework must give the authorities involved a range of sufficient measures to choose from, which are adequate and proportionate to the level of risk that has been assessed in the circumstances of that particular case”*: Tunikova and Others v Russia (55974/16, 14 March 2022 at [95]). A failure to take reasonably available measures which could have had a real prospect of altering the outcome or mitigating the harm is sufficient to engage the responsibility of the State: O’Keeffe v Ireland (35810/09, 28 January 2014 at [149]).
35. P has objected to the offer of support to avoid destitution. Section 11 of the Care Act 2014 provides that the duty is discharged if an adult with capacity decides to refuse the offer of social care. In the present case, P lacks capacity (for the purposes of the vulnerable adult jurisdiction of the High Court) to make such decisions about her residence and care because of Y’s undue influence. Her refusal to engage and accept the offer of support does not therefore necessarily discharge the local authority of its statutory responsibilities.

Discussion

36. This is a difficult and sensitive case and I agree with Miss Richards KC that there are, in reality, no good outcomes for P. P’s mindset has not been altered during her time in the residential placement – she is as firm as ever about her desire to decline help from the local authority and to do what she wants. Sadly, she has no insight into the dysfunctional relationship that she has with her father and it is likely that, once she leaves the placement and whatever she might say about wanting her own place to live, P will be drawn back into his orbit and surrender herself once more to his control. I am wholly satisfied on the evidence before me that P is a vulnerable adult who lacks capacity because of the ongoing undue influence of her father. However, P’s refusal to engage and accept offers of help does not necessarily discharge the local authority of its statutory responsibilities.
37. The stark choice is thus between the cessation of the protective framework with the overwhelming likelihood that P will return to live with her father (in circumstances where it is unclear where they will live and how they will support themselves) or a further prolonged period of residential care which is likely to be as ineffective as the previous period in helping P gain insight into her circumstances and free herself from the undue influence of her father.
38. Applying the case-law cited above and on fine balance, the real and immediate risks to P – though very concerning – fall short of establishing a real and immediate risk of degrading treatment for Article 3 purposes. Whilst there appears to have been financial and psychological abuse of P by Y, he does not appear to have physically assaulted her and his treatment of her is not such as to cause anguish and inferiority capable of breaking P’s moral and physical resistance. Destitution - which P faces given her reluctance and that of her father to claim state benefits - is not sufficient to amount to

Approved Judgment

degrading treatment. Even if I am wrong about all that and a real and immediate risk of engaging Article 3 exists, I find that the local authority has, in the recent past, taken all reasonable steps to negate that risk including bringing these proceedings and accommodating P in a residential setting. P has consistently refused all offers of help and accommodation and has failed meaningfully to engage with domestic abuse and mental health services. Further, though the police declined to intervene in April 2023, I consider that P would not presently support any criminal prosecution of Y for his behaviour towards her. In those circumstances, I endorse the view shared by the represented parties that it would be disproportionate to make further protective orders in respect of P. The inherent jurisdiction is not unboundaried and, given that all investigations into P's circumstances have now concluded, there is no lawful justification for the continuance of protective orders. Further protective orders in circumstances where they are unlikely to manifestly alter P's situation would represent an unjustifiable interference with P's Article 5(1) rights to liberty and security of person. I am thus satisfied that, despite the risks to P's welfare should she reject the offers of support from the local authority and return to live with her father, further orders regulating her residence or otherwise constraining her choices are unjustified and disproportionate.

39. The local authority made some proposals which it asserted were an appropriate discharge of their statutory obligations to P. First, it is proposed that the local authority will set up a prepaid card with a balance of £500 which it will make available to P via her advocate or the library where P spends much of her time. This will be a safety net for P should she wish to make use of it. Second, the local authority has agreed to withdraw the claim for state benefits it made on P's behalf and to inform the Department of Work and Pensions that P should not be assumed to lack capacity to make any future application for state benefits. Third, a pack of information which might help P access help and support should she wish to do so has been prepared and will be given to P's advocate to give to her in case P maintains contact with her advocate following her departure from the residential placement. All of the above represent a reasonable response to the reality of P's situation and I am satisfied that they are an appropriate discharge of the local authority's statutory obligations to P.

*Conclusion*

40. I conclude by thanking the advocates for the represented parties for their hard work and thoughtful approach to this worrying case. I also extend my thanks to the social workers involved with P who have tried hard to engage her and promote true independence for her.
41. Regrettably, I think it is almost inevitable that P will come to the attention of the authorities in future. I hope this will be in a context where she is seeking help to forge her own course in life, free from the undue influence of her father but I suspect that, unless something significant changes, future contact is likely to be at a time of crisis for P.
42. P should have access to a copy of my judgment if she wishes to read it. I wish her well for the future and, notwithstanding my endorsement of the consent order, I remain concerned about her wellbeing.
43. That is my decision.