

Neutral Citation No: [2022] NIFam 13

Ref: SCO11804

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

ICOS No: DJ 2021/45 (P)

Delivered: 28/03/2022

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

Between:

YZ

Applicant

-and-

AB and CD

First & Second Respondents

and

WX

Third Respondent

and

THE OFFICIAL SOLICITOR
TO THE COURT OF JUDICATURE

Fourth Respondent

Patrick Gillen BL (instructed by Fisher & Fisher, Solicitors) for the applicant
Stephen Gilmore BL (instructed by Campbell & Grant, Solicitors) for the third
respondent
Sinead O'Flaherty BL (instructed by the Official Solicitor's Office) for the Official
Solicitor

SCOFFIELD J

Introduction

[1] These proceedings were commenced by way of originating summons dated 1 June 2021. The kernel of the relief sought was an order, pursuant to the inherent jurisdiction of the court, that the applicant be permitted to have direct contact with the first and second respondents, having been prevented from so doing by the third respondent.

[2] The applicant and third respondent are sisters. The first and second respondents are their parents. Sadly, the first respondent, who is aged 82, suffers from dementia. The second respondent, who is also aged 82, has significant health issues and suffered a stroke which has impacted upon her speech, amongst other things, and resulted in global dysphasia. It is common case that they are both frail and in ill health. This judgment has been anonymised to protect the identity of the first and second respondent.

[3] Mr Gillen appeared for the applicant; and Mr Gilmore appeared for the third respondent. The first and second respondents' interests were represented by the Official Solicitor, for whom Ms O'Flaherty appeared. I am grateful to all counsel involved for their succinct and helpful submissions; and for the pragmatic engagement between them at various stages of this litigation. Regrettably, it has not proven possible for the core issue in dispute to be resolved by agreement.

Factual Background

[4] As noted above, the first and second respondents are in poor health. The applicant contends that, for many years, she provided significant levels of care to both her parents, until April 2018, when she underwent surgery in hospital. The care which she variously provided to her parents up until that time (she contends) included cooking their meals, tending to their home on a daily basis, and bringing them to a variety of appointments including medical appointments. There does not seem to be any serious dispute that the applicant was involved to a significant degree in her parents' care at that stage. However, she had back surgery in 2018 and has, I understand, had further surgery in 2019 and 2020, which resulted in a change of circumstances.

[5] The applicant further says that, following her surgery in April 2018, she was required to recuperate for a period which meant that she was unable to provide the same level of care to her parents as she had been providing. She says that the third respondent was extremely critical of her at that time, alleging that she was using her illness as an excuse to reduce the level of care that she had been providing to their elderly parents. The applicant disputes this.

[6] In any event, the disagreement between the sisters which arose at this time clearly led to a serious deterioration in their relationship. It is common case that the relationship has never been repaired since that time. Indeed, relations between the applicant and the third respondent further deteriorated significantly. One particular factor in this appears to have been a disagreement in or around October 2019 when both sisters had booked holidays for the same dates and (on the applicant's case) the applicant was forced to cancel her holiday in order to provide care for her father over that period.

[7] Due to a deterioration in the health of the first and second respondents, it was deemed appropriate for both of them to be placed in nursing home care. For some

time the applicant's parents were living in different nursing homes, due to their differing conditions and care requirements. The applicant avers that, after their having been admitted to nursing home care, she continued to visit each of her parents on an almost daily basis.

[8] AB and CD being placed in nursing care was, it seems, a further cause of dispute between the applicant and third respondent. The applicant says that the third respondent attributed blame to her for their parents being placed in nursing care and alleged that she had "walked away" from their parents and did not make enough effort to provide for them. Again, the applicant strongly disputes this. She says that both of her parents had complex medical needs, with which she was not able to cope.

[9] The third respondent has a power of attorney in relation to the first respondent and an enduring power of attorney in respect of the second respondent. She asserts that, when the extent of her parents' health issues became clear, she was the only one willing to take on this responsibility. However, she has also averred that, when the applicant found out that she had a power of attorney, she was cross and said that she did not want anything to do with their mother's care; and that all she would do was visit (like their brother), also refusing a request that she make meals for them.

[10] The dispute in relation to contact with the applicant's parents appears to have arisen following the outbreak of the Covid-19 pandemic. At that time, AB and CD were removed from their respective nursing homes to be cared for back in their own home. The decision in this regard related to the risks associated with nursing home residents contracting Covid-19 around the start of the pandemic. The third respondent says she had no choice but to leave her family home and move in with her parents to provide care at all hours. The position remains that the third respondent lives between her own home and that of her parents, where they live. Her home is a short distance away.

[11] On the applicant's case, after AB and CD moved back to their home address, the third respondent changed the locks on the property to prevent the applicant from gaining access to the house. She also closed all of the windows and all of the curtains in the property to prevent the applicant from speaking to her parents through the window or from seeing them at all. Again, the third respondent denies that any closing of the windows or curtains was done for this reason.

[12] There is plainly a dispute about, amongst other things, the purpose and justification for the third respondent's protective approach to her parents in terms of protection against the transmission of Covid-19. On the applicant's case, her sister's approach was over-protective and unwarranted, and largely used as a pretext to deny her and her family contact with her parents. On the third respondent's case, her actions were simply a responsible and loving attempt to protect her parents, whom it is accepted are in seriously ill health, from the likely devastating effects of

coronavirus should they catch it. She cites the applicant having arrived at her parents' home on the day that her father was brought home from the nursing home "without any protective gear and seemingly with little regard to Covid precautions." In her evidence she does accept having been "particularly strict" but she contends this was warranted by her parents' vulnerability.

[13] Each of the applicant's parents has an assigned social worker due to their respective serious health conditions. The applicant sought assistance from Social Services with regard to the issues that she was experiencing in obtaining access to her parents. In particular, Ms Mary Ryan (a social worker) attempted to informally resolve the dispute and spoke to the third respondent about it. Ms Ryan arranged for the applicant to have some contact with her elderly parents by speaking to them through the window of her home. Whilst this was very difficult given the health of both parents, the applicant has averred that she was glad to have an opportunity to see them.

[14] One of the most concerning aspects in relation to the evidence is the reference to an incident on Easter Sunday 2020. The applicant alleges that, on this occasion, the third respondent assaulted her. The incident was reported to police. The third respondent accepts that they "find it difficult to co-exist in the same environment, even for short periods." On her case, however, it is the applicant who causes friction or is aggressive or abusive towards the third respondent or her children. As to the incident at Easter, the third respondent accepts there was "an altercation." She says that the applicant arrived at the house, at the height of the Covid restrictions, without any personal protective equipment. The third respondent said that she did not want the applicant to see their parents in those circumstances but that the applicant refused to wear any further protection and also refused to leave. The third respondent avers, "This led to pushing, shoving and name calling. I am ashamed to say that there was pushing and shoving on both sides." She says that it is exaggeration for her sister to have stated that she assaulted her; but nonetheless accepts that neither of them came out of the incident in a good light.

[15] The applicant wrote to the third respondent on 12 June 2020. In the course of this correspondence she indicated that she had brought a range of matters to the attention of the Trust; and that she considered that the third respondent was abusing her power of attorney to their parents' detriment. She made reference to the incident on Easter Sunday, which she considered to be of concern in light of the fact that it had apparently exposed a violent side of the third respondent's nature. She also alleged that the third respondent, and her family members, had themselves contravened coronavirus restrictions (although whether this was set out in guidance or regulation is unclear) by failing to appropriately use PPE. For her part, it seems that the third respondent contends that it was the applicant and her family who wrongly attended the home without wearing appropriate face coverings or other protective wear.

[16] Following the easing of restrictions Ms Ryan arranged that the applicant would have some direct visits with her parents. The applicant says that the third respondent insisted that such visits should be supervised by a third party. These were limited to once *per* week for one hour; and the parties' cousin agreed to attend with the applicant. Such visits occurred on approximately four occasions. The applicant says that these visits stopped in around September 2020, when the third respondent refused to permit further access to the property. It seems that the parties' cousin became no longer available to facilitate and support the contact arrangements, partly, it seems, because there had been arguments between the siblings in the course of the contact. The evidence suggests that others have been approached to supervise contact, or act as an intermediary, including a local priest, a nun, neighbours and others; but no one wishes to get involved. It is profoundly depressing both that such intervention has been required to be sought and also that no one wishes to assist, presumably because of the known level of acrimony between the two sisters.

[17] In the third respondent's evidence, she has listed a number of incidents throughout late 2020 and into 2021 where she contends that the applicant was aggressive, loudly banging on the doors or windows or, on two occasions, interfering with paramedics who were attending to one of their parents. In the absence of detailed oral evidence in relation to these issues, it is difficult for me to determine what precisely occurred and who was at fault. It seems likely, however, that the applicant was frustrated and angry at being denied access to her parents. In relation to the two occasions where an ambulance had to be called for CD, it also seems likely that the applicant simply wanted information in relation to her mother's condition and, in the absence of being kept informed by the third respondent, sought to speak to her mother or those treating her directly, which the third respondent then interpreted as interference at a time when her mother's needs required to be prioritised. The applicant has complained that she had to learn on a number of occasions from friends and neighbours that her mother was being taken away in an ambulance.

[18] The applicant lodged a complaint with Social Services in an attempt to persuade them to do more to intervene in the dispute between her and the third respondent. The Trust informed her that they had exhausted their powers in relation to the matter. This is one of the reasons why the applicant has felt compelled to seek the assistance of the court. The Trust correspondence of 23 March 2021 indicates that the Trust had undertaken "extensive negotiation and arbitration work" with both the applicant and the third respondent. The Trust was concerned that, if a visit took place, this may result in a breakdown of the current support system "given the family dynamics", which could result in a care home placement being required for the second respondent, which would not be in her best interests.

[19] At the time of the issue of this application, the applicant averred that the third respondent continued to prevent her from having contact with, or any meaningful relationship with, their elderly parents. The applicant said that she had done all

within her power and taken all possible steps to resolve the issue informally. She was grateful for the effort which Social Services had made but considered it was clear that they had now done all that they could.

[20] One of the saddest aspects of the case is that the application has been brought in the context of the first and second respondents being in extremely poor health. Thankfully, through the course of these proceedings, their health appears to have at least remained stable; although I have recently been informed that AB's health has deteriorated further. At the commencement of the proceedings, the applicant described each of the first two respondents' health as "precarious." She says that she is realistic about their current life expectancy. She remains deeply hurt and upset that her sister had continued to prevent her from having any contact with their parents in what is most likely the last, or at least the latter, stages of their respective lives.

The involvement of the Official Solicitor and the views of the social worker

[21] There is a medical certificate confirming that the first respondent has been examined and is incapable by reason of mental disorder (as defined in the Mental Health (Northern Ireland) Order 1986) of managing and administering his property and affairs in light of his decline in cognitive function. The court previously granted leave for the Official Solicitor to instruct Dr Barbara English to carry out capacity assessments in relation to both the first and second respondents. This assessment was undertaken in their home on 24 June 2021, with reports being provided to the Official Solicitor on 1 July 2021.

[22] Dr English's reports have been lodged with the court. In summary, Dr English set out a clear view that both the first and second respondents lacked capacity in relation to these proceedings. They both have significant difficulty with communication, in relation to their understanding and in their ability to express their views. It was Dr English's view that neither the first nor second respondent could provide views in relation to the subject matter of these proceedings.

[23] On the basis of this assessment, the Official Solicitor accepted the court's invitation to act on behalf of the first and second respondents. She was appointed as Guardian ad Litem for both the first and second respondents by order dated 19 July 2021. In view of the clear description in Dr English's reports of their presentation and inability to communicate views in any form, it was not considered appropriate for the Official Solicitor to carry out a further visit to the patients in the circumstances.

[24] However, there has been significant engagement between Ms Liddy from the Official Solicitor's office, and the Official Solicitor's instructed counsel (Ms O'Flaherty), and the relevant social worker, Ms Ryan. Through the Official Solicitor's participation in these proceedings, I have been provided with a range of information about the efforts undertaken by the social worker to resolve matters and

her views on how things progressed. In her update report to the court of 6 July 2021, Ms Liddy reported that, from the information she had, “the Trust are of the view that contact should take place and they have no concerns about unsupervised contact.”

[25] Ms Liddy’s conclusion in that update report was that she was of the opinion that safe and appropriate contact could take place between the applicant and her parents if both sisters agreed some simple ground rules. The ground rules suggested included that contact should take place at a time when other professionals were present in the house (to avoid the sisters being alone with each other in the presence of their parents, given a worry about the risk of a further altercation); that one sister should leave when the other entered the home; and that a brief record of any issues (for instance relating to the parents’ care needs) should be left before and after each visit.

[26] The views of Ms Ryan were also outlined in a social circumstances report, provided at the request of the Official Solicitor but addressed to the court, also dated 6 July 2021. This report provides detail of CD’s care needs. It also notes that it became evident that there was “much acrimony” between the second respondent’s children and that, during social work home visits, the second respondent conveyed that the acrimony between her children was causing her distress. The report notes the attempts made to mediate between the applicant and the third respondent, as well as a meeting with a further sibling who apparently declined to meet with the sisters citing the relationship breakdown between them. During the meetings between the applicant and the third respondent at which Trust staff were present, the strain and tension in the relationship was very evident, with the meetings becoming extremely difficult “with both shouting at one another, directing verbal aggression towards each other... [And] where both accused each other of not having been supportive of their parents.” The Trust persisted in offering mediation but it seems that the third respondent declined mediation with the applicant.

[27] The conclusion and recommendation in the social care report is as follows:

“[WX] has been determined to promote her mother’s wishes to remain in her own home and has arranged private care in conjunction with Trust domiciliary care and the support of her immediate family. [CD’s] care needs are being fully met to quality standard and at no time have any concerns been raised in respect of the care and support [WX] provides to her mother.

However at present, [CD’s] right to contact with others, in this instance her daughter [YZ], is being denied and obstructed and there appears to be no evidence to justify no contact between [CD] and her daughter [YZ].

[YZ's] contact with [CD] has been observed whilst [CD] was availing of respite care in Carlingford Lodge Care Home in November and December 2019. There is no evidence or suggestion of any risk posed by her daughter, [YZ], that would justify no contact. I have also observed [CD's] positive non-verbal responses when [YZ's] name was mentioned in discussion with her and as already referred to in this report, Hospital Nursing staff reported positively on their observations of contact between [CD] and her daughter [YZ].

I therefore respectfully recommend that in the interests of promoting [CD's] relationship with her daughter, [YZ] that consideration is given to supporting the facilitation of contact between them both. At this time, it would appear the sole reason [CD] is denied contact with the daughter [YZ] is due to personal issues between [YZ] and [WX] as opposed any risk posed to [CD]. It was acknowledged that [YZ] and [WX] may struggle to facilitate visitation arrangements whilst both are in the family home together and therefore there is a risk of [CD] being exposed to altercations. Given that informal supervision arrangements have occurred and reportedly [CD] has been exposed to arguments between her two daughters, the Trust respectfully recommend that both sisters are not in the family home together during contact arrangements."

[28] In Ms Liddy's further update to the court of 7 September 2021, she maintained the view summarised at para [25] above and recommended that contact could occur at least once *per* week (although noting that she would be guided by the social worker in relation to the frequency and duration of contact).

[29] In the course of these proceedings, however, which were delayed for a considerable period during a time when the third respondent was seeking legal aid (and then pursuing a judicial review application in relation to the refusal of legal aid), the frequency of interim contact ordered by the court increased to twice *per* week. This seems to have been progressing at least satisfactorily, perhaps even well. The Official Solicitor's recommendation at the full hearing of this application was that the applicant's contact be increased to three times *per* week.

Contact since these proceedings commenced

[30] By order dated 19 July 2021, Keegan J ordered, inter alia, that one-off contact was to be arranged immediately for the applicant and the first and second respondents, to be facilitated by Ms Ryan of the Trust. The Trust was prepared,

exceptionally, although reluctantly, to supervise this one-off contact. It proceeded and there is a report in relation to it from the social worker. The third respondent was apparently unhappy about the arrangement and indicated that her mother was not well enough for visits. However, the second respondent appeared to be happy that the applicant was visiting and appeared to be laughing and relaxed. The contact appeared to go well with both parents and, when the applicant left, they were both comfortable in bed with no indications of distress or upset. Further to this, however, the parties were unable to agree any further contact.

[31] Subsequent to that, after I became seized of the proceedings, I made a further interim order on Friday 17 September requiring contact. On that occasion, the application was listed for a full hearing but I acceded to a request for an adjournment on the part of the third respondent given the issues which had arisen with the grant to her of legal aid. When adjourning the case however, I made provision by way of order for two further instances of contact on Saturday 18 and Saturday 25 September. The arrangements in this regard were largely, though not wholly, capable of agreement between the parties, for which I commended them.

[32] At the hearing on 28 September, I was advised that these two instances of contact had proceeded well and without incident (save that an issue had arisen, which was being addressed in correspondence between the parties' respective solicitors, as to whether correct PPE had been worn). From early October 2021, the interim contact arrangements were, by order, increased to twice *per week*, when it became clear that the third respondent's issues in relation to legal aid were not going to be resolved within a short period. This twice weekly contact was initially one hour each Thursday and each Saturday afternoon; although this was then changed by agreement to one hour each Thursday and Sunday morning; and then to one hour each Thursday afternoon and each Sunday morning. It was not possible for the parties to agree the details of additional contact at Christmas and New Year and I heard a brief contested application in relation to this and ruled on the matter.

[33] I have been told that the limited interim contact has been going well. On one occasion, however, when one of the parents had unfortunately contracted Covid, the third respondent simply placed a notice on the door reading, "Visit Cancelled to-day until further notice." Nothing about the issue giving rise to this was communicated to the applicant. The third respondent says that this was because AB had tested positive on a lateral flow test but was awaiting the result of his PCR test and, so, the position was in a state of limbo. It was accepted on her behalf that the situation could have been communicated better but, she contends, her concern at that point was that her father got the correct treatment.

The parties' positions at the full hearing

[34] The third respondent has provided a statement of evidence in which she says the following:

“It is not the case that I wish to stop my sister from visiting or seeing our parents, it is that I am worried and afraid – both for their sakes and for that of myself and my family. I do not believe that [YZ] can be trusted to care for or do the right thing for either parent. It seems to be a game for her and she seeks recognition but is unwilling to do any work.”

[35] In submissions, Mr Gilmore emphasised that his client accepted that some level of contact between the applicant and her parents should occur. Her position was that any contact should be reasonable, safe and appropriate. The third respondent was content to maintain the level of contact established through the interim orders, namely that the applicant is able to see her parents for one hour, twice *per week*. Mr Gilmore emphasised the importance of set routine for the first and second respondents and the logistical difficulties in arranging contact between the first and second respondents themselves (given that they stay in separate bedrooms and have significant mobility issues), as well as their care requirements. Any contact with the applicant had to be fitted around these other considerations and around his client’s needs also, given that (at least to date) it has had to be a condition of contact that the two sisters stay away from each other entirely.

[36] The third respondent has concerns about the applicant arriving “unannounced” at what she describes as her home and being upsetting, aggressive or abusive. She is also concerned at the applicant having access to her belongings if she was permitted to call at the house whilst the third respondent was out. She also relies upon the applicant not providing appropriate care for her parents when she is visiting (citing instances where she would not help her mother use the commode). The third respondent complains that the applicant will not, on such an occasion, come to her for help. At the same time, she accepts that interaction between them is incredibly fraught. She also seeks “protection” for when the applicant visits. Her suggestion is that there be a definitive time and day upon which the applicant can visit, both to facilitate certainty and so that the third respondent (and her family) can vacate the house when the applicant (and her family) attend.

[37] For her part, the applicant sought a radical increase in the amount of contact she was permitted. She seeks daily contact with her parents and contends that this will be the best way for her relationship with her parents to be fostered and maintained. Mr Gillen submitted that the third respondent is not in her parents’ home 24/7 and leaves their house on a daily basis to go back to her own home, which is close by, so that there was no reason why the applicant could not visit on a daily basis. Respite care covers 3-4 nights *per week*, so the third respondent is not constantly at, or living in, her parents’ home. The applicant also contends that her parents’ needs fluctuate on a daily basis and that there are occasions when they may be tired in the morning or afternoon, so reducing the quality of the contact, which points towards more flexibility in the times being required. Initially, Mr Gillen was arguing essentially for a right on the part of his client to call to the house at will (or

‘unannounced’, as the third respondent would have it); although he later retreated from this position and accepted that defined times were more likely to be realistic and desirable in light of the history between the parties. The applicant further seeks court-ordered contact on special occasions, such as each of her parents’ birthdays, Mothers’ Day and Fathers’ Day.

[38] Ms O’Flaherty for the Official Solicitor, acting as Guardian ad Litem for the first and second respondents, outlined that all attempts at mediation between the parties have failed. Ms Liddy’s position was that she could not support the applicant’s request for daily contact; but that an order was necessary and that it would be appropriate for the level of contact to be increased slightly from the interim position. As noted above, the Official Solicitor’s ultimate position was that contact three times *per week* – on a Tuesday, Thursday and Sunday – would be appropriate.

The proper approach in law

[39] This application is made under the inherent jurisdiction of the court which allows the High Court to manage and administer the affairs of patients who are incapable. This is an ancient jurisdiction inherited by the High Court (see *Valentine, Civil Proceedings: The Supreme Court* (1997, SLS) at para 18.52), now exercisable pursuant to RCJ Order 109. It may be exercised at the instance or on the application of any person interested: in this case, the applicant.

[40] None of the parties made detailed representations in relation to the legal principles which govern such a situation; but it was accepted by all parties that, as a result of the court’s inherent jurisdiction and its broad powers to grant injunctive relief under section 91(1) of the Judicature (Northern Ireland) Act 1978 in any case where it appears to the court to be just and convenient to do so, the court had power to make an order governing the extent and terms of the applicant’s contact with her parents.

[41] Mr Gilmore submitted that, unlike in a children’s contact case where the child’s welfare was the court’s paramount consideration, no such principle applied in these proceedings. In his submission, the two principal parties (the applicant and third respondent) were simply “on a par” and the role of the court was to adjudicate between their competing rights. I do not accept this analysis. Although Mr Gilmore may be correct to the extent that there is no statutory obligation to consider the first and second respondents’ interests as paramount (as, for instance, there is in article 3 of the Children (Northern Ireland) Order 1995 in relation to children), the court’s jurisdiction in this field is essentially a protective one. The two elderly people who are regrettably at the centre of this dispute require to have their interests protected; and I consider that at least an important consideration in the court’s analysis must be what is in their best interests. As parties to the proceedings, I also consider that the court ought to be astute to ensure that their Article 8 ECHR rights are properly considered and respected, including their right to respect for their family life with

the applicant and members of her family as well as with the third respondent and members of her family.

[42] The indications I have been given of the quality and outcome of the first and second respondents' contact with the applicant (particularly in those instances where this has been observed by a third party such as the relevant social worker) is that it is positive and beneficial. I consider it to be in the first and second respondents' best interests that this contact is both maintained and increased.

Discussion

[43] The Trust, and in particular Ms Ryan, are to be commended for the efforts they have undertaken to try to resolve the issues which have arisen in this case amicably between the parties. The Official Solicitor has indicated that Ms Ryan and her senior social worker have "gone above and beyond" to try to mediate in this case. Ms Ryan is CD's social worker. It seems that a further social worker with some involvement, AB's social worker, took a much more strict view of her remit, indicating that arrangements in respect of contact were not considered by her line management to be a matter with which she should involve herself. That is quite understandable; but it also throws into sharp contrast the time and energy expended by Ms Ryan in seeking to resolve matters in all parties' interests, particularly those of the elderly patients who are at the heart of this dispute. It is unfortunate that these efforts did not bear fruit and that these proceedings were necessary.

[44] As to the question of protection of the first and second respondents against contracting coronavirus, on the evidence available to me I consider that the third respondent was quite properly eager to ensure a high level of precaution and risk management in light of her parents' extremely clinically vulnerable medical state. She is to be commended for her concern in this regard. Nonetheless, I also consider it clear that this issue was used as a convenient excuse to reduce or remove contact between the applicant and their parents, which went beyond the exercise of appropriate caution in the circumstances.

[45] It is accepted that the third respondent insisted upon the applicant being accompanied or supervised when she was visiting her parents during the period of visits which had been negotiated by Ms Ryan, the social worker. It is difficult for me to clearly discern whether this was through genuine concern that the applicant would behave inappropriately in some way or simply as a means of being obstructive. There is little or no evidence to justify this approach on the former basis - unless, perhaps, YZ had given some reason for justifiable concern by being insufficiently cautious about viral transmission. There is certainly no other apparent basis for any concern about YZ's behaviour or attitude towards her parents; and the independent information I have from the social workers concerned and the Official Solicitor supports the view that there was no basis on which contact required to be supervised. On balance, I consider that WX's insistence on supervision was borne

out of a desire to be obstructive rather than because she genuinely considered supervision to be necessary.

[46] Ms Ryan informed the Official Solicitor that when relations had broken down attempts had been made to arrange contact between the applicant and the first and second respondents *via* telephone or FaceTime; but that the third respondent was not content with this arrangement. Further attempts were made to facilitate contact through the window of the home (due to Covid) but it seems that the third respondent closed the blinds, either to obstruct this from happening or knowing this may be a likely consequent. Attempts were also made to facilitate contact in a neutral manner with a third-party in attendance. A person named EF appears to have been identified as a suitable person for this purpose. However, when contact was attempted with EF's attendance, it seems that this could not proceed as the third respondent denied being in agreement with the arrangement. Further attempts were then made with her cousin attending but, again, this did not succeed, as outlined above.

[47] It does not seem to be disputed that, for many years before her own health deteriorated, the applicant was closely involved in her parents' care. The reason for these proceedings seems to me to a radical, if not total, reduction in contact the applicant and her wider family was able to have with her parents, which was clearly not justified.

[48] I have formed the clear view that in a number of respects the third respondent's behaviour has been obstructive and unreasonable, going beyond what could be said to be reasonably necessary or proportionate in order to cater for the legitimate concerns she had about her parents' health. In particular, I am concerned about the reports of the third respondent refusing to permit contact by means of telephone or video link; and not even permitting the applicant limited contact from outside the house through a window, by closing the curtains or blinds. These instances, and the recent incident where the applicant was denied important information about her father's health and informed simply by notice that her contact visits were cancelled until further notice (see para [33] above) – which the Official Solicitor considered to be “simply unacceptable” – lead me to conclude that the third respondent's approach has been motivated, at least to a material extent, by her ill feeling against her sister rather than genuine concern for the needs and wishes of her parents.

[49] In particular, the third respondent seems to have closed her eyes to the potential benefits of her parents having contact with her sister. It seems that the second respondent was admitted to hospital in April 2021 and that, during that time, contact with the applicant had been facilitated *via* FaceTime with the assistance of hospital staff. Ms Ryan reported that this form of contact appeared to have been positive for CD, who had presented as “teary” and waving positively at the screen. Ms Ryan also confirmed that when she had mentioned the applicant to the second respondent, one could see a (positive) non-verbal change in her demeanour. I

cannot accept that, in the efforts which were made by the social work team to mediate, WX would have been unaware of their views about the positive nature of contact between the applicant and her parents and their absence of concern about it being facilitated. In addition, after Keegan J had initially ordered a one-off contact, which occurred without difficulty and indeed (according to the report from the social worker and Official Solicitor) was successful and beneficial, the third respondent did not agree any further contact until ordered by the court in mid-September. This appears to me to be further evidence that her approach was obstructive and designed to prioritise her own needs and interests above those of her parents.

[50] I accept that the third respondent has recently borne the brunt of the burden of caring for her elderly parents and do not for a moment underestimate the energy and emotional commitment that this requires. I also accept that the third respondent, who is self-employed, feels that she has not been adequately supported by her siblings. It is impossible for me to determine whether these grievances are objectively warranted but WX's obvious strength of feeling leads me to conclude that they are at least firmly and genuinely held. However, as I observed during the course of the hearing, the third respondent's concern that the applicant is not 'pulling her weight' is hardly helped by the situation which has arisen between them. This can only be corrected if there is a marked improvement in their relationship and in the access which the applicant has to her parents. Only when communication is improved and trust is built will the applicant be able to make some meaningful contribution to caring for her parents which might alleviate the third respondent's burden; but her approach has made this impossible.

[51] Having said that, I accept that the third respondent has complied with the court-ordered interim contact arrangements and has, with the benefit of legal advice, pragmatically accepted them during the period when the determination of the proceedings was delayed on her application because of her separate challenge to the Legal Services Agency. As noted above, the interim arrangements seem to have been proceeding well. I can only hope that, once these proceedings have concluded, there may be a better basis for the parties re-engaging with each other and beginning to rebuild a level of trust.

[52] As to the level of contact going forward, I am not persuaded that either daily or flexible contact is in the parents' best interests for the moment. Whilst this may be an ultimate goal, it cannot proceed at present given the volatile relationship between the two principal parties and the lack of trust between them. However, additional contact between the applicant (and her family) and her parents is warranted both in their interests and in the vindication of the applicant's Article 8 rights. I propose to broadly accept the recommendation of the Official Solicitor, which I consider does strike the right balance for the moment, and order as follows:

- (a) The applicant (and her children, if accompanying her) must be permitted at least three instances of contact with her parents *per* week. These are to

comprise of a period of contact on Tuesday, Thursday and Sunday each week of at least one hour on each occasion. A regular time is to be agreed between the parties (but the time may be altered by agreement of both parties either generally or in relation to any particular occasion of contact). The presently agreed times for Thursday and Sunday contact may represent a sensible starting point.

- (b) Neither the applicant, nor her children, should approach or have any direct contact with the third respondent or her children during any period of contact. Conversely, neither the third respondent, nor her children, should approach or have any direct contact with applicant or her children during any period of contact. An exception may be made for a genuine emergency where the needs of either the first or second respondent require this.
- (c) The applicant is not to post any pictures of the first and second respondents to social media (which was a particular concern of the third respondent). The applicant is, however, entitled to take photographs of her parents for personal use in the usual way.
- (d) The applicant and her children must respect and comply with all current guidance (if any) in respect of Covid-19 restrictions.
- (e) The applicant and/or her children must immediately make known any needs or requirements of the first and/or second respondent which arise during any period of contact to the relevant care-givers.
- (f) Neither the applicant or the third respondent, nor either of their children, may involve the carers in the contact arrangements or family disputes.
- (g) In addition to the weekly contact at (a) above, the applicant and her children are to be permitted at least one additional hour of contact with each of her parents on their respective birthdays, or at such other time proximate to the parent's birthday as may be agreed.
- (h) On Christmas Eve and New Year's Day, the applicant and her children are to be permitted two additional occasions of contact, for a minimum of two hours on each occasion, or at such other time proximate to these occasions as may be agreed.
- (i) The applicant is at liberty to contact, and should not be obstructed from contacting, her parents indirectly by way (for instance) of card or letter.

[53] I do not consider that any additional order is required in relation to contact on Mothers' Day or Fathers' Day, or Easter Sunday, since each of these events will fall on a Sunday when contact is otherwise to take place.

[54] In respect of communication in relation to the parents' health, Mr Gilmore accepted that it was important that information was passed on; although he also submitted that, given the poor state of their relationship, it was not advisable for this to occur either by telephone or text messages. Some arms-length system would require to be found. I also propose to make a further order that the applicant should be kept up to date with significant information in relation to her parents' health and well-being and that this be provided as soon as reasonably practicable when there is any significant development. The parties are invited to liaise with the Official Solicitor as to the best means of doing so, perhaps by way of one of the now many apps designed for this purpose (particularly in relation to shared parenting). Such a means of communication may also be of assistance in agreeing necessary or appropriate changes to contact arrangements where relevant.

[55] I do not propose to order that the third respondent be confined to her room during any instance of contact. This has been a feature of the interim contact orders, with the third respondent consenting to this. It might well be sensible and appropriate for this practice to continue, at least in the first instance; but I do not propose to include it in the court's final order. The provision that the parties should not have any direct contact with each other during occasions of contact should be strictly complied with, unless and until the parties jointly feel that this is unnecessary. I am obviously not prohibiting the two principal parties from having *any* contact with each other and, indeed, would encourage some form of re-engagement. I should also say that, on the basis of what I have been told, I see no reason why the third respondent necessarily requires to be in the property during times when the applicant is visiting her parents.

[56] Finally, I should make clear that I consider the contact arrangements which are to be contained in the court's order to represent a floor, rather than a ceiling; that is to say, a minimum level of contact which should be available to the applicant. If this can be increased, by agreement, it should be, particularly as her parents become older, more frail or in worse health. It is also only with increased communication and contact that the applicant can realistically contribute further to her parents' care to seek to ease the burden on the third respondent. That too should ideally be a goal of the ongoing arrangements.

[57] Liberty to apply should be included in any final order so that, should the need arise, a matter of disagreement or a required alteration to the order can be referred back to the court expeditiously. In relation to the first of these possibilities, it is to be hoped that this will not arise.

Conclusion

[58] As I have already observed in the course of this judgment, it is a sad reflection on the first and second respondents' children that this matter has required to be litigated in court. I would urge both sisters to make a conscious effort when these proceedings conclude to put the legal dispute behind them; to prioritise the needs of

their parents; to try to rebuild some degree of trust and some form of relationship, as I am sure their parents would wish; and to seek to operate and develop the contact arrangements now being ordered in a spirit of goodwill. In the later stages of their lives, their parents deserve no less.

[59] I propose to allow the parties seven days within which to agree the terms of a final order reflecting the core components set out at paras [52] to [57] above. In the absence of agreement, competing texts should be submitted to the court for consideration.

[60] I also propose to permit the parties to provide brief written submissions in relation to costs within seven days, should they wish. Provisionally, however, I consider that the appropriate order is that the third respondent should bear the applicant's costs of these proceedings save that, since the third respondent is legally assisted, that order should not be enforced without further order of the court; and each party's costs should be subject to legal aid taxation.