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IN THE COURT OF PROTECTION

[2019] EWCOP 44



Case No. COP13012043

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Tuesday, 21 May 2019

**IN THE MATTER OF THE MENTAL CAPACITY ACT 2005**

Before:

THE HONOURABLE MR JUSTICE COBB

B E T W E E N :

A NORTH EAST LOCAL AUTHORITY

Applicant

- and -

(1) AC  
(BY HER LITIGATION FRIEND)  
(2) BC

Respondents

**REPORTING RESTRICTIONS: Court of Protection Rules 2007**  
**ANONYMISATION APPLIES**

MISS JACQUELINE THOMAS (instructed by Legal Services, A North Eastern Local Authority)  
appeared on behalf of the Applicant.

MR JOE O'BRIEN (instructed by Switalskis) appeared on behalf of the First Respondent.

THE SECOND RESPONDENT appeared in Person.

**J U D G M E N T**

MR JUSTICE COBB:

- 1 At the conclusion of a two-day hearing on 8 and 9 May in Leeds, I gave my decision on the key issues arising in this case. That decision has already been converted into an order which I have approved, and which I hope has now been sealed.
- 2 I indicated to the parties at that time my concluded view that it is in the first respondent's best interests to move to live at LM, and to receive a package of care arranged by the applicant local authority in accordance with her needs. I further provided that such move shall not take place until the applicant local authority has filed and served a transition plan and a final support plan containing relevant information, including arrangements as are relevant to provide for the deprivation of AC's liberty and for the litigation friend to indicate her agreement to those plans.
- 3 I ruled that the applicant should be authorised to sign a tenancy agreement in respect of the property at LM on behalf of AC. I directed the applicant to file and serve an assessment of AC's mental capacity to enter into a tenancy agreement by no later than 4.00 p.m. on 30 May 2019, and directed then that the litigation friend was to confirm in writing whether she agrees to the plan. This was to be done by 4.00 p.m. on 6 June. In the event of agreement, I directed that the transition work could progress thereafter. In default of agreement from the litigation friend in respect of the transition plan, then the litigation friend will apply to restore the matter to court prior to the implementation of the transition work for my further determination. I directed the applicant to file and serve a final support plan by 4.00 p.m. on 20 June 2018 and mirroring the earlier provision, I directed that the litigation friend was to confirm in writing whether she agrees to that plan by 4.00 p.m. on 27 June.
- 4 In the event of agreement, the parties could and should present a consent order to the court providing for final best interests' declarations and authorisations for the deprivation of liberty. If agreement is not forthcoming from the litigation friend in respect of the full support plan, then the litigation friend is directed to apply to restore the matter to court prior to the final move.
- 5 I further directed at that time that it is in the first respondent's best interests for her to have contact with the second respondent, her sister. Such contact is to be subject to a contact plan in accordance with the terms set out in the relevant document in the trial bundle, updated to include the name of the provider and the specific days on which contact is to take place. I directed that the applicant local authority shall arrange for a substantive review of the contact arrangements; this shall take place (with a view to considering an extension of the duration of contact) within one month of AC's move to LM. What follows are my reasons for the decisions which I have outlined above.

## **INTRODUCTION**

- 6 The hearing on 8 and 9 May was set up for me to make final determinations in relation to AC, a woman now in her 50s. Specifically, I was required to make adjudications in relation to her residence and contact. Ancillary to those arrangements, it has been suggested that I will need, not at this stage but at some point in the near future, to give some consideration to issues arising in relation to deprivation of AC's liberty.
- 7 The hearing on 8 and 9 May follows many court hearings over the last twelve months. Indeed, these overly lengthy proceedings were launched by application in January 2017, nearly two and a half years ago. This judgment should be read alongside the lengthy

judgment which I delivered on 21 November 2018 following an eight-day hearing in the previous month conducted at the Family Court in Leeds (see [2018] EWCOP 34). I have previously made a range of declarations pursuant to *section 15* of the *Mental Capacity Act 2005* including declarations that the first respondent lacks capacity to conduct the proceedings and to make decisions on her residence, care, and contact with others. Since my judgment of 21 November 2018, I have given directions in this case on the following dates:

- (1) 21 November 2018 in London;
- (2) 7 January 2019 again in London;
- (3) 23 to 25 January 2019 - on these days, the case had been listed for final hearing, but this was not possible given, at that time, the hospitalisation of AC and the need for more information about long-term placement. This hearing took place in Leeds;
- (4) 5 February 2019 in Sheffield;
- (5) 12 March 2019 at the Quayside Court in Newcastle; and
- (6) 1 April 2019, again in London.

8 In the period since the fact-finding hearing and judgment of November 2018, multiple applications on form COP9 have been issued by BC in relation to contact and other issues which I identify below. Applications were made on: 9 November 2018; 14 January 2019; 18 February 2019; 19 March 2019; 28 March 2019; and 17 April 2019. I address the issues arising from these applications on which a determination is required at the conclusion of this judgment.

### **APPLICATION TO ADJOURN**

9 This hearing was set up by order of 5 February 2019. At the outset of the hearing and, indeed, foreshadowed by a COP9 application form lodged some weeks earlier, BC made an application to adjourn this final hearing. She indicated that she had not had time to prepare adequately for it. She referred to having suffered a range of medical issues, particularly experienced since a roundtable meeting had taken place on 11 April. Specifically, she referred to an allergic reaction to caffeine which had laid her low from 11 to 19 April. She complained of having suffered a cough and a cold, a clicky jaw, and routine problems with her autoimmune disease. She referred to two medical appointments with consultant physicians which were to take place in the week following the final hearing, one of which was routine and the other for her emerging jaw problem.

10 No medical evidence was, in fact, supplied in support of her application to adjourn. I listened with care to her comments. I indicated then and I confirm that I am not unsympathetic to the challenges faced by BC in this litigation (particularly if she is or has been feeling below par medically) but I took the view that there was, in what she told me, an insufficient basis for adjourning the case out of my list.

11 As it happens, BC has throughout the two-day hearing represented herself with considerable skill as usual. She has not shown signs of having been compromised in her preparation of the case. She accepted in her final submissions that she has found it difficult to be “calm” about this situation given the allegations made against her and the issues involved but she has remained calm within the court environment. It is fair to acknowledge that she has, understandably, become upset in the presentation of the case particularly in her final

submissions, reflecting, as I mentioned in my earlier judgment ([2018] EWCOP 34), her strong emotional investment in the subject and in the outcome of this litigation.

## **THE ISSUES**

12 Two principal issues before the court are (1) where should AC live and (2) what arrangements should be made for her contact with BC. I heard the evidence of SW5, the learning disability team manager employed by the applicant, and from BC herself. I read the documentation. I saw photographs proffered by the local authority and by BC, and saw maps of the locations of the various homes under consideration. As I said earlier, the issues need to be seen in the context of my earlier judgment and I specifically draw attention to the following paragraphs of that judgment for emphasis: paragraphs 5, 81, 98, and 166.

## **THE LAW**

13 Decisions around residence and contact are best interests' decisions. In making the decisions at this hearing, I have had specific regard to the provisions of *section 4* of the *Mental Capacity Act 2005*. This subsection requires me to consider all the relevant circumstances (*section 4(2)*). I have had further specific regard to *section 4(6)* and *section 4(7)* and have considered, so far as is reasonably ascertainable, what I consider AC's past and present wishes and feelings are or are likely to be, the beliefs and values that would be likely to influence AC if she had capacity, and other factors that she would be likely to consider if she were able to do so. By *section 4(7)*, I have been obliged to take into account and I have done so, given the practicability and appropriateness of so doing, the views of:

- “(a) anyone named by the person as someone to be consulted on the matter in question or on matters of that kind,
- (b) anyone engaged in caring for the person or interested in his welfare,
- (c) ...
- (d) ...”

14 In this respect, of course, I have paid particular attention to the views of BC.

## **CURRENT SITUATION**

15 AC is currently a resident at Placement 3 which offers residential care. AC has been at Placement 3 for much of the period since the 5 February 2019 hearing when I authorised that placement. She moved to Placement 3 on 8 February and is well settled there and seems to have made good progress. She has formed positive relationships with staff and has displayed improved communication skills with others. Her bowel management has been successful, and she has been eating and drinking well. I have seen a particularly positive report from AC's litigation friend about AC's stay at Placement 3 which highlighted the good quality care offered by the social worker who was referred to in the attendance note as “M” and also by AC's key worker CP10. At Placement 3, AC has been able to enjoy a range of activities, including sailing, horse riding, sports, wildlife, music, physiotherapy, and others. It is reported that she looks well and healthy.

16 Shortly after AC arrived at Placement 3, difficulties arose in the relationship between senior staff and BC. BC was reported as having been rude and argumentative with staff and not prepared to listen to their advice or requests. On 13 February (notably, not more than five days after AC's arrival at Placement 3), BC reported the staff at Placement 3 to the police

maintaining that the home was not meeting AC's needs and she had concerns and suspicions about the service. I have had the opportunity to hear BC's explanation for that call to the police and have seen relevant records relating to it. I pause here to observe and indeed to find that this was, in my judgment, a wholly disproportionate response to early difficulties in communication and, in my finding, a disgraceful action on the part of BC whether deliberately done with the intention of upsetting the staff at the home or not, and was calculated by BC to upset the arrangements for AC in her new accommodation. It almost had the effect of sabotaging the placement at Placement 3. That, as it now appears, would have been a wholly deleterious outcome for AC as is acknowledged by everyone including BC.

- 17 Notwithstanding these events, AC has been offered high quality care at Placement 3 (as I have earlier indicated) and has had the chance to enjoy some contact with her sister BC. In fact, BC has seen AC rather less than I had hoped. First, the arrangements took some time to establish and then BC refused to attend arrangement contacts as they had been set up to be supervised by a care agency, Care Agency 3, an agency with whom BC had 'issues'.
- 18 The local authority proposed that contact should take place once a week for two to four hours. This happened somewhat sporadically over the spring, but difficulties were ironed out at a roundtable meeting on 11 April convened helpfully by the litigation friend. From that point on, the supervision has been provided by a company called Care Agency 4 and has proceeded reasonably smoothly.

### **FUTURE OPTIONS**

- 19 The focus of enquiry at this hearing have been future arrangements for AC's care. The local authority tells me that it has conducted a thorough search for suitable accommodation since October 2018. The search has incorporated a review of all of the supported accommodation in the area and its environs. I remind myself that even at the time of my substantive judgment in November 2018, the provision at LM was one of the possible outcomes for placement for AC (see paragraph 5 of that judgment at [2018] EWCOP 34). The social worker told me that there is a dearth of suitable supported living accommodation in the area. By "suitable", the social worker specifically refers to AC's specific needs. AC has particular and, indeed, extensive living needs which are likely significantly to reduce the available options. For instance, she needs level access for her wheelchair, space within a home for navigation within her wheelchair, the facility for a hoist, and there is a shortage of such accommodation in the area.
- 20 The home finding team of the applicant looked specifically for "voids" within its portfolio and tried to match AC to suitable properties. In the end, on the applicant's case, it boiled down essentially to two options: SM and LM. In respect of both sites, each of the accommodation placements have been filled and there are waiting lists for both. Unusually, and fortuitously, AC's name has been included on lists on both sites and has the option of accommodation in either.
- 21 Overall, in fact *four* options have been raised for discussion before me but only two, SM and LM, have been in serious contention and I briefly survey the four options. First, I have considered whether AC could stay at Placement 3. On many levels, I am satisfied that this would meet her needs. This is a view which is shared by the professionals. However, Placement 3 has indicated that it will not offer her a long-term home. This is not because it cannot meet her needs but because of the difficulties caused at management level by BC.

22 The litigation friend's note of her visit to Placement 3 on 26 April 2019 contains the following passage:

“CP11 going on to confirm that she has ‘no issues regarding AC herself. It is due to the issues regarding BC... CP11 confirming that ‘BC can be time consuming. It has an impact on the service and her staff team’. CP11 confirming that she is ‘disappointed’. CP11 describing BC as being draining and having made her ill...”

23 CP11 had written to CP12, the social worker at the community team responsible for learning disabilities, in the following terms:

“I would like to take this opportunity to emphasise that we have no issues in providing care and support for AC. We feel she has transitioned well into Placement 3 and is happy and settled at this time. We have managed to establish relationships for AC with the appropriate agencies and have provided a holistic care package to her. However, due to the issues in relation to her sister, BC, we do not feel we can continue to provide the support and care. The issues presented by BC are incredibly time consuming and are having an impact on me as the service manager and the staff team as a whole. We therefore do not feel we can provide long-term support to AC. We are disappointed to be in this position, but the impact of BC is very draining for all...” (emphasis by underlining added).

24 Secondly, I have been referred to the provision at MH. This accommodation is favoured by BC as it is located in the vicinity of many of her family members. AC currently visits MH for some of her activities. However, MH is run by HT, as is Placement 3, an organisation which has declared that it will not entertain AC in its care given historic difficulties with BC. The staff at HT have indicated they are not optimistic that they would be able to cope with allegations being made by BC in relation to the delivery of care provision for AC. I may add that in the wider review of care provision, other care agencies, including TP and HH, have also declined to offer AC accommodation because of the concerns surrounding BC.

25 Third, SM. SM would offer AC accommodation within a two bedroomed flat. SM is in the area in a large complex with core care support provided by Care agency 5. A specific flat earmarked for AC is a ground floor flat. SM is a little further from the area than LM and would be more difficult for BC to access. SM has a communal room which is thought to be appropriate for AC as she likes to interact with others.

26 Fourth, LM; LM is in the south of the applicant's commissioning area. LM would offer bungalow accommodation for AC in a semidetached home. AC would not have access to core support onsite and would require bespoke one-to-one support. From LM, it would be easy for AC to access CF, a day centre, which she has previously enjoyed. The local authority propose to use one of two care providers, either Care agency 3 or Care agency 5 to provide the care at LM but it has not been easy, says the local authority, to identify one care provider confidently given that there has been some uncertainty (and there remains some uncertainty) about a start date and indeed the location of the care provision. The local authority would marginally prefer to engage Care agency 5 as BC has not yet had any experience with them. There is no history with Care agency 5. Care provider arrangements have been explored were AC to move to LM, i.e. what are the core needs, what is the individual need of AC and the other residents; there is still a small degree of uncertainty about precisely how the care package would be developed and delivered.

- 27 It is fair to observe that by the end of the two-day hearing, all parties had reached the view that LM was the better of the two ‘live’ options before the court. I have had regard, as indeed have the parties, to the helpful balance sheet benefits analysis which are to be found at pages G19 and G20, and G259 to G260 of the bundle. I have read the competing care plans with care, the care plan at G264 in relation to the delivery of care at SM and at G276 in relation to the delivery of care at LM. There is a more current and helpful balance sheet analysis at G287. I do not regard it as either necessary or particularly edifying to reproduce that balance sheet in this judgment, but I can confirm that I have not only reviewed it but found it helpful.
- 28 In oral evidence, the pros and cons of the various placements were investigated. In relation to LM, it was acknowledged that this is a suitable, sought-after, property with two bedrooms and a convenient layout with a living room and kitchen. I have had access to the internal plans. LM is nearer to places familiar to AC and this was described by SW5 as the “magnetic factor” which, in her view, placed LM above SM. It is also nearer, as I have indicated, to BC’s home. AC is known to have engaged well previously at the day centre known as CF which is a familiar place to her.
- 29 So far as the cons of LM are concerned, BC raised her concern about the location near a park, expressing her reservation about alleged problems with travellers visiting and using the park. Although on a main road, there are traffic calming measures along the road. It is an obvious concern that there is no core team identified though I am satisfied, as the local authority plans advance, that a bespoke service will be provided for AC through Care agency 3 or Care agency 5. Historically, the local authority had expressed its reservations about sexualised behaviour of other residents at LM but, on enquiry, this appeared to refer to activities historically within the apartment accommodation at LM which is discrete from the bungalows.
- 30 The litigation friend identifies one of the greatest risks about LM (which, in fairness, is a risk relevant also to SM) namely that it is a *new* service. It is untested and there is still a deal of uncertainty about the care model. For that reason, Mr O’Brien, on behalf of the litigation friend, rightly challenged the local authority to provide more detailed information about the care provision and support that would be available to AC. It was felt that there would perhaps be more socialisation available at SM but AC’s experience at Placement 3 reveals that she enjoys engaging with staff and, indeed, had formed, it appears, a very positive relationship with M. At LM, she will have an intensive relationship with carers which, indeed, she may prefer. She will, of course, also be visiting CF which will give her an opportunity to socialise at least two days a week.
- 31 I turn next to consider the practicalities. When SW5 gave evidence on 8 May, there was still some uncertainty about some of the practicalities:
- (1) Whether AC would have a tenancy or a licence;
  - (2) What the tenancy or licence would look like and who would sign it. Local landlords would, I was told, accept arrangements for a tenancy for someone with learning disabilities who lacked capacity to enter into such an arrangement provided there was a best interests assessment coupled with a report or declaration of incapacity;
  - (3) What would be AC’s security of tenure; and
  - (4) When the start date would be for AC to enter LM.

- 32 Overnight on 8 May, SW5 obtained further information. She had been in touch with senior management within the local authority responsible for the development at LM. She confirmed that phase one of the development will be available for viewing in the week commencing 13 May, even if the accommodation was not yet habitable. The senior management did not envisage any delays in the completion of phase two which was expected by 17 June and that could be, on one analysis of the information, a realistic moving date for AC. She had identified the landlord of LM as LL1 and confirmed that AC would benefit from an assured shorthold tenancy. She verified that the local authority would be prepared to sign the tenancy agreement on her behalf. By comparison, she indicated that the landlord at SM is a company called LL2 who also provided a draft tenancy agreement and, again, she indicated that the local authority would sign that tenancy agreement if authorised by the court to do so.
- 33 SW5 was able to provide further information about both LM and SM providing internal diagrams, showing the entrance to the accommodation, the availability of pull cords, facilities for hoists, and confirm that in both accommodation, LM and SM, there is still “quite a lot to do to meet her bespoke needs”. She confirmed that there will be an occupational therapist’s specialist review of AC’s needs during any transition period and that the local authority would, in that period itself, attend to issues around assistive technology to input into the final support plan.

### **TRANSITION**

- 34 It is agreed, and Placement 3 are firm about this, I emphasise, that wherever AC is to move to, there is a need for a detailed transition plan. CP10 said this:
- “... it is essential that there is a lengthy and detailed transition plan formulated and that that is the key for information for new carers supporting AC... Tom noting that when AC arrived at the current placement, she had previously been in hospital and that did not offer the opportunity to do a proper transition.”
- 35 It is illustrative to note that after ten weeks or so in that placement, the staff are still discovering how best to deliver care to AC in such a way as to maximise the benefits to her. I am clear that wherever AC is to go, there is a need for detailed transition. That will involve careful planning. It is vital that those who are going to be working with AC get to know her, her habits, her foibles, her means of communication, her strengths, her weaknesses, and her likes and dislikes. This is the key to the successful delivery of the care package. First, the provider needs to be identified and then relationships need to be formed and fitted within the accommodation that is to be directed.
- 36 There is agreed value in involving (i) Placement 3, (ii) the future care provider, and (iii) Care agency 4 (who supervise the contacts) in the transition plan. There is, as is apparent from this judgment, a great deal more to do in relation to the care plan development and care planning before AC will be in a position to be able to move. Because there is no clarity yet about where she is going to be living, and what her daytime activities are going to be, the timescale for the final care plan and so on, much remains in the air. The local authority reassures me that a transition plan will be available within three weeks from the identification of the accommodation and a final support plan will be available once it knows where she is going to be living.

### **THE PARTIES’ CASES ON ACCOMMODATION**



- 37 The local authority asks me to conclude that there really are only two options before the court and that a move to LM would be in AC's best interests. This is the most appropriate placement for AC's needs having conducted a proper search. Ms Thomas highlights the significant advantages of LM offering privacy for AC, two-to-one care, and a proper home for AC. Ms Thomas rightly identifies the limited stock of supported housing available and seeks to persuade me that the search for appropriate accommodation has been sufficiently robust. The local authority is clear that it is in AC's interests for her to move as soon as LM is available and that she should reside at LM with a care package bespoke to her which will be available through probably Care agency 5. The local authority has indicated that it would be prepared to consider a third agency, Care agency 6, as proposed by BC.
- 38 BC made a number of points about future accommodation. She told me that she was disappointed that Placement 3 had resolved not to offer AC, her sister, a home. She felt that she had done nothing to upset the placement, although that is not their clear account. She felt from the outset that Placement 3 could meet AC's needs and told me that the staff at Placement 3 had wanted to meet AC's needs. BC felt that Placement 3 was good and that CH, one of the day provisions for AC, was "excellent". In all those circumstances, Placement 3, of course, could and probably would have attracted my approval as a long-term outcome had it felt able to offer AC a home.
- 39 As against that, I have recited earlier in this judgment what the senior management at Placement 3 feel about BC's involvement in AC's care and her unwelcome interventions. BC told me that she does not accept the content of CP11's letter which I have earlier cited. She told me she does not accept my factual findings in relation to working with professionals in the past. She told me in her evidence that there was nothing in her behaviour which needs to change. She did not recognise the description of being "hostile and aggressive" during telephone calls with Placement 3. She told me in her evidence that she had never fallen out with any care provider (directly contradictory to my earlier factual findings).
- 40 BC was clear that SM was not suitable for her sister. It was not a safe environment, the location was not suitable, and BC would not get "peace of mind" if AC were to be resident there. She felt that the communal space was not an advantage but was a disadvantage because she felt that AC would become neglected in a communal environment. BC reluctantly but, in my assessment, sincerely accepted that LM whilst "not ideal" was nonetheless preferable to SM. She accepts that there would be more outdoor space than she had thought for AC, that there may be some socialisation with her neighbour though this depends, I accept, on who the neighbour will be. BC acknowledged the privacy which the bungalow at LM would offer her sister and accepted the appropriateness of two-to-one 24 hours a day care which should keep her safe. BC felt that the property may need adaptation for AC's needs and would like to contribute to the discussions around that. In the final analysis, she made clear that her preferred option as between SM and LM was clearly LM. She recognised the benefits of LM being a new and environmentally designed accommodation and that it would become a "home" for AC.
- 41 The litigation friend's view is that AC's interests will be served by a move to LM. Mr O'Brien, on behalf of the litigation friend, had described this as a "finely balanced decision". The litigation friend has been concerned about the robustness of the search and of the plan and expressed a concern that little more information was truly available at this hearing in May 2019 than had been available in October 2018. That said, the litigation friend is realistic that resources are limited acknowledged the suitability of the two options presented to the court. In the event, the litigation friend concluded that LM is a placement which is more likely to meet AC's best interests and needs coupled with her access to her day service.

## CONTACT

- 42 In relation to contact between AC and her sister, the local authority proposes a defined order for contact which should be supervised by a third party, currently Care agency 4. It is asserted that the current arrangement is reasonably satisfactory. The local authority is of the view that because of BC's behaviour, it is essential that the contact is supervised by a third-party agency which is not connected with the delivery of care in AC's home. There have been historically too many fallouts with the professionals to jeopardise that key relationship. Ms Thomas invited me to accept the concern of the local authority that if BC were given unrestricted access to AC in her home, this would be likely to result in clashes with the staff and alienation of the support team which could have serious implications for the continuity of accommodation provision.
- 43 BC indicated that she would like "proper contact" and she suggested that the contact should be for eight hours duration on each occasion, and that three to four hours was not enough. She was reasonably satisfied with the arrangement being supervised currently by Care agency 4.
- 44 The litigation friend is of the view that the history of the case shows that BC, who can be confrontational, aggressive, and rude at times, should have her contact with her sister supervised by a third party other than the provider of care within her supported living. Mr O'Brien reminds me that findings which support this argument have already been made and that there has been no mitigation or amelioration of BC's approach. Mr O'Brien cautioned the court that it cannot afford what he described as "the exorbitant consumption of professional time" in managing BC which is "disproportionate" to the care needs of AC. BC's stance has a tendency, he said, to propel care agencies into defensive caring services which is not in AC's best interests.
- 45 Mr O'Brien observed that maintaining the placement for AC has to be a priority and, in that regard, at least at present, AC's contact with BC has to be away from the home so that there is no contact between BC and the carers of AC particularly in the early stages of the placement. The litigation friend would like there to be a substantive review of contact with a view to increasing it if it is felt to be in AC's best interests.

## CONCLUSION

- 46 AC has, in my judgment, undoubtedly benefited from life at Placement 3. She was seen by her litigation friend as being well, clean, wearing nice clothes, and interacting well with M who "has a big smile on her face" when talking about AC, reflective of a warm and positive relationship. Her litigation friend observed that AC "appears to be engaging more than she has done on previous visits". I believe that BC recognises the benefits which the change in care regime at Placement 3 has achieved for her sister particularly in contrast to that which pertained at Placement 2 and possibly at Placement 1.
- 47 BC has many qualities of that I am sure. She is deeply fond of her sister. She has been courteous and respectful to me in court but, with regret, I find that BC remains obstructive, lacking in insight, frustratingly inconsistent and it may be said capricious in the way in which she deals with professionals. She cavilled when questioned in court about how she could communicate with professionals going forward.
- 48 Over a significant period of time, I have had the ability to assess BC. She sees things differently from professionals. She gives a strong impression of holding an unwavering belief that she is right, and others are wrong in all things relevant to AC. She does not

accept the concerns raised about her by care providers. She has been reluctant to give out her mobile telephone number but in fact did so in the hearing and accepted, for the first time, that the social worker could indeed contact her on this number. She indicated that she would not be prepared to correspond with the social worker by email. She said the issue is in relation to the use of encrypted emails and she was resolute about this. She accepted that the legal department would not be involved forever and maintained it was the social worker not her that was “being difficult”. She was asked whether or not she felt that there was still a “vendetta” being waged by the Social Services Department against her and she confirmed that that was still her view. There is still a very low level of mutual trust between the local authority and BC. This needs to change.

- 49 BC spoke at one point in her evidence about “walking away” from AC given the stresses on her of the current situation. She spoke of her brothers, who are not able to offer much of a relationship with AC and, I inferred, were not supportive of BC in all she is doing to manage AC’s life. I do not think that BC genuinely meant that she would “walk away” from this situation. If she did, I would be very surprised indeed given that she says she is the only person who really knows and understands her sister.
- 50 Having heard the submissions, having read and listened with care to the evidence of the social worker and of BC, I have reached the conclusion that it is indeed in AC’s best interests that she should reside at LM. This placement provides her with, in my judgment, a true home, a bungalow on a supported living site with the facility for bespoke care. AC will benefit from regular, dedicated two-to-one carers, which provides a significant advantage over many of the arrangements which she has benefitted from in the past and about which I heard as options for her future. A bungalow at LM is environmentally suitable for her needs. She will have the opportunity to continue to attend her day care centre which she has so enjoyed in the past, and it is a placement which is not only proposed by the local authority as the most suitable but it attracts the support of AC’s litigation friend and a sufficient degree of support from BC. That, in itself, is a point of significance.
- 51 I am satisfied, on all that I have heard, that LM can be and should be an appropriate home for AC. It is vital that a clear, comprehensive, detailed, and well-constructed transition plan should be prepared and urgently. It needs to be informed by contributions from her current carers. It needs to be informed by contributions from Care agency 4 and, of course, designed in collaboration with the identified future carers.
- 52 At the moment, I satisfied that BC needs to be kept at arm’s length from the arrangements for the transition of AC’s future care in order to give AC the best chance of settling into a new environment in which I hope she can thrive. That said, as I indicated at the outset of this judgment, I am satisfied that it is in AC’s best interests for her to continue to have regular contact with BC, such contact to be subject to a contact plan, and I shall direct the local authority to arrange for the substantive review of the contact arrangements to take place with a view to considering an extension of time within one month of AC’s move to LM.

### **MISCELLANEOUS APPLICATIONS**

- 53 At the conclusion of the hearing on 9 May, the parties and I sought to resolve all outstanding applications. I deal with them as follows:
- (1) BC shall complete the Form A11 financial assessment and return it to the applicant local authority by 4.00 p.m. on 23 May 2019;

- (2) BC has permission to disclose to the Police the documents set out in her index of disclosure and the judgment of this court dated 21 November 2018;
- (3) BC has permission to disclose to the Independent Safeguarding Adults Board the minutes of the meeting filed and appearing in our bundle at G315 and the report at I1;
- (4) There is no order made on the application by the second respondent dated 19 March 2019 for expert evidence to be obtained;
- (5) In relation to BC's request for Placement 3 to disclose in documentation to her in relation to purchases made, there will be no order save that it is agreed that if Placement 3 seeks funds beyond the £25 a week currently made available to AC by BC, it shall make that request for funds and then provide receipts for the item of expenditure; and
- (6) There will be no order made for financial deputyship as sought in the application by BC dated 9 November 2018.

54 That disposes of all the outstanding applications before the court as at 9 May 2019. The case should be listed for further hearing at the Leeds Family Court on a date to be fixed in October 2019 with a time estimate of one day before me when I shall review the authorisation of the deprivation of liberty provision, contact arrangements, and the management of the financial affairs of AC. An application in this case will be reserved to me unless release by me to an alternative judge.

55 I would like to end this judgment with a plea to BC to accept these arrangements in AC's best interests, to enjoy her time with her sister, to recognise that the court's decision has been fully informed and thoroughly investigated taking full account of her own contributions. If she were to do otherwise, she would be doing a grave disservice to her sister and to all who care for her.

56 The other side of this coin contains a warning that if I were to take the view that in the future BC were intent on making applications unnecessarily, or that applications were being vexatiously made, then I would consider making orders to restrain such applications such as by way of civil restraint order. There is a further warning. If were to find that BC's behaviour towards the contact staff was disrespectful or undermining, it would be bound to have an impact on the arrangements for future contact which would be likely to lead to their reduction at a time when I very much hope that we can look towards expansion of those arrangements.

57 I further draw attention, finally, to the provisions of *section 50* of the *Mental Capacity Act 2005* which provides, as we discussed at the hearing, that any new applications on a subject other than previous orders will require the court's permission to be issued. That is a provision which will now be strictly monitored and enforced going forward.

58 That is my judgment.

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**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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**This transcript has been approved by the Judge**