Neutral Citation Number: [2019] EWCOP 56

Case No: 13447267

IN THE COURT OF PROTECTION
AND IN THE MATTER OF THE INHERENT JURISDICTION OF THE HIGH COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/12/2019

Before:

THE HONOURABLE MR JUSTICE COBB

- -

Between:

TD	**Applicants**
BS	
- and -	
KD	**Respondents**
QD	
(By the Official Solicitor as his Litigation Friend)	

- -

Re QD (Jurisdiction: Habitual Residence)

- -

Miss April Plant (instructed by **Hatch Brenner**) for the Applicants, **TD** and **BS**
Mr Brendan Roche (instructed on a direct access basis) for the First Respondent, **KD**
Mr John McKendrick QC (instructed by **Bindmans** on behalf of the Official Solicitor) for the Second Respondent, **QD**

Hearing dates: **18 & 19 December 2019**

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Approved Judgment

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

.....

THE HONOURABLE MR JUSTICE COBB

This judgment was delivered in public. 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 QD and members of his family must be strictly preserved in line with the transparency order. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

The Honourable Mr Justice Cobb:

Introduction

1. This application, brought in the Court of Protection, concerns QD ('QD'); he is a man in his 60s. He suffers from Dementia in Alzheimer's disease[1], which in his case is connected with an atypical form of Parkinson's disease; as a consequence of these conditions he has a significant cognitive impairment. The joint applicants are his adult son ('TD') and adult daughter ('BS'), both children from his first marriage. The First Respondent ('KD') is QD's second wife. QD is himself the Second Respondent and appears in these proceedings through the Official Solicitor as his litigation friend. All parties have been ably represented; I am particularly grateful to Mr McKendrick QC and his solicitor who were instructed at very short notice.

2. Until early September 2019, QD was living with KD in Spain with his wife, and had been so for several years. On or about 3 September, QD flew to this country in the company of TD and BS; this journey was made without the knowledge, let alone the agreement, of KD. By application made on the following day the Applicants sought (and seek) a range of welfare orders concerning their father; in particular they seek an order that he reside at a care home in England (which I shall refer to as 'The Pines' – a pseudonym), that he not return to Spain, and that he have only supervised contact with KD, his wife.

3. KD opposes the application. By notice dated 10 October 2019[2], KD has raised a preliminary issue, namely whether this court has jurisdiction to determine the application at all, or whether proceedings relating to QD should be effectively stayed here pending transfer to Spain. This preliminary issue has been listed before me for determination.

The competing arguments

4. Miss Plant for TD and BS contends that while QD was habitually resident in Spain until early September, he is now habitually resident[3] in England, and that therefore I can apply the provisions of the *Mental Capacity Act 2005* ('*MCA 2005*') in the usual way. She further contends, as a feature of this argument, that the removal of QD from Spain was not wrongful, but was justified under the common law doctrine of necessity. She alternatively contends that jurisdiction is established on the grounds of

[1] QD's condition is specifically described in the documents as a Lewy Body Dementia, a progressive neurodegenerative dementia.
[2] Not strictly in accordance with *rule 13* of the *Court of Protection Rules 2017*, but accepted as such.
[3] *Schedule 3, para.7(1)(a) MCA 2005* (see [8] below)

'urgency'[4]. Although the applicants' case was not specifically advanced on the basis that it may not be possible to "ascertain" QD's habitual residence, if that were in fact my conclusion, I could exercise jurisdiction based upon his physical presence here[5].

5. Alternatively, Miss Plant argues that if I were to find that QD is as a matter of fact habitually resident in Spain, I should in the circumstances invoke the inherent jurisdiction so as to enable me to make substantive orders in relation to QD, a vulnerable adult, in relation to his care, contact with others and his residence. Ms Plant accepts that I could not use the inherent jurisdiction to authorise the deprivation of QD's liberty, but orders in that respect could be made by resort once again to the provisions of *MCA 2005*. Thus, I would be, on her case, operating a hybrid jurisdiction founded in part on the inherent jurisdiction, while exercising statutory powers under the *MCA 2005*.

6. Mr Roche and Mr McKendrick QC separately contend that QD is and at all material times was habitually resident in Spain, and that the court's powers here are therefore limited simply to making protective orders pending transfer of the proceedings to the Spanish Court.

Jurisdiction: the relevant law

7. *Section 63* of the *MCA 2005* provides as follows:

> "Schedule 3—
>
> (a) gives effect in England and Wales to the Convention on the International Protection of Adults signed at the Hague on 13th January 2000[6] (Cm 5881) (in so far as this Act does not otherwise do so), and
>
> (b) makes related provision as to the private international law of England and Wales."

Schedule 3 (of the *MCA 2005*) applies to an 'adult', who is defined for these purposes as a person who "as a result of an impairment or insufficiency of his personal faculties, cannot protect his interests, and has reached 16" (see *Schedule 3, para.4* ibid.).

8. *Schedule 3, para.7 MCA 2005* provides, materially, as follows:

> "(1) The court may exercise its functions under this Act (in so far as it cannot otherwise do so) in relation to—
>
> (a) an adult habitually resident in England and Wales,
>
> (b) an adult's property in England and Wales,

[4] *Schedule 3, para.7(1)(c) MCA 2005* (see [8] below)
[5] *Schedule 3, para.7(2)(a) MCA 2005*.
[6] This was ratified by the UK for Scotland in November 2003; it is not yet ratified for England and Wales, where it is given effect, but only to the extent specified by certain provisions of the *MCA 2005*.

> (c) an adult present in England and Wales or who has property there, if the matter is urgent, or
>
> (d) an adult present in England and Wales, if a protective measure which is temporary and limited in its effect to England and Wales is proposed in relation to him.
>
> (2) An adult present in England and Wales is to be treated for the purposes of this paragraph as habitually resident there if—
>
> (a) his habitual residence cannot be ascertained,
>
> (b) he is a refugee, or
>
> (c) he has been displaced as a result of disturbance in the country of his habitual residence".

9. 'Protective measures' (referred to in *para.7(1)(d)* set out above) are defined in the *MCA 2005* as follows: (per *Schedule 3*, *para.5*):

> "(1) "Protective measure" means a measure directed to the protection of the person or property of an adult; and it may deal in particular with any of the following—
>
> (a) the determination of incapacity and the institution of a protective regime,
>
> (b) placing the adult under the protection of an appropriate authority,
>
> (c) guardianship, curatorship or any corresponding system,
>
> (d) the designation and functions of a person having charge of the adult's person or property, or representing or otherwise helping him,
>
> (e) placing the adult in a place where protection can be provided,
>
> (f) administering, conserving or disposing of the adult's property,
>
> (g) authorising a specific intervention for the protection of the person or property of the adult".

It is clear that *para.7(1)(d)* provides an exceptional jurisdiction, empowering the court to take measures to protect the incapacitated person which are temporary in nature and whose territorial effect is limited to the state in question.

10. Habitual residence is a question of fact, to be determined by reference to a wide range of circumstances of the particular case; it is not a legal concept. The test of habitual residence promulgated by the European Court (and adopted domestically) is 'the place which reflects some degree of integration by the [child/adult] in a social and family environment in the country concerned'. Given the pivotal significance of the concept of 'habitual residence' in family law statutes and instruments, the phrase has generated significant commentary in domestic family law jurisprudence; it has been authoritatively established that interpretation of the phrase 'habitual residence' in the context of the *MCA 2005* should follow the same approach. In this regard, I have had regard to the comprehensive judgment of Moylan J (as he then was) in *An English Authority v SW and others* [2014] EWCOP 43. I draw attention specifically here to [64]:-

> "Given the close links, in particular between the *2000 Convention* and the *1996 Child Protection Convention*, as explained in the Lagarde Report; given the relationship between the *2000 Convention* and the *MCA*; and for general policy considerations as referred to by Lady Hale in [*Re A* [2013] UKSC 60], it is clear to me that the definition of "habitual residence" under the *MCA* should be the same as that applied in other family law instruments, including *BIIa*".

Thus, for these, and related, principles it is helpful to consider the Supreme Court's decisions in *Re A* [2013] UKSC 60, [2013] 3 WLR 761 (in particular the 'thread-drawing' paragraph [54] in the judgment of Lady Hale), and *Re B* [2016] UKSC 4, [2016] 2 WLR 557 (in particular at [39] and [45]).

11. In the context of the Court of Protection proceedings, my attention was specifically drawn to the judgment of Munby J (as he then was) in *Re PO* [2013] EWHC (CoP). Given the significance of the principles enunciated there to the facts of this case I set out the key passages below in full:

> [14] "Habitual residence" is, no doubt designedly, defined neither in the Convention nor in the *2005 Act*, though there is an authoritative Explanatory Report on the Convention drawn up by Paul Lagarde dated 5 January 2000. For present purposes I need refer to only three paragraphs of the Lagarde report. In paragraph 49 he points out that:
>
> > "No definition was given of habitual residence, which despite the important legal consequences attaching to it, should remain a factual concept."
>
> In paragraph 50 he says:

> "The change of habitual residence implies both the loss of the former habitual residence and the acquisition of a new habitual residence. It may be that a certain lapse of time exists between these two elements, but the acquisition of this new habitual residence may also be instantaneous on the simple hypothesis of a move of the adult concerned when this has occurred on a long-term if not final basis. This is then a question of fact, which it is for the authorities called upon to make a decision to assess."

In paragraph 51 he notes that:

> "The Commission did not discuss again certain questions connected with the change of habitual residence which were debated in detail during negotiations on the Convention on the Protection of Children. It thus implicitly accepted the solutions which had been arrived at there. Therefore, where the change of habitual residence of the adult from one State to another occurs at a time when the authorities of the first habitual residence are seised of a request for a measure of protection, the *perpetuatio fori* ought to be rejected, in the sense that the change of habitual residence *ipso facto* deprives the authorities of the former habitual residence of their jurisdiction and obliges them to decline its exercise."

[15] Helpful assistance is given by the decision of Hedley J in *Re MN (Recognition and Enforcement of Foreign Protective Measures)* [2010] EWHC 1926 (Fam), [2010] COPLR Con Vol 893. The facts in that case were very different from those with which I am here concerned. For present purposes it suffices to note that the proceedings related to an elderly woman, MN, habitually resident in California, who had been removed from there to Canada and thence to this country in circumstances which, it was said, involved a breach of the terms of Part 3 of an advance directive signed by her.

[16] Hedley J's careful and compelling judgment repays reading in full. For immediate purposes I can confine quotation to what he said in paras 22-23:

> "It follows that, in my judgment, the question of authority to remove is the key in this case to the question of habitual residence. Habitual residence is an undefined term and in English authorities it is regarded as a question of fact to be determined in the individual circumstances of the case. It is well

> recognised in English law that the removal of a child from one jurisdiction to another by one parent without the consent of the other is wrongful and is not effective to change habitual residence … It seems to me that the wrongful removal (in this case without authority under the directive whether because Part 3 is not engaged or the decision was not made in good faith) of an incapacitated adult should have the same consequence and should leave the courts of the country from which she was taken free to take protective measures. Thus in this case were the removal 'wrongful', I would hold that MN was habitually resident in California …
>
> If, however, the removal were a proper and lawful exercise of authority under the directive, different considerations arise. The position in April 2010 was that MN had been living with her niece in England and Wales on the basis that the niece was providing her with a permanent home. There is no evidence other than that MN is content and well cared for there and indeed may lose or even have lost any clear recollection of living on her own in California. In those circumstances it seems to me most probable that MN will have become habitually resident in England and Wales and this court will be required to accept and exercise a full welfare jurisdiction under the Act pursuant to para 7(1)(a) of Sch 3. Hence my view that authority to remove is the key consideration."
>
> I respectfully agree". (emphasis by underlining added).

12. In relation to that important passage from *Re MN (Recognition and Enforcement of Foreign Protective Measures)* set out in [15] of the Re PO decision (reproduced in [11] above) Munby J said this:

> "[18] In the case of an adult who lacks the capacity to decide where to live, habitual residence can in principle be lost and another habitual residence acquired without the need for any court order or other formal process, such as the appointment of an attorney or deputy. Here, as in other contexts, the doctrine of necessity as explained by Lord Goff of Chieveley in *In re F (Mental Patient: Sterilisation)* [1990] 2 AC 1, 75, applies: see the analysis in *Re S (Adult Patient) (Inherent Jurisdiction: Family Life)* [2002] EWHC 2278 (Fam), [2003] 1 FLR 292, paras 20-21. Put shortly, what the doctrine of necessity requires is a decision taken by a relative or carer which is reasonable, arrived at in good faith and taken in the best interests of the assisted person. There is, in my judgment, nothing in the *2005 Act* to displace this approach. Sections 4 and 5, after all, pre-suppose that such actions are

> not unlawful per se; they merely, though very importantly, elaborate what must be done and provide, if certain conditions are satisfied, a statutory defence against liability: see the important analysis of Baker J in *G v E (Deputyship and Litigation Friend)* [2010] EWHC 2512 (COP), [2010] COPLR Con Vol 470, especially paras 17-18, 56-57.
>
> ….
>
> [20] Of course, the doctrine of necessity is not a licence to be irresponsible. It will not protect someone who is an officious busybody. And it will not apply where there is bad faith or where what is done is unreasonable or not in the best interests of the assisted person. Thus there will be no change in P's habitual residence if, for example, the removal has been wrongful in the kind of circumstances with which Hedley J was confronted in *Re MN…*" (emphasis by underlining added).

13. As I earlier indicated (see [5] above), Ms Plant submits that if I were to find that QD is habitually resident in Spain, I should invoke the inherent jurisdiction to found a basis for making welfare-based orders. I therefore turn to this aspect of the argument.

14. I recently observed in *Wakefield MDC & another v DN & another* [2019] EWHC 2306 (Fam) at paragraph [19], that the inherent jurisdiction ("the great safety net" as Lord Donaldson described it in *Re F (Mental Patient: Sterilisation)* [1990] 2 AC 1), survived the coming into force of the *MCA 2005*. The clearest authority for this proposition is *A Local Authority v DL* [2012] 3 All ER 1064 *('Re DL'*) (*sub nom Re L (Vulnerable Adults with Capacity: Court's Jurisdiction)* [2013] Fam 1). It is illuminating to revisit and look with care at McFarlane LJ's phraseology, as he defined the issue in *Re DL* at [1] as follows:

> "The question for consideration is whether, despite the extensive territory now occupied by the *MCA 2005*, a jurisdictional hinterland exists outside its borders to deal with cases of 'vulnerable adults' who fall outside that Act and which are determined under the inherent jurisdiction."

And at [61]:

> "In the absence of any express provision, the clear implication is that if there are matters outside the statutory scheme to which the inherent jurisdiction applies then that jurisdiction continues to be available to continue to act as the 'great safety net' described by Lord Donaldson".

I highlight these paragraphs to emphasise that McFarlane LJ was plainly contemplating the use of the inherent jurisdiction to protect vulnerable adults where their situation falls 'outside' of the statutory scheme; it is only those cases which can be caught by the 'great safety net'.

15. McFarlane LJ's approach in *Re DL* is, of course, entirely consistent with the long-standing and principled approach which the courts have adopted and applied more generally. That is to say, where Parliament has created a statutory scheme which is intended to be exhaustive, the common law should not go behind that scheme (*Black v Forsey* [1988] SC (HL) 28, discussed also in *Re L*, [1998] UKHL 24; [1999] AC 458; [1998] 3 All ER 289; [1998] 3 WLR 107; [1998] 2 FLR 550; [1998] 2 FCR 501; [1998] Fam Law 592). In essence, the terms of the statute must be looked to first to see what Parliament has considered to be the appropriate statutory code, and the exercise of the inherent jurisdiction should not be deployed so as to undermine the will of Parliament as expressed in the statute or any supplementary regulatory framework. It is my clear view that the court has power to make a range of declaratory, injunctive, and other orders, *only* where these are necessary "to fill the gaps of law" and to enhance the *Article 8 ECHR* rights of the vulnerable: see again *Re DL* at [67].

Background facts

16. The background facts are not materially in dispute. Although TD, BS and KD were all available to give oral evidence, no party sought to call them or have them called to be challenged; this decision was sensibly influenced by the wish to reduce the temperature of this family litigation in these difficult circumstances. The parties had filed additional witness statements from third parties, purporting to buttress their respective cases as to the facts; Cohen J had entirely appropriately directed on 27.11.19 that these witnesses would not be required for the hearing.

17. TD and BS are the two adult children of QD's first marriage. In or about 2010, KD and QD formed a relationship, and in 2012, they moved together to live in Spain. They bought an apartment there, and since 2014 have been legal residents of Spain. QD owns a further property in Spain. It was, apparently, their intention to retire and live there. In early 2017, QD and KD were married.

18. Later in 2017, QD was diagnosed (by medics in Spain) with Parkinson's Disease. In April 2018, he was diagnosed with dementia. In months which followed, KD's role appeared to morph into that of QD's carer (tending to his increasing needs including, cooking, washing, toileting, shaving, dressing him and accompanying him to the hospital), while enjoying the benefits of being his wife. In July 2018, on a visit to England, TD and BS arranged for QD to execute a property and finance Lasting Power of Attorney ('LPA') in their favour; this was done without the apparent knowledge of KD, who confirms that it was done "behind my back". A further LPA was executed in March 2019 when QD and KD visited England again. On this visit, it is notable that KD had stayed with her adult daughter (a child from her first marriage) and grandchildren but QD did not stay there with her; arrangements were made by KD for him to stay at The Pines.

19. KD has objected to the grant of both LPAs referred to in the paragraph above. She has launched proceedings in the Court of Protection to challenge the grant of the disputed LPAs. Furthermore, TD advises that there is a dispute in Spain about the proposed gift by QD of a second Spanish property to TD and BS.

20. During the summer of 2019, TD and BS received communications from friends and neighbours of their father that he was not being cared for appropriately by KD. They

became concerned that he was being neglected in a number of material respects, and that KD was concerned only with QD's money (TD: "I believe she is draining his funds for her own personal gain"). TD and BS received further detailed reports that KD was being unfaithful to QD. In light of these allegations, TD and BS resolved to 'rescue' their father, and bring him to England and place him in residential care. They state (per their written evidence) that they engaged the services of a Spanish lawyer, who is said to have advised them that:

> "… what [they] were planning was completely legal and justified".

Specifically, they were advised by the Spanish lawyer:

> "In principle, as no judge has granted your father's wife his legal guardianship, it is not illegal to fly him to the UK. Moreover if you claim that you are taking him to the UK in order to take care of him, your motives are justified. According to Spanish laws, even though he is not in sound mind he is not incapacitated, so according to Spanish laws legally he can make his own decisions. Therefore, in principle, flying him to the UK would not be an offence."

I observe, in passing, that while it is possible that the Spanish lawyer was working from different material from that which has been presented to me, and/or that the nuances of legal or other phraseology around mental incapacity may not easily translate, it is not clear to me how the Spanish lawyer could have formed the view on the basis of the evidence presented to me that QD was "not incapacitated".

21. TD contacted KD to advise her that he was proposing to visit his father; KD told TD would not be welcome to stay in her home, given what she perceived to be the "underhand" way in which he had apparently obtained the LPAs in 2018 and in 2019. KD nonetheless agreed that QD could spend the weekend with TD at a hotel. In this exchange of correspondence, KD further advised TD that she was proposing to apply (or had applied) to the Spanish court for legal guardianship of QD, and (in this regard) for a court-appointed capacity assessment. TD reflects in his statement that this news operated as: "the red flag to move promptly and effectively to successfully bring him [i.e. QD] back [to England]".

22. On or about 1 September 2019, TD and BS flew to Spain; TD and BS maintain that they were "shocked" to see that QD's condition had deteriorated in the months since their last meeting. TD collected QD from his home but did not take him to a hotel for the weekend; together with BS, they took QD to the British Consulate, where they obtained emergency travel documentation for QD, and flew with him back to England. On their arrival in the UK, they drove him straight to The Pines, where (according to them) he settled quickly. On 4 September 2019 they issued this application; that application is expressly founded on the basis that they had reason to believe that QD was being "drugged" by KD to keep him "inside his home", and that she is having relationships with other men; they added "we are concerned that he is being mistreated". TD then wrote an e-mail to KD to advise her that QD was now in England where he would remain and that he would not be returning to Spain.

23. On 6 September, a social worker from the local adult social care team conducted a capacity assessment, and concluded that QD was unable to make decisions about his care and contact. The social worker took the view that "his needs are best met in a residential care home setting". She further commented that QD has a "significant impairment of the mind"; he appeared to trust TD and BS "and was unable to recall any other persons who cared for him".

24. As earlier indicated ([3] above), by notice dated 10 October KD asserted that this court does not have the jurisdiction to determine the issues relating to QD. In her statement in support of this position, she says that she wishes for her husband to return "home where he belongs", to participate in the Spanish court proceedings, adding:-

> "… once he returns, I wish the Spanish court to assess his capacity and decide who is the more suitable person to look after him, after listening to all the people involved including of course his children".

25. From translated court documents, it appears that on 24 September 2019 the Spanish Court accepted KD's 'petition for a declaration of incapacity' in relation to QD; the order confirms that the court has the "jurisdiction and objective competence to hear this matter… and the geographical competence given that the petitioner [KD] resides within its district." It is further recorded that KD's application will proceed through "small claims process".

26. In October 2019, Dr. N was commissioned by the parties to complete an assessment of QD. During the assessment, QD was noted to be disorientated as to time and place, believing himself to be in Spain. Dr. N concluded as follows:

    i) QD has a diagnosis of Dementia in Alzheimer's disease;

    ii) QD does not have capacity to make decisions about where to live, his care and support needs, and how to be kept from harm;

    iii) He is not expected to recover capacity;

    iv) He requires on-going residential care, and his needs are likely to escalate in the future;

    v) When asked about QD's ability to return to his home in Spain to live, Dr. N described this as a "retrograde step". It was said that he requires full time care in a formal care environment; if he did return, he would be at high risk of falling;

    vi) Dr. N was of the view that QD's move from Spain to The Pines "will have been associated with heightened confusion on account of disorientation in a novel environment", and a subsequent change from his current environment to a "novel environment in Spain, or even a return to his home environment in Spain, is highly likely to be associated with further disorientation".

Conclusion

27. The written evidence of Dr. N amply confirms (indeed there is no dispute about this) that there is reason to believe that QD lacks capacity to make decisions about his residence, and his care and support needs, within the definitions of the *MCA 2005*. The parties also accept that, in those circumstances, it is highly likely that he lacks capacity to conduct these proceedings. His condition is such that there is no realistic prospect of any improvement in his capacity.

28. But can / should this court exercise substantive jurisdiction under the *MCA 2005* in respect of QD? On the basis of the evidence available to me (and rehearsed above, specifically at [16]-[24]), I have reached the clear conclusion that QD remains habitually resident in Spain. This court must therefore decline primary jurisdiction in accordance with the provisions of *Schedule 3* of the *MCA 2005*, and should yield to the jurisdiction of the Spanish Court. In reaching this conclusion I am particularly influenced by a constellation of factors, most prominent among them being:-

    i) that when he had capacity, QD chose to live in Spain, and this was (it appears) to have been his permanent home;

    ii) QD has now lived in Spain for many years;

    iii) QD has more than one property in Spain;

    iv) QD received health care in Spain;

    v) QD was integrated into life and a community in Spain where he appeared to have a social life;

    vi) it is conceded by the Applicants that prior to 3 September 2019, QD was habitually resident in Spain;

    vii) it is, of course, the country in which his wife continues to live; moreover, she had sought to regularise the care arrangements for him in Spain by initiating proceedings for legal guardianship in that country some weeks before QD was relocated to England.

29. I am further influenced by the fact that, as an agreed fact, QD's move to this country was achieved by stealth. I do not find that TD and BS can avail themselves of the 'doctrine of necessity', to convert what was a wrongful act on their part into a justified act. While I have no reason to question their case that they had received information which gave them concerns about QD's welfare (and specifically the care he was receiving), it seems to me that there were options open to TD and BS other than QD's summary removal from the jurisdiction of Spain, in circumstances for which he had no chance of being prepared. For instance, it would have been a far more reasonable course for them to have notified the police or social services in Spain of their concerns; they could/should have raised their concerns directly with KD (however difficult this would have been), rather than perpetrate a deceit upon her by removing her husband from her care. In short, their covert plan was not the only option available to them, nor was it, objectively viewed, a reasonable one. Although TD and BS may have believed that they were acting in QD's best interests, in fact the

impact on QD of his deracination from Spain has not been beneficial to him, as Dr. N has observed ("heightened confusion… disorientation": see [26](vi) above).

30. Secondly, I am absolutely clear that it would not be appropriate for me to assume jurisdiction based on 'urgency' (per *schedule 3, para.7(1)(c) MCA 2005*); exercise of jurisdiction based on *para.7(1)(c)* would be justified in my view only where substantive orders are necessary in order to avert an *immediate threat* to life or safety, or where there is an *immediate need* for further or other protection. While it is important that decisions are made in QD's interests as soon as possible, I do not find that there is an 'urgency' about the need for substantive orders. I specifically reject Miss Plant's argument that it is 'urgent' for the court here to make substantive orders in order to beat the courts in Spain to do so.

31. Thirdly, I am equally clear that it would not be appropriate for me to deploy the inherent jurisdiction here as a means for making substantive orders in relation to QD; there is a comprehensive and robust statutory scheme available in the *MCA 2005*, which covers (in *section 63* and *schedule 3*) this very issue. To apply the inherent jurisdiction here would be to subvert the predictable and clear framework of the statute in an unprincipled way. The flaw in Miss Plant's argument was at least in part illustrated by the fact that she was obliged to accept that even if I assumed primary jurisdiction at common law, I would then need to revert to the *MCA 2005* to deal with deprivation of liberty authorisations. I did not consider that the short and summary judgment of Peter Jackson J in *Re Ann C* [2016] EWCOP 46, relied on by Miss Plant, is of any great assistance; in that case there was very great uncertainty about the habitual residence of P (there was "relatively little information about her current circumstances" before the court: see [6] of the judgment) and the court invoked the inherent jurisdiction at the end of a very short (15 minute) hearing to hold the ring until the Official Solicitor could undertake further enquiries.

32. I therefore propose to exercise the limited jurisdiction available to me pursuant to *Schedule 3, paragraph 7(1)(d)*, to make a 'protective measures' order which provides for QD to remain at and be cared for at The Pines and to continue the authorisation of the deprivation of his liberty there only until such time as the national authorities in Spain have determined what should happen next. I accept Mr McKendrick's concluding submission that it is for the Spanish administrative or judicial authorities to determine the next step, which may of course be to confer jurisdiction on the English courts to make the relevant decision(s).

33. I shall list a further hearing by no later than 31 January 2020. I shall grant permission for the papers filed in these proceedings, together with this judgment, to be released by QD's representatives to the Spanish authorities, with additional permission for the instruction of an expert opinion on Spanish law to advise on processes hereafter.

34. That is my judgment.