Neutral Citation Number: [2021] EWHC 2147 (Fam)

Case No: FD21P00041

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
IN THE MATTER OF THE SENIOR COURTS ACT 1981

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/07/2021

Before:

THE HONOURABLE MR JUSTICE COBB

- -

Between:

T	**Applicant**
S	
- and -	
	Respondents
L	
M	
K	
(By the Official Solicitor as his litigation friend)	

- -

Re K: T (& Another) v L (& Others) (Inherent Jurisdiction: Costs)

- -

Victoria Butler Cole QC (instructed by **Direct Access**) for the Applicants
Constance McDonell QC (instructed by **DMH Stallard**) for the First and Second Respondents
Ruth Hughes (instructed by **Bindmans** on behalf of the Official Solicitor) for the Third Respondent

Hearing date: 23 July 2021

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Approved Judgment

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. A Transparency Order is in place.

The Honourable Mr Justice Cobb:

Introduction

1. By application dated 18 January 2021, the Applicants, T and S, sought a range of relief under the High Court's inherent jurisdiction in respect of the financial affairs and living arrangements of a vulnerable elderly gentleman, K. The Applicants were, and are, friends and former professional colleagues of K, and were then Attorneys for him under Lasting Powers of Attorney ('LPAs') created in 2019. Specifically, they sought:

   i) directions for the investigation by the court of the revocation of their LPAs,

   ii) suspension of the process of revocation of new LPAs which had been purportedly entered into in October 2020,

   iii) investigation into the validity of a new will drafted in November 2020, and

   iv) the replacement of K's carer, Ms B, and the installation of a new carer / care package.

   At the time of the application, the Applicants were concerned that K had failing capacity, and they suspected he was being inappropriately influenced by others (including the First and Second Respondents, and his carer, Ms B) in taking radical decisions in relation to the important matters set out above.

2. That application has been considered by the court at four separate case management hearings. The application was ultimately listed before me on 23 July 2021. At that hearing, I was invited to make an order by consent bringing the proceedings to an end, given the high level of agreement of the issues raised. The sole point of contention at that hearing was whether I should make an order for *inter partes* costs in favour of the First and Second Respondents against K, the Third Respondent, acting by the Official Solicitor.

3. It was acknowledged at the hearing that, although there are still some disputes of historic fact which may to some extent bear upon the merits of the costs arguments, it was appropriate and indeed proportionate that I should dispose of the costs dispute on the basis of the documents read, and on written and oral submissions from counsel.

Background

4. K is a well-known and distinguished lawyer and academic. He is represented in these proceedings by the Official Solicitor, who has instructed Miss Ruth Hughes. As I have indicated above, the Applicants are former colleagues and friends of K's from his Chambers, who were his attorneys under Lasting Powers of Attorney for Property and Affairs and Health and Welfare, registered by the Office of the Public Guardian in October 2019; they are represented in the proceedings by Victoria Butler Cole QC. The First and Second Respondents, L and M, are respectively the nephew and niece of K (the adult children of K's younger brother, C), and are represented on this application by Ms Constance McDonnell QC.

5. K lives alone in Kent. His former partner, A, left him in 2019; K has no children. In mid-2019, K was diagnosed with mixed Alzheimer's disease with vascular dementia. In the same year (and let me stress that there is no doubt raised in this litigation that K was capacitous to do so), the Applicants were appointed as his Attorneys under executed Lasting Power of Attorneys ('LPAs').

6. In late 2020, unexpectedly and without notice, the Applicants received notice that the welfare and property LPAs, in respect of which they were attorneys, had been revoked, and were to be replaced by new LPAs; under the new LPAs K's brother, C, and the Second Respondent were appointed as Attorneys. The First Applicant, T, sought an explanation from the First Respondent, L, but was advised that "there is little value in our discussing this"; the First Applicant was referred to a local firm of solicitors, Furley Page, which had then apparently been retained by K. The Applicants were given to understand that the revocation of their LPAs was intended to be followed by the creation of a new will, also to be handled by Furley Page, but they were given no information about this. It subsequently became known to the Applicants, following investigation by the Official Solicitor, that at about the same time as the purported revocation of LPAs (24 November 2020), K had indeed created a new will, leaving a significant bequest (amounting to hundreds of thousands of pounds) to his then carer Ms B, together with £30,000 for her to care for either his cat or any other animal that K may own at the date of his death, and leaving the bulk of the estate to the First and Second Respondents. This replaced a will created only 12 months or so earlier. It is right to observe that this history was viewed by the Applicants with some concern given that earlier in 2020, the First Respondent had commented (in writing) that if anyone wanted to "sell something new to [K]" they could first "sell it to [Ms B] safe in the knowledge that she would then do her bit to swing [K] towards it."

7. At about this time, it became apparent to the Applicants that Ms B was blocking communications from K's old friends and colleagues (including themselves); concern was raised that the First and/or Second Respondents were aware of this. Members of trusted staff were sacked.

8. It is reasonably apparent from all that I have read that the Applicants endeavoured to raise their concerns with the First and Second Respondents. Efforts were made to negotiate a resolution to these issues at a round table meeting (of which I have the transcript) just before Christmas 2020. When those negotiations failed, the Applicants sought resolution through correspondence. Ultimately, they made the application to seek the court's directions in relation to the matters set out in §1 above. In doing so, they said this:

> "The Applicants are not using [K]'s funds to advance this application, and do not seek to maintain a role as decision-makers for [K]. They wish to raise their concerns before the court, and propose that the Official Solicitor is appointed to investigate them further and to represent [K]'s interests. The applicants could then step back from the proceedings."

9. Upon issue, the proceedings were urgently listed before Hayden J on 21 January 2021. He directed the Office of the Public Guardian to suspend its processing of the deed of revocation of the 2019 LPAs and the registration of the 2020 LPAs.

10. The situation did not improve. In December 2020, the Applicants had discovered that a security firm had been employed to 'guard' K; it appears that this step had been taken by the First and Second Respondents or at least with their knowledge or support; the security guards made access to the home difficult. On 18 February 2021, Hayden J made an order injuncting the security firm from preventing K's lawyer and expert from attending upon him. On the following day, Professor Robert Howard, Consultant Psychiatrist and Professor of Old Age Psychiatry, together with K's solicitor attended at the home, and indeed they recount how they had considerable difficulty gaining access to K. On that visit, Professor Howard assessed K and found him to lack capacity in a number of areas of his life.

11. A little less than a month later, on 10 March 2021, Dr James Warner, Consultant Psychiatrist, acting only on the instructions of the First and Second Respondent (and without agreement of the parties, or a court order) undertook a separate capacity assessment of K. Dr Warner assessed K as having testamentary capacity; it is unclear to me, having read the report, whether Dr Warner's analysis truly supported his conclusions but be that as it may. Dr Warner was concerned that K was imminently about to lose his capacity.

12. On 23 March 2021, the solicitor for the First and Second Respondents sent an open letter offering a 'pragmatic' way of resolving the issues. Much has been made of this letter. This letter led to the calling of a round table meeting which took place on the afternoon of 1 April 2021; this was attended by the parties and their lawyers. I have read the attendance note, and extracts have been highlighted for me; a wide range of issues was discussed. In the meeting, the First and Second Respondents (through their solicitor) indicated that, although they were not "wedded" to the idea of Ms B remaining as K's carer, they were nonetheless *not* then advocating her dismissal or removal and indeed were proposing that she be integrated into an agency. Interestingly, in passing, I noted that the Second Respondent had deposed to a statement in late-February 2021 in which she said that she had "never had an issue with [Ms B's] care of [K] … she is a good professional carer and has [K's] best interests at heart". The First Applicant was very clear in response to any suggestion that Ms B should remain: "An interim care agency with [Ms B] remaining in place is the wrong approach to take" and indicated that there was "some urgency" about resolving the issue. The round table meeting covered other ground including K's property and financial affairs.

13. Within a matter of days, Ms B abruptly resigned and left her post. A new care agency was swiftly introduced.

14. On 23 April 2021, the matter came before Poole J; by then the parties had agreed the need to appoint independent Deputies for K; the order reflected this, together with the Applicants' and Second Respondent's disclaimer of the powers of attorney upon that event. The order records that the parties had agreed that the 2020 LPAs should not be registered. On the Applicants undertaking to issue proceedings in the Court of Protection, Poole J (sitting also as a nominated Judge of the Court of Protection) made a number of interim orders predicated on K's acknowledged lack of capacity; those proceedings were to be consolidated with these. Among the orders made was the order confirming the new care agency, in place since the departure of Ms B.

15. On 5 May 2021, by agreement, Martin Terrell of Warners Solicitors was appointed as K's Deputy for Property and Financial Affairs.

16. On 10 May 2021, an experts' meeting took place between Professor Howard and Dr Warner. It did not yield any clear consensus on key issues relevant to a determination of capacity. There was some question whether Professor Howard and/or Dr Warner had properly applied the historic *Banks v Goodfellow* (1870) test, or whether they had applied the test under the *Mental Capacity Act 2005*. This is not a matter on which, for obvious reasons, I now need to adjudicate. It was however agreed between the parties that Professor Howard and Dr Warner should meet with K together and assess his testamentary capacity anew; this agreement was embodied in a court order which I made on 17 June.

17. The meeting of the experts together with K (and accompanied by the Property and Affairs Deputy) took place on 22 June. Dr Warner expressed the view afterwards that K had "significantly deteriorated". The experts agreed, and the Deputy did not demur, that at that time K lacked testamentary capacity as a result of his dementia; in particular it was agreed that he was not able to understand the claims on his bounty, nor was he able to retain information for long enough to give instructions for the making of a will.

18. In light of this settled evidential position, the parties have reached agreement that an application will now need to be made to the Court of Protection for the execution of a statutory will for K under *section 18(1)(i) MCA 2005*. A minor dispute has arisen as to who should make the application - whether it should be Mr Terrell (the Property and Affairs Deputy), or the Official Solicitor. Although invited to express a view at the hearing on 23 July as to who should best make the application, I have declined to do so. Frankly, it seems to me that it makes very little difference who actually makes the application as Mr Terrell and the Official Solicitor will both be equally involved in the legal process come-what-may.

19. Agreement has further been reached for the appointment of Ms Jo Dufton as the Welfare Deputy. An application for a consent order to that effect is currently sitting in the in-tray at the over-stretched Court of Protection office at First Avenue House. In order to accelerate this process, at the invitation of the parties, I shall make the order today.

20. It has not been necessary for me to make any determination about the continuing engagement of Ms B, as she abruptly left the employ of K over the Easter weekend 2021, and has been replaced by a care team approved by all parties.

Costs: the principles

21. The First and Second Respondent seek an order that their costs of these proceedings are met in full by K and paid from his assets. They seek an order that their costs be subject to a detailed assessment if not agreed; I am advised that their costs currently exceed £215,000. The application is opposed by the Official Solicitor on behalf of K; the Official Solicitor's costs are in the region of £140,000. The Applicants do not seek an order for costs (their costs are c.£15,000 having undertaken much of the work themselves and instructing counsel on a direct access basis) but support the Official Solicitor's position on this contested application.

22. Costs orders at the conclusion of litigation like this lies in the discretion of the court: *Section 51(1)* of the *Senior Courts Act 1981*. It is agreed by counsel in this case that it is the *Civil Procedure Rules 1998* rather than the *Family Procedure Rules 2010* which govern the application given that these are not truly 'family proceedings'. This

approach adopts what I said at [4] in *Redcar & Cleveland v PR* [2019] EWHC 2800 (Fam), and where I explained the statutory route to this result. The relevant costs provisions are located in *rule 44 CPR 1998.*

23. I summarised the relevant procedure rules in the *Redcar* judgment at [6] and [7] as follows:

> "[6] *Rule 44.1 CPR 1998* emphasises the discretion as to *whether* costs are payable by one party to another, and if so, the *amount* of those costs; and *when* they are to be paid. While the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, the court may of course "make a different order" (*rule 44.2*).
>
> [7] Specifically, in deciding what order (if any) to make about costs, the court is enjoined (*rule 44.2(4)/(5)*) to have regard to *all the circumstances,* including (but not limited to):
>
> i) the *conduct* of all the parties;
>
> ii) whether a party has *succeeded* on part of its case, even if that party has not been wholly successful.
>
> In relation to 'conduct':
>
> iii) this includes "conduct before, as well as during, the proceedings";
>
> iv) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
>
> v) the manner in which a party has pursued or defended the case or a particular allegation or issue; and
>
> vi) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim."

24. Ms McDonnell QC submits that the *CPR* apply without gloss; Miss Hughes submits that in proceedings under the inherent jurisdiction, the ordinary rule as between litigants is that there is no order for costs unless there was some good reason for one; in this regard she cites the judgment of Peter Jackson LJ in *A NHS Trust v D* [2012] EWCOP 886.

25. In relation to the general approach, I propose to apply the following principles:

    i) The *Senior Courts Act 1981* and the *CPR 1998* confirm that I have a wide discretion in relation to costs;

    ii) Proceedings brought under the inherent jurisdiction relating to a vulnerable adult have many of the same essentially welfare-oriented characteristics of

proceedings under the inherent jurisdiction relating to minors (see McFarlane LJ in *DL v A Local Authority* [2012] EWCA Civ at [61], and see also Wall LJ in *Westminster City Council v C* [2008] EWCA Civ 198; [2009] 2 WLR 185 at [54]: "I am in no doubt at all that the inherent jurisdiction of the High Court to protect the welfare of incapable adults, confirmed in this court in *Re F (Adult: Court's Jurisdictions)* [2001] Fam 38 survives, albeit that it is now reinforced by the provisions of the *Mental Capacity Act 2005* (*the 2005 Act*)"). Therefore, although the *CPR 1998* applies to such proceedings, the costs principles which apply in family proceedings are likely to be highly relevant in this regard;

iii) In family proceedings where the welfare of a minor is concerned, it is usual to make no order as to costs; in this regard, I quote below an extract from the judgment of Baker LJ in *LR v A Local Authority* [2019] EWCA Civ 680 in which he helpfully and succinctly summarised the law at [3]:

> "The approach to be followed when considering applications for costs in cases involving children has been considered on two occasions by the Supreme Court in *Re T* [2012] UKSC 36, and subsequently in *Re S* [2015] UKSC 20. We have those principles firmly in mind. For many years, the general practice in proceedings relating to children has been to make no order as to costs save in exceptional circumstances. The principal reason for this approach, as recognised by Baroness Hale of Richmond in her judgment in *Re S*, is that, whenever a court has to determine a question relating to the upbringing of a child, the welfare of the child is the court's paramount consideration, and as a result "in such proceedings there are no adult winners and losers – the only winner should be the child" (paragraph 20) and "it can … generally be assumed that all parties to the case are motivated by concern for the child's welfare (paragraph 22). It follows that "costs orders should only be made in unusual circumstances", for example, as identified by Wilson J (as he then was) in *Sutton London Borough Council v Davis (No 2*) [1994] 2 FLR 569, where "the conduct of a party has been reprehensible or the party's stance has been beyond the band of what is reasonable" (paragraph 26)".

iv) One of the underlying philosophies of this rule is that the proceedings under the inherent jurisdiction in relation to minors or vulnerable adults are significantly essentially inquisitorial in character;

v) Thus, it is no particular surprise that the 'ordinary rule' of no order as to costs in cases under the inherent jurisdiction concerning a vulnerable adult appears to have been assumed by Peter Jackson J in *NHS Trust v D* at [14], and not apparently subsequently doubted;

vi) It is significant that that *rule 44.2(2)* opens with the words "*If* the court decides to make an order…" (emphasis by underlining/italics added) which stresses that the court may well consider not making an order at all.

Costs: the arguments

26. In her able submissions on behalf of the First and Second Respondents, Ms McDonnell argues that:

    i) The proceedings should never have been issued in the first place; they were unnecessary and issued without warning; having been issued, the First and Second Respondent had no real choice but to be drawn into these proceedings and to instruct lawyers to act on their behalf;

    ii) The proceedings have been conducted at a disproportionately intense pitch; the statements filed by the Applicants have been inordinately long and detailed; correspondence has been unnecessarily tendentious between the solicitors for the First and Second Respondent and the Applicants and the Official Solicitor; for their part, the First and Second Respondents have acted in a proportionate way;

    iii) It is difficult in cases of this kind under the inherent jurisdiction to identify who has been 'successful', and there is no 'winner' or 'loser' in this case for the purposes of *CPR 44.2(2)(a)*. However, Ms McDonnell maintains that the First and Second Respondents have not been *un*successful; they have done nothing wrong, and have at all times acted in what they believed to be in accordance with their uncle's wishes;

    iv) On 23 March 2021, the First and Second Respondents made an open ("pragmatic") offer in correspondence to resolve the proceedings, proposing that K should be attended upon by their expert Dr Warner and by the court appointed expert Professor Howard with a solicitor either from Furley Page (the local firm which offers specialist services for elderly and vulnerable clients retained by K to draft his 2020 will) or another firm, with the intention of executing new LPAs and taking instructions in relation to the existing will, the creation of a codicil, and/or drafting a new will. This proposal was of course predicated on the basis that K retained testamentary capacity; the proposal that a statutory will be created was rejected. That proposal was resisted by the Official Solicitor and by the Applicants, and a further three months elapsed before any such attendance actually took place on 22 June 2021 pursuant to my earlier order on 17 June 2021. The costs incurred by the First and Second Respondents at the time of the proposal were £72,650 (inclusive of VAT and disbursements): about one-third of their current costs liability;

    v) The First and Second Respondents are of limited means, and have struggled to meet their expenses; if K had capacity to authorise such expenditure, he would very readily do so: "one of his most deeply-held wishes is that no-one who looks after him should be financially disadvantaged";

    vi) The First and Second Respondents have acted entirely reasonably during these proceedings, have endeavoured to be proportionate and co-operative, and have made proposals to try to avoid unnecessary costs. No order for costs would have the effect of penalising them financially.

27. In her focused and helpful reply, Miss Hughes argued:

i) The usual rule is that there should be no order as to costs (see above); there is no reason to depart from the usual rule;

ii) No interlocutory order has to date been made in these proceedings which would indicate that the principle of 'no order as to costs' could or should be departed from here;

iii) Prior to the proceedings, the First and Second Respondents became directly involved in the purported revocation of the existing LPAs and the drafting of the new will; they were concerned to prevent the Applicants becoming aware of what was taking place, and refused to engage in discussions with them; at the material time, the First and/or Second Respondent knew that K was at least extremely suggestible ("*will do anything to please the person he is with at the time*");

iv) The Second Respondent was instrumental in communications and phone-calls being blocked between K and his friends/colleagues;

v) The letter of 23 March 2021 does not assist the First and Second Respondents:

a) in making these proposals, they revealed for the first time that they had irregularly instructed Dr Warner, without obtaining the agreement of the other parties or the court (the Official Solicitor having specifically asked for an assurance that she would be consulted for her view prior to the engagement of any expert);

b) the report of Dr. Warner had been predicated on misleading or inadequate information;

c) it is reasonable to conclude that Professor Howard's assessment was to be preferred; he had a more complete set of information available to him when he reported, and he had applied the correct/relevant test as to capacity; Professor Howard reached a different view as to K's testamentary capacity and capacity to create LPAs;

d) the proposal by the First and Second Respondent that K "be supported" by Dr Warner, Professor Howard, and a solicitor to (a) execute LPAs to put into effect his "current wishes" as to the attorneys he wishes to appoint in respect of both his health and welfare, and his property and financial affairs, and (b) to "take instructions" from him in respect of re-executing his 2020 will, or preparing a codicil to his 2020 will, or providing instructions on a new will would not comply with the underlying principles of the *MCA 2005*;

e) the letter made no proposal in relation to Ms B, nor did it address the blocking of communications between K and his friends / colleagues. Later communications (even as late as the round table meeting just before Easter) revealed that they were not proposing the replacement of Ms B;

vi) If there are 'winners and losers' in litigation of this kind, then the First and Second Respondents are plainly not the winners:

a) The will which was executed in November 2020 is to be replaced by a statutory will;

b) The LPAs which were purportedly created in November 2020 have not been, and will not be, registered;

c) The carer, Ms B, who was in place from the autumn of 2020 and to Easter 2021 has left.

Conclusion

28. Having considered all of the material rehearsed above, I have concluded that the proper order here should be no order as to costs. I say so for the following reasons.

29. First, I am satisfied that it was necessary for the Applicants to bring these proceedings, and it was perfectly understandable that they felt the need to "act out of conscience and a sense of duty" to K to do so; the Applicants had been alerted to a number of significant and concerning developments in relation to K's affairs, including the purported revocation of the LPAs created in the previous year, and the signing of a new will (replacing one created in 2019), benefiting to a material degree his new housekeeper/carer Ms B. It was understandably a matter of considerable concern that contact had been blocked with a number of K's longest standing and oldest friends and colleagues. It appeared that Ms B had ousted two individuals devoted to K's care, and substituted her own daughter. K's longstanding housekeeper was also dismissed by the First Respondent. In each case, there was clear evidence that K did not want them to go. In my assessment, the Applicants took appropriate steps to avoid litigation, raising their concerns directly with the First and Second Respondents, participating in the round table discussion in December (at which the decision was taken to remove Ms B, a decision which was not later actioned or even wholly supported by the First and Second Respondents), and providing for the First and Second Respondents their detailed draft witness statements in advance of proceedings, so that the First and Second Respondents could see what was likely to be said in the event of litigation.

30. I reject Ms McDonnell's submission that the application was issued without warning. Far from it.

31. Secondly, I find that it was necessary for the First and Second Respondents to be joined as parties to the litigation. I accept that at the time of the application the First Respondent gave every appearance of being:

> "… the central individual (or else alongside [the Second Respondent], one of the two main individuals) who in practice is really in control, and who has been taking the decisions regarding the vulnerable adult which are of concern (or at least which require light to be shed)." (e-mail 22.1.21)

The First Applicant wrote (same e-mail) to the solicitor at Furley Page for the Third Respondent as follows:

> "You'll appreciate that we have been asking for cooperation, and openness, consistently ever since 22 October 2020, but have not yet received it. The main facts we are aware of – in the absence of openness - are outlined in our detailed witness statements in support of the application". From an early point (e-mail 22 January 2021) the Applicants set out a compelling case for having included the First and Second Respondents into the litigation".

32. I do not accept Ms McDonnell's submission that "it is inevitable that Ms B would have been replaced in an appropriate manner or at least properly supervised." No effective steps were taken in this regard following the December 2020 round table meeting and thereafter the indications are that the First and Second Respondents were at best equivocal about dismissing her.

33. Thirdly, while it may well have been that the 23 March 2021 letter was sent with the best of intentions, I am satisfied that the Official Solicitor was perfectly entitled to reject the proposals contained within it. She was unaware that Dr Warner had visited K (and was in 'shock' to discover that he had done) and took a reasonable position on the proposal set out in that letter given the flawed basis (referencing specifically Dr Warner's report) on which it had been predicated.

34. Fourthly, I accept, as Ms McDonnell submits, that there has been very considerable amount of documentary evidence generated in this case which the First and Second Respondents have had to consider with their lawyers and to some of which they have had to respond. However, to my eye, the material filed by the Applicants was relevant and, although extensive, it was to the point; it was necessary to provide such a comprehensive narrative account in formal statements in order to provide the court with a proper understanding of the context for the dispute, and to correct some of the dissembling contained elsewhere in the documentation. Indisputably, the litigation has generated a significant amount of correspondence during 2021 between DMH Stallard (for the First and Second Respondents) and the other parties; this is at least in part because of the high level of mistrust between the parties, the personal affection for K by each of the parties and their investment in the litigation and its outcome, and the many 'fronts' on which this litigation has been presented. I am sure that, with hindsight, it is a source of considerable regret to all sides that so much material has been generated and money spent, but in this regard, I feel unable to pin responsibility only to the Applicants and/or the Official Solicitor.

35. Fifthly, and finally, it is my view that no order for costs is likely to be the appropriate starting point in welfare-oriented proceedings under the inherent jurisdiction concerning a vulnerable adult. In this type of litigation, as with proceedings concerning children, there are generally no winners or losers, and costs orders are therefore likely to be 'unusual' (see §25(iii) above). This is such a case – a rather depressing tale of which I suspect K, if he knew the full facts, would be profoundly distressed. If anyone can be assessed to be a 'winner' at this point, I can only identify K himself:

    i) He now has the benefit of professional independent court appointed Deputies;

    ii) The will which was signed in November 2020 is to be set aside and a new statutory will created;

iii) The LPAs which were purportedly entered into in November 2019 replacing the Applicants and appointing new Attorneys have not been registered; court appointed Deputies are now (or about to be) in place in relation to property and financial affairs and welfare;

iv) Ms B has left; since Easter, K's care has been provided satisfactorily by a new care agency.

v) Contact has resumed between K and his friends/colleagues; the security guards have left. K is free to be able to speak to and see his friends.

He is, in my assessment, in altogether a better place than he was when these proceedings commenced. For the avoidance of doubt, I accept Miss Hughes' argument that *if* it can be said that there has been any 'winner', it is neither the First nor the Second Respondent.

36. The First and Second Respondents must therefore bear their own costs, as will the other parties.

37. That is my judgment.