



Neutral Citation Number: [2020] EWCOP 51

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 26/10/2020

**Before:**

**MRS JUSTICE KNOWLES**

-----  
**Between:**

**THE HEALTH SERVICE EXECUTIVE OF  
IRELAND**

**Applicant**

**- and -**

**IM**

**Respondents**

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

**and**

**KENT COUNTY COUNCIL**

-----  
-----

**Mr David Rees QC** (instructed by **Bindmans**) for the Applicant  
**Miss Keri Tayler** (instructed by the **Official Solicitor**) for IM  
**Miss Christine Cooper** (instructed by the **local authority solicitor**) for Kent County Council

Hearing dates: 29 September 2020

-----  
**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.

.....

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the patient and members of their family must be strictly preserved. 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.

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

1. The application before me is for the determination of where IM, now aged 92 years, is habitually resident. She is presently living in Ireland, having moved there in September 2018. Prior to that move, she had been resident in Kent for over 55 years. If, as the Applicant contended, IM remained habitually resident in this jurisdiction, then issues as to her health and welfare were matters for the Court of Protection. If she was now habitually resident in Ireland as both Respondents contended, then such matters would fall within the jurisdiction of the High Court in Ireland.
2. In this judgment, I refer to the Applicant, the Health Service Executive of Ireland, as “the HSE”. It was represented by Mr David Rees QC. The Official Solicitor was represented by Miss Keri Tayler and the local authority, Kent County Council, by Miss Christine Cooper. I am grateful to all of them for their written and oral submissions.

*Procedural History*

3. Earlier Court of Protection proceedings were issued by the Office of the Public Guardian [“the OPG”] regarding the revocation of the Lasting Powers of Attorney for Property and Affairs and Health and Welfare granted in favour of IM’s grandson, VS. VS disclaimed his appointment as IM’s Property and Affairs and Welfare attorney and those proceedings concluded with a final order on 18 November 2019 when the court appointed a deputy for IM’s property and affairs.
4. It appears that, in June 2019, the HSE proposed the appointment of a personal welfare deputy for IM. It made its concerns about her welfare known to the OPG and to the interim property and affairs deputy appointed by the court. The HSE also filed reports with the court on 22 November 2019 stating its view that IM should return to England. By an order dated 4 November 2019, the HSE were invited to attend a hearing on 25 November 2019 when the court noted that one of the issues to be addressed at that hearing was IM’s habitual residence. The HSE attended court on 25 November 2019 but had not been told the hearing had already been vacated. This happened on 18 November 2019, the OPG having applied to withdraw the proceedings on 12 November 2019. The court concurred with that request on the papers and vacated the hearing on 25 November 2019 without apparent reference to the HSE’s concerns or the earlier direction that IM’s habitual residence remained in issue.
5. As the HSE was concerned that welfare issues relating to IM had not been resolved by the court’s final order, the HSE made an application on 25 November 2019 for the appointment of a personal welfare deputy for IM. That application was replaced by one dated 28 February 2020.
6. On 2 April 2020 I approved an order containing interim declarations as to IM’s capacity to conduct these proceedings and to make decisions about her residence and care. I also approved an investigation by the HSE into IM’s background and circumstances to enable me to determine the issues of residence and care. At a hearing on 15 May 2020, I listed this hearing to determine the question of IM’s habitual residence.

*The Background Facts*

Approved Judgment

7. The factual background to this matter is complicated by an absence of information about certain key issues. I have had to try and resolve some of the factual inconsistencies without hearing any evidence from those involved with IM's care. That is not unusual in what is intended to be a summary process to resolve doubt as to this court's jurisdiction to make decisions for IM.
8. Prior to September 2018 IM lived on the ground floor of a property in Kent and, despite her considerable age, was able to look after herself and go to the shops without assistance. The upper floor of the property appears to have been occupied by VS and his successive partners. According to NS, VS's sister, he appears to have lived with IM on and off since he was about 15 years old though VS told IM's solicitor that he had lived with IM for about 15 years. It is, however, beyond doubt that VS provided practical and other assistance to IM from time to time and it is reasonable to infer that the demands on him as her informal carer probably increased over time. IM's GP records contained many references to IM receiving support from VS as did the records from the Enablement at Home Service in 2017. IM also had other relatives living in Kent including NS, but her relationship with them seems to have been more at arm's length.
9. There were conflicting accounts of IM's relationship with VS. NS described a toxic and abusive relationship in which VS moved into IM's property and of IM being "too scared" to do anything about it. She stated that VS's then girlfriend used IM's bank card to take money from IM and alleged that VS and his partner also agreed with a builder to overcharge IM for work done on the roof of her property. A statement apparently made in connection with non-molestation proceedings in 2010 between NS and VS stated that, after Christmas 2009, IM broke down in tears on the telephone and told NS that VS had taken £6,000 from her. NS had encouraged IM to get VS to move out and believed that IM was scared of VS. From about 2013 NS had had several telephone calls with IM in which IM described VS "going berserk at her" and said that living with him was "like mental torture". In January 2013, a safeguarding alert was raised by Kent County Council following an allegation from NS that VS had taken money and a bank card from IM but, surprisingly, no further action was taken.
10. It is important to note that none of these allegations have been put to VS and he has filed no evidence in these proceedings. The relationship between him and NS is clearly very poor indeed. By contrast, his former partner, SFC, told the OPG that IM doted on VS though she did confirm that his behaviour could be unreliable, volatile, and erratic. She told the Official Solicitor in May 2020 that VS had been very close to IM and had helped with her medication, hospital appointments, shopping, and other matters. She confirmed that IM would not have chosen to move to Ireland herself but would have gone along with what VS wanted as she relied on him. On the contrary, IM used to talk about remaining in her home and spoke about family buried in the local cemetery. I note that another relative, FS, described VS as doting on and worrying about his grandmother.
11. In May 2017, IM then aged 88, was referred to her local memory clinic due to concerns about cognitive deterioration. IM's disclosed medical records make no further reference to any action being taken as a follow-up to that referral. Coincidentally, in May 2017, Lasting Powers of Attorney ["LPAs"] for Property and Affairs and for Health and Welfare were executed in favour of IM's grandson, VS and his then partner, SFC. The LPAs were registered in July 2017. In July 2018, presumably consequent on the

Approved Judgment

breakdown of VS and SFC's relationship, a partial deed of revocation was made, removing SFC as attorney and leaving VS as sole attorney. IM engaged a solicitor to act in those matters and there were no concerns raised as to her capacity.

12. In November 2017, IM was admitted to hospital after a fall. She was assessed as having the capacity to make the decision about her discharge home with a package of reablement care. On 18 February 2018, IM was the subject of an over-75s well person assessment. The assessment report expressly recorded that there were no concerns about IM's memory. It also recorded that IM knew what her medication was for. I note that she had a diagnosis of Chronic Obstructive Pulmonary Disease. In May 2018, IM was once more assessed, but no concerns were recorded about her mental capacity. She was further assessed for chest pain by ambulance staff on 17 August 2018 who expressed no worries about her mental health. She was then seen in the Accident and Emergency Department of the local hospital and there was no record of IM being confused or mentally impaired at that time.
13. However, in May 2018 it appears that IM was having frequent urinary tract infections and was struggling to manage her medication due to apparent confusion. In July 2018 three months of medication was requested from the pharmacy as IM was said to be going on holiday. Another prescription was requested in November 2018, but there was no-one at IM's home when it was delivered.
14. In Spring/Summer 2018, IM told another relative, FS, about a move to Ireland and the plan for her to live there with VS and AM (VS's new partner). When contacted by the Official Solicitor in May 2020, FS described IM as being quite happy with the proposed move. On 23 July 2018, IM told her GP about a proposed move to Ireland and the medical records showed that she knew and understood that her house was being sold. She once more discussed the move with her GP on 20 August 2018 and had apparently understood and retained the relevant information. The GP recorded that IM was stressed and emotional and did not want to move to Ireland. However, he raised no concerns that IM lacked the capacity to decide to move.
15. On 17 September 2018, IM's home was sold for £290,000 by VS. Solicitors acting for him confirmed to the OPG in January 2019 that VS had managed the sale of IM's property and that "*everything was done legally and above board*". At that time IM was staying with AM. No-one in England saw IM or VS after that, including NS, friends, and neighbours though and it subsequently transpired that IM, VS and AM moved to Ireland in September 2018. A safeguarding alert was raised by the OPG with Kent County Council in January 2019 and the police were also notified. There were concerns that IM had not been registered at a new GP and so might not have been getting the medication she needed, and that her post was being redirected to AM's address. These concerns were initially raised by NS who had passed IM's house and had seen a skip outside. She established that the property had been sold and became concerned for IM's welfare. It was clear that NS had not been told about IM's move to Ireland with VS and also did not know about the Lasting Power of Attorney. She reported IM's disappearance to the police and wrote to the OPG which commenced an investigation into possible financial abuse of IM.
16. Investigations by the OPG established that 7 of IM's bank accounts had been closed and the funds transferred to other accounts in the UK. Withdrawals had been made in a variety of locations including Ireland and Spain. It appeared that a lot of money had

Approved Judgment

been spent in Irish pubs and money had been transferred to deceased individuals. A property in Ireland had also been purchased. That investigation concluded with VS renouncing both powers of attorney. Though no findings were made against VS in the earlier Court of Protection proceedings brought by the OPG, the evidence pointed to VS having failed to manage IM's funds properly and to him having spent some of her money. However, VS reimbursed those monies from the proceeds of sale of AM's property and IM's funds of £291,480.17 have been transferred in full to the property and affairs deputy appointed by the court.

17. Following the commencement of the police investigation, VS's solicitor contacted the OPG in January 2019 and gave an address for IM in Ireland where she was living with VS and AM. IM was also registered with a GP who reported that she had been confused on all the occasions she had been seen.
18. On 16 November 2018, IM was admitted to the OLL nursing home ["OLL"] for respite care. She was discharged on 19 December 2018 and VS engaged a carer to help with her care, but IM was readmitted to OLL on 24 January 2019 from hospital. Her capacity was not assessed whilst she was in hospital. Kent County Council asked the HSE to assess her needs and to undertake safeguarding checks. When Irish police visited VS's address, he said that IM was in hospital which was incorrect. Kent County Council closed its investigation at this stage on the basis that IM was now in Ireland. On 4 February 2019, IM's new GP visited her and produced a report for the OPG. No special concerns about her residence and care arrangements were raised. VS and AM were reported to visit her along with the carer who had been supporting IM in the community since her arrival in Ireland.
19. In May 2019 a social worker with the HSE, DB, raised concerns that VS and AM were threatening to remove IM from the nursing home. It appears that IM was moved to a different unit in the home as VS and AM had complained about another resident with dementia using foul language. IM was moved into a shared room and though apparently content, she expressed a preference for a single room. AM was reported to have said that, if IM were not moved to a single room, she would take IM to another nursing home.
20. Since IM's admission to OLL in January 2019, there have been periods of confusion noted in her records, and a medical assessment in February 2019 found her to lack capacity to manage her property and affairs. The most recent assessment of capacity in May 2020 found IM to be orientated in person but not in place or time and to have very little knowledge of her surroundings. Her immediate recall was extremely poor, and she was considered to be unable to make informed decisions in any capacity.
21. To date, IM remains resident in the OLL nursing home. Though the care home notes recorded on many occasions that she was anxious and worried, after December 2019 IM appeared to be more settled. She has given the Official Solicitor contradictory views regarding the care home: on 3 June 2020 she said "*I don't know anyone here. I can't make friends with anyone*" whereas on 28 May 2020 she said "*I like it here. It's nice here*". However, on 28 May 2020, IM told the Official Solicitor that she believed she was resident in a care home in England. When asked on 28 May 2020 where she would prefer to live, IM said "*If I come back to England, I will come back to nobody, and the people I know here, I don't really know either. So, it's awkward me saying this because I can't really tell you...*". She was confused about whether her family were visiting her.

Approved Judgment

On 3 June 2020, when asked where she would like to live, IM said she wanted to stay in Ireland because this was where VS was living and described him as the only family she had. She was unaware of who FS was and thought she had met NS only once.

22. VS visited last in January 2020 prior to the outbreak of the Covid-19 pandemic and has telephoned on about three occasions in 2020 though I note he told the Official Solicitor that he telephoned every month. OLL records noted that IM has asked staff on many occasions to telephone VS so she might speak to him. VS has also confirmed to the Official Solicitor that he intends to remain living in Ireland. In contrast, NS has not spoken to IM as she says she cannot afford the cost of the telephone calls because she is receiving Universal Credit.

*The Legal Framework*

23. The parties were agreed as to the legal framework and jurisprudence I should consider in resolving this matter. I am indebted to Mr Rees QC for much of what follows.
24. The starting point for consideration of the court’s jurisdiction in cross-border matters is Schedule 3 of the Mental Capacity Act 2005 [“the MCA”]. Section 63 of the MCA 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 13<sup>th</sup> January 2020 (Cm. 5881) (insofar as this act does not otherwise do so), and*

*b) makes related provision as to the private international law of England and Wales.”*

The 2000 Hague Convention [“the Convention”] relates to “*adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests*”. Like other Hague Conventions, this provides a framework for the mutual recognition of measures by contracting states. Underlying the Convention is a presumption that jurisdiction over persons to whom the Convention applies will primarily be exercised by the courts of the state in which they are habitually resident. The Convention came into force on 1 January 2009 (following its ratification by three states). It has now been signed by 18 states including the United Kingdom and Ireland. Though the United Kingdom has ratified the Convention, it has declared that the ratification applies to Scotland alone and thus the Convention is not yet in force in England and Wales. Ireland has not ratified the Convention. Therefore, the Convention does not apply in this case and recourse must thus be had to the wider provisions of Schedule 3 of the MCA.

25. In summary, certain provisions within Schedule 3 which make direct reference to certain aspects of the Convention (such as cross-border placements) are not yet in force. However, the greater part of Schedule 3 is in force and these provisions are clearly based upon the Convention and make use of Convention terms including “*habitual residence*”. Schedule 3 para 2(4) expressly provides that “*an expression which appears in this Schedule and in the Convention is to be construed in accordance with the Convention*”. The effect of the parts of Schedule 3 currently in force is to (a) clarify the scope of the Court of Protection’s substantive jurisdiction and provide for the court to

Approved Judgment

exercise this jurisdiction in certain circumstances even where the person in question is not habitually resident in England and Wales; and (b) provide for the recognition and enforcement in England and Wales of orders of foreign courts relating to persons who lack capacity. However, these provisions are of general application and, unlike the Convention, do not require the relevant foreign state to have assumed reciprocal obligations to recognise English orders.

26. Schedule 3 para 7(1) provides 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,*

*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.”*

27. It should be noted that “*adult*” has a specific definition under Schedule 3 para 4, namely being a person who “*as a result of an impairment or insufficiency of his personal faculties, cannot protect his interests, and has reached 16*”. This definition is not identical to the Convention meaning and is not confined to persons who lack capacity within the meaning of section 2 of the MCA. Further, it should also be noted that Schedule 3 para 7 is not on all fours with the Convention. Under Article 9 of the Convention, the authorities of a Contracting State where the property of the adult is situated have jurisdiction to take measures of protection concerning that property, “*to the extent that those measures are compatible with those taken by the authorities of the state of habitual residence*”. That limitation is not found in Schedule 3 para 7(1)(b), so where an adult has property in England and Wales, the Court of Protection has jurisdiction over it concurrent with the courts of the state of habitual residence (see Re O (Court of Protection: Jurisdiction) [2014] Fam 197 at [10] and [28]).

*Habitual Residence*

28. “*Habitual residence*” is defined in neither the MCA nor the Convention. In An English Local Authority v SW and Others [2014] EWCOP 43, Moylan J (as he then was) held that the meaning to be given to habitual residence in the context of the Convention and the MCA should be the same as in other family law instruments such as the 1996 Hague Child Protection Convention and Council Regulation EC 2201/2003 (Brussels IIA) though he also acknowledged that different factors will be relevant and will bear differential weight (see [64]-[65]).

29. Thus, habitual residence is to be determined in accordance with the guidance given by the Supreme Court and the Court of Justice of the European Union in a number of recent cases. The following principles are key:



Approved Judgment

- a) Habitual residence is a question of fact and not a legal concept such as domicile (A v A (Children: Habitual Residence) [2014] AC 1 at [54]);
- b) The test adopted by the ECJ is the “*place which reflects some degree of integration by the child in a social and family environment*”. The child’s physical presence should not be temporary or intermittent (Proceedings brought by A (Case C-523/07) [2010] Fam 42 at [38]);
- c) Consideration needs to be given to conditions and reasons for the child’s stay in the state in question (Mercredi v Chaffe (Case C-497/10PPU) [2012] Fam 22 at [48]);
- d) The essentially factual and individual nature of the enquiry should not be glossed with legal concepts which would produce a different result from that which the factual enquiry would produce (see A v A above at [54]);
- e) Both objective and subjective factors need to be considered. Rather than consider a person’s wishes or intentions, it is better to think in terms of the reasons why a person is in a particular place and his or her perception of the situation while there - their state of mind (Re LC (Children) [2014] AC 1038 at [60]);
- f) It is the stability of the residence that is important, not whether it is of a permanent character (Re R (Children) [2016] AC 76 at [16]); and
- g) Habitual residence is to be assessed by reference to all the circumstances as they exist at the time of assessment (FT v MM [2019] EWHC 935 (Fam) at [13]).
30. In Re LC (Children) (see above), Baroness Hale stressed the need to look at the circumstances which led to the move in question:
- “The quality of a child’s stay in a new environment, in which he has only recently arrived, cannot be assessed without reference to the past. Some habitual residences may be harder to lose than others and others may be harder to gain. If a person leaves his home country with the intention of emigrating and having made all the necessary plans to do so, he may lose one habitual residence immediately and acquire a new one very quickly. If a person leaves his home country for a temporary purpose or in ambiguous circumstances, he may not lose his habitual residence there for some time, if at all, and correspondingly he will not acquire a new habitual residence until then and later. Of course there are many permutations in between, where a person may lose one habitual residence without gaining another”.*
31. In An English Local Authority v SW (see above), Moylan J made the following additional points:
- a) The overarching test for habitual residence should be the same whether one is considering adults or children, although different factors may or will have differing degrees of relevance [66].
- b) The expression “*degree of integration*” is an overarching summary or question rather than the sole, or even necessarily the primary factor in the determination of habitual residence. The court’s focus should not be narrowed to this issue alone as a question of fact [68] and [72].

Approved Judgment

- c) Integration, as an issue of fact, can be an emotive and loaded word. It is not difficult to think of examples of an adult who is not integrated at all in a family environment and only tenuously integrated in a social environment but who is undoubtedly habitually resident in the country where they are living. Integration as an issue of fact can also raise difficulties when a court is determining the habitual residence of a person who lacks capacity [70].
- d) The court “should not lose sight of the wood for the trees” [71].
32. Where an incapacitous adult has been moved from one jurisdiction to another, the question of the authority that the person effecting the move had to make it is also important. In Re MN (Recognition and Enforcement of Foreign Protective Measures) [2010] EWHC 1926 (Fam), Hedley J held that a move which was wrongful should not effect a change in the habitual residence of the incapacitated adults and should leave the courts of the country from which that person was taken free to take protective measures [22]. In determining whether a decision is wrongful, the court must look not only at the terms of the authority conferred upon the person taking the decision, but also at their motives for taking that decision.
33. The fact that the person effecting the move has formed a subjective view that it is in P’s best interests may not suffice to prevent the move from being wrongful. Pursuant to s.4(9) and s.5(1)(b) of the MCA, a person making a decision on behalf of an incapacitous adult must “*reasonably believe*” the decision to be in their best interests. Thus, in Re QD (Jurisdiction: Habitual Residence) (No 1) [2019] EWCOP 56, Cobb J held that a decision by P’s children to move him from Spain to England was wrongful and that they could not rely upon the doctrine of necessity [29]. The judge indicated that, whilst they may have believed that they were acting in P’s best interests, this was not a reasonable belief on their part.

*The Parties’ Positions*

34. These can be summarised shortly. The HSE submitted that IM remained habitually resident in England. To the extent that she was capable of taking the decision to move to Ireland, this was a decision taken under the pressure and influence of VS. This could be seen from the history of VS’s influence over her; his control over her finances; her failing capacity and vulnerability; and her previous clear statements that she wished to remain in Kent (contrasted with the limited evidence of a positive wish on her part to move to Ireland). Alternatively, to the extent that the decision was taken by VS acting as IM’s welfare attorney, it was not a decision taken in good faith but was taken with the collateral purpose of obtaining access to the proceeds of sale of her home as demonstrated by his subsequent actions. It was thus “*wrongful*”, to adopt the language of Hedley J in Re MN. Though the HSE accepted that there was an element of stability to IM’s current placement, Mr Rees QC submitted that it could not be said she had yet acquired a habitual residence in Ireland, given the reasons why she was present in Ireland and her perception of her own situation.
35. In contrast, Kent County Council and the Official Solicitor submitted that IM was now habitually resident in Ireland. Whilst there was some evidence of cognitive decline prior to IM’s move to Ireland, this was insufficient to rebut the presumption that IM had the capacity to decide on a move to Ireland. Further, there was insufficient evidence for the court to find that IM was subject to coercion and undue influence by VS and that the

Approved Judgment

move was not wholly voluntary on her part. It was now impossible to speak to IM about VS's earlier behaviour towards her; NS did not wish to become involved in the litigation; and VS had not had an opportunity to respond to the allegations about his behaviour. IM had now lived in Ireland for two years; was settled at OLL; and was content to stay there.

36. All the parties recognised that this was not a case where it was easy to assert one way or the other whether the court continued to have jurisdiction to make decisions on behalf of IM.

*Discussion*

37. On the evidence available to me, I have concluded that IM is now habitually resident in Ireland. The following matters have influenced my conclusion. I have treated accounts given by family members with a degree of caution and looked for corroboration from other sources before relying on them.
38. First, I have assumed that IM had the capacity to decide to move to Ireland in September 2018 unless it was established that she did not. There is some evidence that IM's capacity fluctuated, particularly when she was suffering from infections. Thus, she was referred to a memory clinic in May 2017 and was also reported to be confused about her medication in spring 2018, at a time when she was suffering from urinary tract infections.
39. However, there is a larger body of evidence suggesting that IM had the capacity to make the decision about moving to Ireland. When discharged from hospital in November 2017, IM was assessed as having the capacity to make the decision about her discharge home with a package of re-enablement care. The assessment carried out in February 2018 expressly recorded there were no concerns about IM's memory. Likewise, the assessment carried out in May 2018 raised no concern about IM's mental capacity. In August 2018 IM's contact with the ambulance service and with the Accident and Emergency department of the local hospital did not give rise to concerns about her being confused or mentally impaired. Though IM told her GP about the proposed move to Ireland on 23 July 2018 and again on 20 August 2018, her GP raised no concerns that IM lacked the capacity to decide to move even though he recorded her in August 2018 as being stressed and emotional and not wishing to move. I also note that IM was deemed to have capacity by her solicitors both to execute LPAs in May 2017, and to remove SFC as an attorney in July 2018.
40. Evidence of sustained cognitive decline only emerged in late October 2018 when IM was suffering from a succession of urinary tract infections requiring hospitalisation. It is unsurprising that those infections had an effect upon her cognition. Since her admission to OLL in January 2019, there have been periods of confusion noted in her records, and medical assessment in February 2019 found IM to lack capacity to manage her property and affairs. It is clear that she presently lacks capacity to make fully informed decisions.
41. Standing back and looking at matters in the round, I have concluded that IM had the capacity to decide to move to Ireland with VS and AM in the summer of 2018. Evidence which would rebut the presumption of capacity did not emerge consistently until after the move took place.

Approved Judgment

42. Second, I find myself unpersuaded that IM's decision to move to Ireland was a decision taken under unreasonable pressure from VS. The relationship between IM and VS was undoubtedly complex. He provided her with care and support as her medical records attested and she was wholly reliant upon him. I have no doubt that IM's decision to move to Ireland was made with the knowledge that she needed VS to care for her and did not want to live in England without him. That relationship of dependency between an elderly vulnerable person and their carer is entirely common and understandable. Though it is difficult to see objectively why IM would wish to move from Kent where she was long established and had potent family connections, the need to be with VS is likely to have displaced these and other considerations when IM agreed to move. For IM, the most important consideration would have been that she would continue to live with VS, who would look after her as he had already done for many years.
43. No one involved with IM at the time was sufficiently concerned before the move to assist her in seeking advice support from statutory agencies. The move to Ireland was not achieved by stealth or made in an overly hasty manner. VS made no attempt to conceal the proposed move and IM discussed it freely with her GP and with FS over time. Her misgivings about moving expressed to the GP in August 2018 were understandable but do not, of themselves, suggest that IM had not voluntarily decided to move. Though that decision might have been unwise given that IM was leaving behind all she was familiar with, it was not without emotional and practical justification as far as IM was concerned.
44. Mr Rees QC submitted that, to the extent that VS took the decision for IM acting as her welfare deputy, it was not a decision taken in good faith but was taken with the collateral purpose of obtaining access to the proceeds of sale of IM's home as demonstrated by his subsequent actions. There is little doubt that VS handled IM's money in a manner which properly aroused suspicion with the OPG. Given that the money lawfully owing to IM has been accounted for and repaid by VS with little protest, this might suggest that his dealings with IM's money were characterised by incompetence and a failure to understand his duties pursuant to the property and affairs LPA rather than by a desire to enrich himself permanently at IM's expense. There may be more than a kernel of truth in the account given by his solicitor to the OPG in January 2019, which detailed confusion and incompetence in managing the proceeds of sale. Whilst a matter of concern to the OPG and to this court, such dealings are not uncommon especially when many relatives have a poor understanding of their duties pursuant to a property and affairs LPA. Furthermore, there is no suggestion that IM was placed in a care home so that VS and AM could avail themselves of her money without the bother of caring for her. The move to OLL in November 2018 was prompted by IM's poor health and I note that, on discharge from OLL in December 2018, IM returned to live with VS and AM who engaged a carer to help with her care. Her return to OLL appears to have been prompted by her medical and care needs and not because she had been abandoned by VS. Though concerned by VS's behaviour with respect to IM's property, I am not persuaded that the desire to enrich himself at IM's expense was the sole justification for the move to Ireland.
45. Third, IM is now settled in Ireland at OLL and, judging from her behaviour, is seemingly content to stay there. She was settled there in April 2020 when I made interim declarations. I make clear that the passage of time since that date has played no part in my decision making as it would be improper to turn the delay caused by the pressure

Approved Judgment

on court lists to the disadvantage of the HSE. IM has also maintained some contact with VS though it has undoubtedly been affected by the Covid-19 pandemic. He is plainly still the most important person in her thinking as confirmed by her discussions with the Official Solicitor. No other relative has sought to contact or visit her and IM has not sought the assistance of OLL staff to contact either NS or FS. I place little weight on IM's lack of awareness of which country she is resident in given her cognitive decline, recently evidenced in May 2020. To the extent that a very elderly and cognitively frail lady living in a care home can be said to be integrated into her environment, IM undoubtedly is. She has a local GP and connections with VS and his partner in the wider community.

Next Steps

46. Mr Rees QC suggested that, if I concluded that IM was habitually resident in Ireland, I might decide to exercise the inherent jurisdiction to make decisions about IM's welfare given her British citizenship. Given that her property was in this jurisdiction, Mr Rees QC submitted that England and Wales remained the most appropriate forum in which to take decisions about IM. The Official Solicitor and Kent County Council opposed this course and submitted that these proceedings should be brought to a conclusion, leaving it to the HSE to bring such proceedings in the Irish High Court it considered necessary with respect to IM.
47. Mr Rees QC acknowledged that, if I declined to exercise the inherent jurisdiction with respect to IM, the HSE envisaged bringing proceedings in the Irish High Court to determine IM's best interests as to residence. If she were to remain resident in Ireland, the Irish High Court would be asked to approve steps to obtain the transfer of her property from England to the General Solicitor for Minors and Wards of Court in Ireland.
48. Having reflected on the HSE's submission, I decline to exercise the inherent jurisdiction with respect to IM. To apply the inherent jurisdiction in this case as a means of making orders with respect to IM would constitute a subversion of the comprehensive regime available in the MCA for those who lack capacity to make decisions about welfare, property and other matters as IM clearly does. Further, it would improperly reserve to this court decisions about IM's welfare when there is a robust and appropriate jurisdictional framework in Ireland for taking such decisions about a person who is habitually resident there.
49. There will be a further hearing listed at which I will consider making declarations and ancillary orders to bring these proceedings to a conclusion and to facilitate such proceedings as may be necessary with respect to IM in Ireland.

*Additional Observations*

50. The HSE has throughout acted entirely properly in bringing its concerns about IM to the attention of this court, to her (then interim and now confirmed) property and affairs deputy, and to the OPG. Though I have not heard from the OPG, it is regrettable that the OPG applied to withdraw the proceedings on 12 November 2019 when it knew that the issue of IM's habitual residence was a matter unresolved by the court and did so without drawing that issue to the court's attention. It is equally unfortunate that the court acceded to that application on paper without apparently recognising the

**Approved Judgment**

unresolved issue of habitual residence though I note it did not then have available to it the reports submitted by the HSE on 22 November 2019 (although it did have available to it the HSE's earlier report from June 2019).

51. Mr Rees QC invited me to give guidance to avoid such a situation arising in future. I think that is difficult without the necessity for further enquiry which would prolong these proceedings and incur additional costs. However, it seems self-evident to me that care should be taken in concluding proceedings on paper where there are unresolved issues which might potentially have implications for the court's jurisdiction and, most importantly, the welfare of a vulnerable and incapacitous person. Further, it seems to me that parties to proceedings should properly draw the court's attention to those unresolved issues when making applications which might bring the proceedings to a conclusion. Had the OPG done so, the hearing on 25 November 2019 might well have gone ahead.

*Conclusion*

52. That is my decision.