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Neutral Citation Number: [2021] EWCOP 57

Case No: 13785356

IN THE HIGH COURT OF JUSTICE
COURT OF PROTECTION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/10/2021

Before :

MRS JUSTICE LIEVEN

- -

Between :

AB

Applicant

And

XS
(P, by her litigation friend the Official Solicitor)

Respondent

- -
- -

Mr Parishil Patel QC (instructed by **DWF Law**) for the **Applicant**
Mr John McKendrick QC and Mr Alex Ruck Keene (instructed by **Mackintosh Law** on behalf of the **Official Solicitor**) for the **Respondent**

Hearing dates: **7 October 2021**

- -

Approved Judgment

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MRS JUSTICE LIEVEN

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 incapacitated person 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.

Mrs Justice Lieven DBE :

1. This case concerns XS. XS is a 76 year old woman who currently resides in Lebanon and is a dual UK and Lebanese citizen. The Applicant is her cousin, AB, who lives in London and wishes XS to return to the UK. The Applicant was represented before me by Parishil Patel QC and XS, through her litigation friend the Official Solicitor, by John McKendrick QC. I am very grateful to both of them for their clear and succinct submissions. The application is supported by XS's nephew, GH, who has been concerned with her care throughout the time she has been in Lebanon.

Background Facts

2. XS was born in 1944 in Lebanon. She came to the UK in 1971 and at some point became a UK citizen. Sadly in 2013 she was diagnosed with Alzheimer's Disease and was for a time that year detained under the Mental Health Act 1983 ('MHA'). In late 2013 she was discharged home. In April 2014 she had a fall at home and was admitted to University College Hospital. On 8 May 2014 there was a best interests meeting at which the professionals agreed she did not have capacity in respect of her residence and that she should be discharged to a care home.

3. On 25 May 2014 she moved to live at a care home in North London. The notes at this time refer to her discussing going to Lebanon to visit her family and friends, including her brother R. There is some reference to her wanting to visit but not want to stay there forever. On 9 September 2014 there is a case note that records XS saying that she would like to visit Lebanon to "trial it out". The notes are not particularly clear as to how much of this plan was XS's idea and how much that of her family, but she was certainly keen to go to Lebanon for a time without there being evidence of her committing to a permanent move.

4. On 10 September 2014 a capacity assessment was undertaken, and it was concluded that XS had capacity to enter into a Lasting Power of Attorney ('LPA'). XS's solicitor, Ms Perkins, produced an attendance note at the time which indicated she believed XS had capacity. Further, she was examined by Dr Ruth Allen, a consultant old age psychiatrist, who also confirmed her capacity. The LPA was entered into on 11 September 2014 and was later registered. I note at this point that at an earlier hearing I held that the LPA was valid, all the relevant requirements having been met and the evidence being clear and unchallenged that XS had capacity at the time she entered into the LPA.

5. Later in September 2014 XS travelled to Lebanon and she moved into a flat very close to that of her brother, R. Sadly, in April 2016 R died. Following his death, XS was moved into a care home in Beirut. Although the evidence at this point is not entirely clear, there is a strong implication from the material I have seen that by this date XS no longer had capacity, certainly in respect of where and in what country she lived. Her nephew, GH, who is R's son, filed a witness statement in these proceedings referring to having tried to consider what was best for XS at that time, and her having been moved to a care home. The fact that GH was deciding these matters, and the sense of his evidence, is that XS had lost capacity by this point.

6. I note that the Applicant has not seen XS since 2015 because of her own health issues and consequent inability to travel to Lebanon. GH has seen her on occasions when he has been visiting Lebanon, although he now lives in Dubai.

7. The Applicant says that she has wished to bring XS back to the UK for a very considerable time as she is certain that is what XS would have wished. However, her efforts to do so have been thwarted by two of XS's nephews. The Applicant's evidence is that both of these nephews live in the USA and have never visited or cared for XS. The Applicant believes that their motivation for seeking to keep XS in Lebanon is financial. I cannot be sure that this is the case, however these proceedings have been served upon XS's nephews and neither has chosen to participate in these proceedings. There is no evidence that the actions that they have taken in Lebanon in respect of XS have been motivated by considerations of either her best interests or what she would have wished.

8. In 2018 the Applicant commenced proceedings in Lebanon to try to gain an order for XS to be brought back to the UK. In April 2019 the Lebanese Court appointed an independent Guardian and in February 2020 a new Guardian was appointed, Ms Itani. On 17 September 2020 the Lebanese Court ordered, with the agreement of Ms Itani, that XS could be taken back to the UK. However, on 7 December 2020, XS's nephews obtained a Travel Ban order from the Lebanese Court. It seems the order was made in October but only sealed or registered in December 2020.

9. Professor Malat, who was appointed as an expert in Lebanese law in this court, has raised a number of concerns about the Travel Ban order, including that it appears to have been made ex parte and without notice to the Guardian. The order has been appealed by the Guardian and there is a hearing listed in Beirut on 27 October 2021.

10. In the light of these events, the Applicant commenced proceedings in this court on 16 April 2021. The Applicant sought rulings on two issues, an application to relocate XS to the UK, and orders in relation to the LPA.

11. In seeking the order for return to the UK, the Applicant relies upon the well-known problems that are facing Lebanon at the present time. In particular, the Applicant refers to the economic difficulties within the country which have led to shortages of medical supplies. It appears that, so far, the medicines XS needs have been obtainable, at least on the black market, but there is necessarily some uncertainty over whether this will remain the case. The Applicant says that this is not a long term and sustainable solution to meeting XS's needs.

12. When there was the major explosion in Beirut in 2020, XS's care home was damaged and for a few days XS was moved out. However, she and presumably other residents, were quite quickly allowed to return. There is no evidence that the care within the Home is anything other than good, or that XS is not comfortable and well looked after there.

13. The Applicant has made arrangements for a medical charter flight to take XS to London if the order is made, and for a place in a care home in London to be available for her.

XS's medical condition

14. Two medical reports have been filed in the proceedings. The Applicant produced a report by Dr Syed who had carried out a desk-top assessment based on the material filed in the proceedings. Dr Syed's report included:

> *"It is quite clear from Dr El-hout's report that [XS's] mobility is quite poor and also she is unlikely to understand why she might be travelling from Lebanon to London. Patients with dementia find it quite difficult to adapt to new circumstances and are used to routine. Therefore, any changes in [XS's] routine are likely to cause her some distress. Given that her mobility is poor and that she requires a wheelchair, she will undoubtedly need close assistance possibly by two companions who are well acquainted in dealing with patients with dementia throughout the flight. It is also well-known that long haul flights can cause increased confused in patients with dementia due to changes in time zones, fatigue and noise."*

15. Dr Syed concluded:

> *"a. as [XS] was in the advanced stages of Alzheimer's, she would be unable to express herself, and that it was not possible to say what her wishes would be "in terms of her relocation from Lebanon to London.*
>
> *b. any disruption in the provision of prescribed medication for [XS] was likely to affect her well-being, and if "there [was] a high risk … of interruptions in treatment due to lack of medical supplies, then quite clearly the UK would be a better choice."*

16. The Official Solicitor instructed an assessment of XS by Dr Karam, an adult and geriatric psychiatrist in Beirut. Dr Karam visited XS and his conclusions can be summarised as follows:

> a. Dr Karam met with [XS] on 18 September at her care home. He was unable to interview [XS] because she is non verbal and in the advanced stages of dementia. He was able to speak with the nurse in charge of her care, [XS's] carer and review her medical charts.
>
> b. She suffers from 'severe and advanced stages of dementia'.
>
> c. Her medical condition is deteriorating. "I will not be surprised if she decompensates acutely at any moment leading to her death".
>
> d. She resides and is cared for in a private room. Consultants from the attached hospital supervise her treatment. "She is receiving very good medical and nursing care. All her medical and nursing conditions are being addressed and promptly".
>
> e. There are frequent power outages in Lebanon and the situation is worsening. "This is not affecting [XS] however".

f. There is a nationwide shortage of medication. [XS]'s treatment however has not been impacted so far.

g. She is in advanced stages of dementia so has very little reactivity to her environment. A change of environment and loud noises (from the plane) may be disturbing and she may become more confused.

h. "In my opinion, as she is already in the severe and advanced stages of dementia, and as prognosis is bad, I do not expect an improvement in her medical and mental condition is (sic) she moves to the UK. Her needs are being well met in Lebanon." However, if she develops an acute complication requiring immediate intervention this may not be readily available in the Lebanon.

The issues

17. There are three issues in the case:

a. Whether XS is habitually resident in England and therefore the Court of Protection retains jurisdiction;

b. Whether the High Court can make an order for XS to return to the UK under the inherent jurisdiction;

c. Whether it is in XS's best interests to be brought back to the UK.

Mental Capacity Act 2005

18. Section 63 of the Mental Capacity Act 2005 ('MCA') states:

"63. International protection of adults

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 (Cm. 5881) (in so far as this Act does not otherwise do so), and

(b) makes related provisions as to the private international law of England and Wales.

19. Relevant excerpts from Schedule 3 state (emphasis added):

"4. Adults with incapacity

(1) "Adult" means (subject to sub-paragraph (2) a person who–

(a) as a result of an impairment or insufficiency of his personal faculties, cannot protect his interests, and

(b) has reached 16.

5. Protective measures

(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.

(2) Where a measure of like effect to a protective measure has been taken in relation to a person before he reaches 16, this Schedule applies to the measure in so far as it has effect in relation to him once he has reached 16.

…

7.

(1) The court may exercise its function 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.

(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.

…

13(1) If the donor of a lasting power is habitually resident in England and Wales at the time of granting the power, the law applicable to the existence, extent, modification or extinction of the power is –

(a) the law of England and Wales, or

(b) if he specifies in writing the law of a connected country for the purpose, that law.

(2) If he is habitually resident in another country at that time, but England and Wales is a connected country, the law applicable in that respect is -

(a) the law of the other country, or

(b) if he specifies in writing the law of England and Wales for the purpose, that law.

(3) A country is connected, in relation to the donor, if it is a country –

(a) of which he is a national,

(b) in which he was habitually resident, or

(c) in which he has property.

(4) Where this paragraph applies as a result of sub-paragraph (3)(c), it applies only in relation to the property which the donor has in the connected country.

(5) The law applicable to the manner of the exercise of a lasting power is the law of the country where it is exercised.

(6) In this Part of this Schedule, "lasting power" means –

(a) a lasting power of attorney (see section 9),

(b) an enduring power of attorney within the meaning of Schedule 4, or

(c) any other power of like effect.

…

19.

(1) A protective measure taken in relation to an adult under the law of a country other than England and Wales is to be recognised in England and Wales if it was taken on the ground that the adult is habitually resident in the other country.

> *(2) A protective measure taken in relation to an adult under the law of a Convention country other than England and Wales is to be recognised in England and Wales if it was taken on the ground mentioned in Chapter 2 (jurisdiction).*
>
> *(3) But the court may disapply this paragraph in relation to a measure if it thinks that –*
>
> *(a) the case in which the measure was taken was not urgent,*
>
> *(b) the adult was not given an opportunity to be heard, and*
>
> *(c) that omission amounted to a breach of natural justice.*
>
> *(4) It may also disapply this paragraph in relation to a measure if it thinks that –*
>
> *(a) recognition of the measure would be manifestly contrary to public policy,*
>
> *(b) the measure would be inconsistent with a mandatory provision of the law in England and Wales, or*
>
> *(c) the measure is inconsistent with one subsequently taken, or recognised, in England and Wales in relation to the adult.*
>
> *(5) And the court may disapply this paragraph in relation to a measure taken under the law of a Convention country in a matter to which Article 33 applies, if the court thinks that the Article has not been complied with in connection with that matter.*
>
> *20(1) An interested person may apply to the court for a declaration as to whether a protective measure taken under the law of a country other than England and Wales is to be recognised in England and Wales.*

Habitual Residence

20. Mr Patel argues that XS has remained habitually resident in England and Wales because it was only ever her intention to move to Beirut temporarily, or for a trial period, to be with her brother. She had not formed the intention of living there permanently and her wish to return to England and Wales has been thwarted by the fact she lost capacity. He points to the references in 2014 to her wanting to be with her brother in Lebanon, and to her only wanting to be in Lebanon for a trial period. He refers to the evidence of the Applicant and GH that she would have wanted to return to England and Wales after her brother died if she had not lost capacity, and that she would definitely have wished to return to London in her last days. This, he argues, shows that she never settled in Lebanon and her habitual residence remained in England and Wales.

21. Mr McKendrick points to the lengthy period XS has spent in Lebanon, some 7 years. He relies on the fact that she wished to move there to live with her brother and therefore, at that point, changed the country of her habitual residence. Further, he relies on the fact that she is now settled and integrated in Lebanon, and has been for many years,

albeit that has largely happened in a period when she appears to have lost capacity, i.e. from around 2015.

22. In *An English Local Authority v SW* [2014] EWCOP 43 Moylan J (as he then was) applied the caselaw under the Hague Convention and Brussels II R, in the context of child abduction cases, to the determination of habitual residence under the MCA. That case concerned a lady who had lived in Scotland, but then suffered a serious brain injury. She was moved to England under a community treatment order.

23. Moylan J referred to the Supreme Court decision in *Re LC (Children) (International Abduction: Child's Objections to Return)* [2014] UKSC 1, where at [61]-[62] Lady Hale said:

> *"61. It would be wrong to overlay these essentially factual questions with a rule that the perceptions of younger children are irrelevant, just as it was to overlay them with a rule (rejected in A v A) that a child automatically shares the habitual residence of the parent with whom he is living. The age of the child is of course relevant to the factual question being asked. As the CJEU pointed out in Mercredi v Chaffe , at para 53:*
>
> *"The social and family environment of the child, which is fundamental in determining the place where the child is habitually resident, comprises various factors which vary according to the age of the child. The factors to be taken into account in the case of a child of school age are thus not the same as those to be considered in the case of a child who has left school and are again not the same as those relevant to an infant."*
>
> *62. Clearly, therefore, this is a child-centred approach. It is the child's habitual residence which is in question. It is the child's integration which is under consideration. Each child is an individual with his own experiences and his own perceptions. These are not necessarily determined by the decisions of his parents, although sometimes these will leave him with no choice but to buckle down and get on with it. The tiny baby whose mother took him back to her home country in Mercredi v Chaffe was in a very different situation from any of the three children with whom we are concerned. The environment of an infant or very young child is (one hopes) a family environment and so determined by reference to the person with whom he lives. But once a child leaves the family environment and goes to school, his social world widens and there are more factors to be taken into account. Furthermore, where parents are separated, there may well be two possible homes in which the children can live and the children will be well aware of this. This may well affect the degree of their integration in a new environment."*

24. In *SW* at [72] Moylan J said:

> *"72. I would suggest that the phrase "degree of integration", as with centre of interests, is an overarching summary or question rather than the sole, or even necessarily the primary, factor in the determination of habitual residence. Otherwise, it would become a legal construct in place of the essential issue which is, of course, that of habitual residence. This*

> *is not to say that the degree of integration and a person's state of mind are not relevant; they are clearly factors to which appropriate weight must be given when the court is undertaking a broad assessment of all the circumstances of the case. The broad assessment which is required properly to determine whether the quality of residence is such that it has become habitual in that it has the necessary degree of stability in order to distinguish it from mere presence or temporary or intermittent residence. This means a sufficient, or some, degree of integration, not, I suggest, as a limited factual assessment, but as a question to be answered by reference to the factors, suitably applied, referred to by the CJEU and the Supreme Court."*

25. In *Re MN* [2010] EWHC 1926 (Fam) Hedley J considered that the question of whether a person who had removed the incapacitated person from one country to another who was lawfully entitled to do so, was critical in deciding whether habitual residence had changed. He applied the caselaw in relation to children who had been abducted in *Re PJ (Abduction: Habitual Residence Consent)* [2009] EWCA Civ 588 to the effect that a wrongful removal of a child could not change their habitual residence.

26. It would seem to follow from this caselaw that if an incapacitated person is moved from one country to another, then they can change their habitual residence once the requisite degree of integration is achieved, regardless of their inability to have exercised any decision making in that choice. The position might be different if the person was removed unlawfully, but that does not arise in this case.

27. For an incapacitated adult who loses capacity after they left the original country, as was the case with XS, there is no equivalent of the adult with parental responsibility in the children cases, whose thoughts and intentions are relevant to the degree of integration in the new country. One could have an incapacitated adult who retains strong roots in the original country, such as a home and family, and who had expressed an unequivocal desire to return before s/he lost capacity. That person might remain habitually resident in the original country even after a prolonged stay in the new country. However, it must be the case that after a sufficiently long period in the new country, the sheer fact of physical integration may become overwhelming and habitual residence moves to the new country. This would be the case even if the individual had originally wished to return to their earlier country of habitual residence. The focus of the test being on integration rather than intention, means that the fact of physical integration will ultimately be determinative.

28. In my view on the evidence, XS's country of habitual residence is now Lebanon. It is not entirely clear what her intentions were when she moved to Beirut in 2014. She wanted to live near her brother, but she unsurprisingly did not address her mind to whether she would wish to stay there if he died. She may have been testing out how she liked living in Beirut and might or might not have decided to stay if she had retained capacity and been able to decide for herself after 2016. However, she has now stayed for 7 years and is physically integrated into the nursing home and with the staff there. Her medical and therapeutic needs are being met in Beirut, and it has undoubtedly become her home. It is of some relevance that XS was born in Lebanon and has Lebanese citizenship, although on the facts of the case these are probably less weighty factors.

29. It is not possible to determine what she would have said in 2014 if told her brother would die in 2016. However, that is not the correct question. Rather, the question is whether she is now integrated into society in Lebanon, and the evidence is clear that she is. It therefore follows that XS is habitually resident in Lebanon and the Court has no power under the MCA to make a return order.

The Inherent Jurisdiction

30. The next issue is whether the Court should exercise its powers under the inherent jurisdiction to order her return to the UK. The history of the inherent jurisdiction was set out by Munby J (as he then was) in *Re SA (Vulnerable Adult with capacity; marriage)* [2005] EWHC 2942 and does not need to be repeated. It was described by Lord Donaldson in *Re F (Mental Patient: Sterilisation)* [1990] 2 AC 1 at 13 as "*the great safety net which lies behind all statute law, and is capable of filling gaps left by that law…".* It was established in *DL v A Local Authority* [2012] EWCA Civ 253 that the inherent jurisdiction continues to be capable of use in cases which fall outside the MCA.

31. In *Al-Jeffrey v Al-Jeffrey* [2016] EWHC 2151 (Fam) Holman J made an order for return to the UK from Saudi Arabia, under the inherent jurisdiction, on the grounds that the girl was vulnerable, and she was a UK citizen. There is therefore no doubt that the power to make such an order exists under the inherent jurisdiction. I note that *Al-Jeffrey* did not concern an individual who fell within the terms of the MCA, and therefore it was not argued that the use of the inherent jurisdiction cut across the statutory scheme.

32. It is however important that the inherent jurisdiction is not used in an unprincipled and unlimited manner, and in particular one which cuts across a statutory scheme which necessarily reflects Parliamentary intent. In her concurring judgment in *Re T* [2021] UKSC 35 Lady Arden at [188] said: *"Any exercise of any inherent jurisdiction of the Court has to be conducted on a principled basis, and inherent jurisdiction cannot be without limits".*

33. In *Re B (A child) (Habitual Residence: Inherent Jurisdiction)* [2016] UKSC 4, the Supreme Court, by a majority, decided to exercise the inherent jurisdiction to order the return of a child who they had found was habitually resident in England. The majority also found (obiter) that they could have exercised the inherent jurisdiction based on nationality. Lord Sumption (with Lord Clarke agreeing) dissented on habitual residence, but accepted the nationality based use of the inherent jurisdiction. Lord Sumption said: *"I do not accept that the inherent jurisdiction can be used to circumvent principled limitations which Parliament has placed upon the jurisdiction of the court".*

34. In *Re QD (Jurisdiction: Habitual Residence)* [2019] EWCOP 56 Cobb J declined to exercise the inherent jurisdiction and said at [31]:

> *"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."*

35. This is a case where it would in my view be plainly inappropriate to exercise the inherent jurisdiction to make an order to return XS to England because it would cut across the statutory scheme for no principled reason. I have found that she is habitually resident in Lebanon, and therefore I cannot make an order for return under the MCA. However, the MCA has provisions in Schedule 3 for making welfare decisions in respect of incapacitated adults with an international dimension. To make such a welfare order under the inherent jurisdiction would be to cut across the carefully crafted statutory scheme applicable to precisely people in XS's situation, and as such would be a misuse of the inherent jurisdiction. As Lord Sumption said in ***Re B***, it is important that the courts do not circumvent principled limitations set by Parliament in a scheme such as the MCA simply because they think that it would be in a person's "best interests" for the Court to intervene. Mr Patel's argument simply rests on saying that XS falls outside the statutory scheme, but that is to create a wholly circular argument. XS falls outside the MCA because Parliament has considered that person's in her situation should not be subject to the jurisdiction of the English Court.

36. I accept that in a case concerning the inherent jurisdiction it is necessary to consider each case on its own particular facts, and the court must always retain an element of flexibility. However, in my view, this case falls quite clearly on the wrong side of the line in relation to cutting across a statutory scheme.

37. Further, and in any event, for the reasons I set out below I do not consider that it is in XS's best interests for her to be returned to the UK. This is a wholly distinct reason why I would not make an order under the inherent jurisdiction in this case.

Best Interests

38. Dr Karam is a specialist in geriatric psychiatry, he works in Beirut and he has recently visited XS. He is therefore in an excellent position both to assess XS's best interests, and to advise the Court on conditions for her in Beirut. It is apparent from his report that XS is very frail, is in the advanced stages of dementia and could die at any time. Equally, he states that she is receiving very good medical and nursing case. She is not currently impacted by shortages of medicines in Lebanon, or at the present time by problems with power outages, although he cannot rule out the possibility of either of these impacting on her in the future. He accepts that if she developed an acute complication immediate intervention might be not available in Lebanon.

39. XS is therefore presently well cared for in the place she has been for over 5 years. She will be familiar both with the environment, but also with the carers. To bring her to the

UK would be extremely disruptive to her and would involve her being cared for by new people and in a new place. It is possible, given her advanced dementia, that XS might not notice these changes, however she might find them very disturbing and upsetting. Equally, even with the best care, she is likely to find the travel and flight physically and possible emotionally exhausting. This will be particularly so given her very frail state.

40. The evidence suggests that she will be wholly unaware of the fact that she has moved to England and will not know either the Applicant or any of the other people she knew in England. There is therefore little tangible emotional benefit to her being in England. I find it very hard to decide what weight to give to the evidence of the Applicant that XS would have wanted to spend her last days in England. However, given that she will be wholly unaware of the matter and that she is well cared for and apparently content in Lebanon, I give that evidence little weight in the best interests balance.

41. I accept that it is possible that there could come a point where it is not possible to get XS the medication she needs in Lebanon, and this might include palliative care. However, in balancing that issue with the much more obvious potential detriment to her physical health of travelling to the UK, I think the benefit of coming to the UK for more certain supply of drugs is a relatively minor factor.

42. Taking all these factors together, my view is that XS's best interests are served by her remaining in Lebanon and spending her days there. In reaching this conclusion I fully take into account the strong views of the Applicant and GH that XS would have wished to return to the UK. However, I have to judge the situation as it is now, and what is in XS's interests now.