Neutral Citation Number: [2023] EWCOP 28

Case No: 13974361

IN THE COURT OF PROTECTION

Date: 30 June 2023

Before:

Mr Justice Poole

- -

Between:

ABERDEENSHIRE COUNCIL	**Applicant**
- and -	
(1) SF (BY HER LITIGATION FRIEND THE OFFICIAL SOLICITOR) **(2) EF** **(3) SUNDERLAND CITY COUNCIL**	**Respondents**

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Joseph O'Brien KC (instructed by **Aberdeenshire Council**) for **the Applicant**
Sophia Roper KC (instructed by **Simpson Millar on behalf of the Official Solicitor**) for **the First Respondent**
The Second Respondent not appearing and unrepresented
Victoria Butler-Cole KC (instructed by **Sunderland City Council**) for **the Third Respondent**

Hearing date: 22 June 2023

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JUDGMENT

Mr Justice Poole:

1. SF is a 44 year old woman from Scotland who has been treated in a psychiatric unit and then cared for in supported living for a total of seven and a half years in England. She has a lifelong diagnosis of moderate intellectual disability, autism spectrum disorder, associated periods of severe anxiety, and a diagnosis of difficult to treat schizoaffective disorder (bipolar type). It is not in dispute that she lacks capacity to conduct this litigation and to make decisions about residence and care. She is the subject of a Scottish Guardianship Order which the Applicant Council applies to be recognised and enforced in England. The Third Respondent Council, in whose area SF is currently cared for, was concerned that the SF was being deprived of her liberty in her current placement without lawful authority and made an application to bring the matter before the Court of Protection. In March 2023 Aberdeenshire Council made its application for recognition and enforcement and HHJ Scully ordered that they should become the Applicant and Sunderland City Council should become the Third Respondent.

2. The application is before me to determine the place of SF's habitual residence. Once that issue is determined, further directions will be required to resolve the remaining issues in the case. All three represented parties contend that SF's habitual residence is in Scotland but the matter is not straightforward. The Second Respondent, EF, SF's mother, was too unwell to attend the hearing and is not represented. I do however have written evidence from her which is part of a very large bundle of evidence. The skeleton arguments from Leading Counsel for this hearing have been extremely helpful.

3. I am satisfied that, as agreed by the parties, SF lacks capacity to conduct this litigation and to make decisions about her residence and care. A very detailed capacity assessment report dated 27 July 2022 by Dr Ostrowski, Specialist Psychiatrist in Autism, fully supports that conclusion in accordance with the principles set out in the Mental Capacity Act 2005: the presumption of capacity is displaced and the lack of capacity in the respects identified above is proved. The conclusions reached by Dr Ostrowski apply equally today as they did in July 2022.

4. In relation to the issue of habitual residence, the brief chronology of relevant events is that from her birth until 2007 SF lived with her parents in Scotland. She has an elder brother, GF – he and members of the wider family live in Scotland. Her mother is still alive but her father died in 2022. Following a marked deterioration in her health in 2007, SF was admitted as a hospital in-patient for three months before being discharged back to her parents' home. Over the next three years SF had long in-patient admissions as well as time at the family home but in November 2010 her parents reported that they were unable to manage her behaviour and she was re-admitted to hospital where she remained until discharge to a residential support service in January 2012. In May 2014 she was re-admitted to hospital. By then her behaviour was very difficult to manage – she was physically aggressive to staff and other patients and often required prolonged restraint by four or five members of staff.

5. In July 2015 SF was referred to a psychiatric hospital (Hospital J) in England and in January 2016 she was transferred to Hospital J under detention under s.3 of the Mental Health Act 1983. By the end of 2017, it was considered that SF was clinically fit for discharge and attempts were made by Aberdeenshire Council to find suitable accommodation and care service providers for her in Scotland. In short, those attempts were unsuccessful. Eventually, in June 2022 SF was moved from Hospital J into a "step

down" placement in England. By then, she was on MHA s17 leave which expired on 5 August 2022. Since then, SF has remained at her current supported placement with 24 hour care.

6. On 1 February 2016, on application by her parents, SF was made the subject of a Scottish Guardianship Order (SGO) for financial and welfare decisions for a period of up to five years. On 16 June 2021, a renewed Welfare and Financial SGO was made for a further seven years. Neither the 2016 nor the 2021 SGO states on its face that the Court (a Sheriff in each case) was satisfied that SF was habitually resident in Scotland. In the application for the 2016 SGO it was stated that SF was habitually resident in Scotland. In the application for the 2021 SGO, SF's parents as the applicants "craved" the court,

> "To find that the Adult is domiciled in Scotland, albeit, her current residence is in England. Under Schedule 3 (2) (a) (1) and (2) of the said Act the Adult is a British Citizen and has a closer connection with Scotland than any other part of the UK. The Local Authority, Aberdeenshire Council, have responsibility for her care and all the Adults property is located and administered in Scotland. The Adult's current residence is temporary until she can return to suitable accommodation to meet her needs in Scotland. The Adult's close family are all resident in Scotland."

The Act referred to in this application was the Adults with Incapacity (Scotland) Act 2000 (AI(S)A 2000). The application referred to Schedule 3 paragraph 2 of that Act, but that provision had no application to SF or the application for an SGO. The relevant provisions as to jurisdiction appear at AI(S)A Schedule 3 paragraph 1 which provides,

> 1(1) The Scottish judicial and administrative authorities shall have jurisdiction to dispose of an application or other proceedings and otherwise carry out functions under this Act in relation to an adult if—
>
> (a) the adult is habitually resident in Scotland; or
>
> (b) property which is the subject of the application or proceedings or in respect of which functions are carried out under this Act is in Scotland; or
>
> (c) the adult, although not habitually resident in Scotland is there or property belonging to the adult is there and, in either case, it is a matter of urgency that the application is or the proceedings are dealt with; or
>
> (d) the adult is present in Scotland and the intervention sought in the application or proceedings is of a temporary nature and its effect limited to Scotland.

> (2) As from the ratification date, the Scottish judicial and administrative authorities shall, in addition to the jurisdiction mentioned in sub-paragraph (1) in the circumstances set out therein, have the jurisdiction mentioned in that sub-paragraph in the following circumstances—
>
> (a) the adult—
>
> (i) is a British citizen; and
>
> (ii) has a closer connection with Scotland than with any other part of the United Kingdom; and
>
> (b) Article 7 of the Convention has been complied with, or if the Scottish Central Authority, having received a request under Article 8 of the Convention from an authority of the State in which the adult is habitually resident and consulted such authorities in Scotland as would, under this Act, have functions in relation to the adult, have agreed to the request.

7. The power of the Sheriff to make an SGO is provided for by Part 6 of the AI(S)A 2000. Schedule 3 paragraph 1(2) of that Act could not have applied to give the Sheriff jurisdiction to make the SGO in 2021 because Art 7, which is concerned with the provision of notice to or from another contracting state, was not mentioned in the application and was evidently not complied with. The application for the renewed SGO refers to SF's domicile but that is not a relevant concept for the purposes of the 2000 Convention or the AI(S)A 2000. The application is therefore confused. As already noted, neither of the SGOs themselves record a finding that SF was habitually resident in Scotland but I am entitled to assume, and do, that the Sheriff making the SGO in 2021 had found that they were satisfied that they had jurisdiction on the basis that SF was habitually resident in Scotland when they made their order. Unless they were satisfied that SF was habitually resident in Scotland, they would have had no jurisdiction to make the order. I proceed on the basis that the 2021 SGO was properly made and that the Scottish court found that SF was habitually resident in Scotland when it made the SGO on 16 June 2021.

8. Schedule 3 of the Mental Capacity Act 2005 (MCA 2005), brought into effect by MCA 2005 s63, gives effect in England and Wales to the Hague Convention on the International Protection of Adults 2000, a Convention ratified by the UK but only in respect of Scotland where it is implemented by AI(S)A 2000.

9. The preamble to the 2000 Convention provides that:

> "The State signatory to the present Convention,
>
> considering the need to provide for the protection in international situations of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests,

> wishing to avoid conflicts between their legal systems in respect of jurisdiction, applicable law, recognition and enforcement of measures for the protection of adults,
>
> recalling the importance of international co-operation for the protection of adults,
>
> affirming that the interests of the adult in respect for his or her dignity and autonomy are to be primary considerations,
>
> have agreed on the following propositions."

Article 1 of the Convention provides:

> "(1) This Convention applies to the protection in International situations of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests.
>
> (2) Its objects are (a) to determine the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the adult; (b) to determine which law is to be applied by such authorities in exercising their jurisdiction; (c) to determine the law applicable to representation of the adult; (d) to provide for the recognition and enforcement of such measures of protection in all Contracting States; (e) to establish such co-operation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention."

As in the 1980 Hague Convention on the Civil Aspects of International Child Abduction and the 1996 Hague Convention on the Protection of Children, the concept of habitual residence is of fundamental importance. The provisions of MCA 2005 Schedule 3 reflect that importance.

10. By MCA 2005 Schedule 3 paragraph 7(1), the Court of Protection is given jurisdiction to exercise its functions under the Act 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.

By MCA Schedule 3, paragraphs 19 to 22,

> Recognition
>
> 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 a 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 of 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 that 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.
>
> (2) No permission is required for an application to the court under this paragraph.
>
> 21 For the purposes of paragraphs 19 and 20, any finding of fact relied on when the measure was taken is conclusive.

> Enforcement
>
> 22(1) An interested person may apply to the court for a declaration as to whether a protective measure taken under the law of, and enforceable in, a country other than England and Wales is enforceable, or to be registered, in England and Wales in accordance with Court of Protection Rules.
>
> (2) The court must make the declaration if—
>
> (a) the measure comes within sub-paragraph (1) or (2) of paragraph 19, and
>
> (b) the paragraph is not disapplied in relation to it as a result of sub-paragraph (3), (4) or (5).
>
> (3) A measure to which a declaration under this paragraph relates is enforceable in England and Wales as if it were a measure of like effect taken by the court.

By paragraph 24,

> The court may not review the merits of a measure taken outside England and Wales except to establish whether the measure complies with this Schedule in so far as it is, as a result of this Schedule, required to do so.

11. In *The Health Service Executive of Ireland v PA & Ors* [2015] EWCOP 38, Baker J held at [52],

> "The scheme of the Convention which underpins Schedule 3 is to facilitate the recognition and enforcement of protective measures taken by foreign Courts save in the circumstances set out in paragraphs 19(3) and (4). The measure "is to be recognised" if taken on the grounds that the individual was habitually resident in the country where the order containing the measure was made. The grounds on which a measure may be challenged may be procedural (paragraph 19(3)) or substantive (paragraph 19 (4). By reason of paragraph 21, however, which as stated above provides that for the purposes of paragraphs 19 and 20 any finding of fact relied on when the measure was taken is conclusive, there is no power to challenge the finding made in the foreign Court that the individual is habitually resident in that country. Accordingly, a finding of a foreign Court that the individual concerned was habitually resident in that country cannot be challenged in any process to recognise or enforce a

> measure in this country, although the process by which the measure was ordered may be challenged (for example, if the individual was not given an opportunity to be heard) and the measure itself may be challenged (for example, if inconsistent with a mandatory provision of law of this country)."

12. The issue before me is a preliminary issue in the application by Aberdeenshire Council for recognition and enforcement of the 2021 SGO. Given my determination that in June 2021, upon making the renewed SGO, the Sheriff must have been satisfied that SF was habitually resident in Scotland and that therefore the court had jurisdiction to make the SGO, it follows, applying Baker J's approach and the recognition and enforcement provisions of MCA 2005 Schedule 3, paragraphs 19 to 24, that there is no power to challenge the finding made in Scotland in June 2021 that SF was habitually resident in that country. There is no challenge to the measure itself. It might be contended that the determination of habitual residence for the purposes of jurisdiction to exercise the powers under the MCA2005 is not part of the "process to recognise and enforce a provision in this country" [Baker J, above] but the determination of habitual residence for the purposes of the application by Aberdeenshire Council, *is* for the purpose of that process and the court has ordered that Aberdeenshire Council be made the Applicant in these proceedings. That is therefore the application in which the determination of habitual residence is being made. In any event, it would be unfortunate for the court to be bound by the finding of habitual residence at a particular point in time for one purpose, but to come to a different finding about habitual residence at that same time for another purpose. As it is, I am bound by the finding of habitual residence made by the Scottish court in June 2021.

13. I am not bound to find that SF *remains* habitually resident in Scotland. Indeed, there have been some changes in her position since June 2021, in particular she has been discharged from detention in hospital under MHA 1983 s3 into supported living. Accordingly, I shall review the authorities on the correct approach to determining habitual residence for adults who lack capacity, consider the particular evidence in this case, and state my conclusions.

14. In *An English Local Authority v SW & Anor* [2014] EWCOP 4, Moylan J held that the meaning to be given to "habitual residence" in the context of the MCA 2005, founded on the 2000 Convention, is the same as that given in other family law instruments, including the 1996 Convention on the Protection of Children. He held at [65] that "whilst, inevitably, different factors will be relevant and will bear differential weight, the overarching approach should be consistent across all international family law instruments" whether relating to adults or children. In *The Health Service Executive of Ireland v IM & Anor* [2020] EWCOP 51, Knowles J extracted the following principles from the authorities, which I adopt,

> "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]); See similarly in *An English Local Authority v SW & Anor* [2014] EWCOP 4 at [27], per Moylan J (as he then was).

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])."

15. I would add that I have taken into account the authoritative review of habitual residence as it applies to children given by Moylan LJ in the *M (Children) (Habitual Residence: 1980 Hague Child Abduction Convention)* [2020] EWCA Civ 1105 in which he emphasised the issue of stability when determining habitual residence. In *Re LC (Children)* [2014] AC 1038 Baroness Hale gave examples of the objective and subjective factors which might be relevant. Subjective factors might include the reason for the move and the state of mind of the individual involved as to their new situation. She emphasised the need for a child centred approach and it seems to me that in the Court of Protection there must be an approach centred on the protected party.

16. The parties have drawn the Court's attention to relevant factors and evidence. Having considered the documentary evidence and skeleton arguments, it seems to me that the salient factors are:

    i) SF was born in Scotland to Scottish parents.

    ii) SF was in her late 30's when she moved to England, having spent her entire life to that point in Scotland.

iii) The length of stay in England is now approximately seven and a half years. She has not left England during that time.

iv) I am bound by the finding of the Scottish court that in June 2021, five and a half years after she had come to England, SF was habitually resident in Scotland.

v) The reason for SF being moved to an English hospital was the lack of a suitable resource in Scotland. SF did not make a positive choice to come to England. The evidence is equivocal as to whether she desired to come to England or simply wanted to move out of the hospital in Scotland where she had been cared for to that point.

vi) SF has no family in England. All her family connections are in Scotland and have always been there. She has been visited regularly (until the Covid Pandemic intervened and then, later, when her father died) by her family who also kept in regular contact with her by remote means. Those were always visits or calls from Scotland. Despite her limited understanding, SF will have associated Scotland not England with her family and with family life.

vii) SF has no friendship network in England.

viii) Whilst she was detained in hospital in England, SF was not free to come and go, she did not partake in any communal activities, she was not integrated at all in any community outside the hospital. She did however have some supervised outings with staff.

ix) Upon discharge to the “step down” supported living placement, SF has been deprived of her liberty under 24 hour care and supervision. She continues to require restraint and seclusion. She has not participated in any communal activities. She does not visit a day centre. She does sometimes leave the placement with a carer to visit the shops or for some activities. Such outings are always under supervision.

x) Although the move to “step down” supported living from hospital is of significance, SF’s day by day integration into the wider community has not materially changed.

xi) Aberdeenshire Council has always remained as the responsible local authority for SF. On the other hand, the NHS Trust responsible for her hospital care in England has been English.

xii) In her supported living placement, since August 2022, SF has been under the care of English healthcare professionals and carers but Aberdeenshire Council has paid and continues to pay for the placement and services.

xiii) Since late 2017/early 2018, Aberdeenshire Council has been trying, albeit unsuccessfully, to find a placement and care package for SF in Scotland. Those efforts were paused whilst a suitable “step down” placement was found in England (because of the lack of success in finding anywhere suitable in Scotland) but have since been renewed. There are now ongoing efforts to secure a placement and care package in Scotland.

xiv) SF's family have always wanted her to return to Scotland as soon as a placement and care package was available. The current placement is temporary. Once a suitable placement has been found in Scotland, Aberdeenshire Council intend and her mother wishes that SF will move back to that country.

xv) SF has been subject to a Scottish Guardianship Order applied for and granted in Scotland under which her parents (now her mother alone) exercise their guardianship responsibilities from Scotland.

xvi) SF has not made any capacitous decisions about where she lives.

xvii) SF has not given any consistent expression to her wishes and feelings about where she should live. She has limited awareness of the country in which she resides. Miss Hurst from the solicitors acting on behalf of the Official Solicitor, visited SF in April 2023. Her attendance note establishes to my satisfaction that SF has been told by her mother that she is going to return to Scotland and that SF expects to return to Scotland but is unable to communicate her wishes and feelings about doing so.

17. I have been assisted by a number of witness statements. One, from Ms H, a Team Manager at the Applicant Council who has had a long involvement with SF, helps to clarify the circumstances under which SF was moved to the Hospital J. Although SF moved to the hospital in January 2016, the purpose was for her to be admitted to a particular ward, which did not happen until early 2017:

> "The aims of admission and subsequent discharge were –
>
> a. Confirmation of diagnosis.
>
> b. Rationalisation of medication regime in line with the confirmed diagnosis.
>
> c. Development of a Positive Behaviour Support Plan (PBS) following assessment.
>
> d. Development of suitable occupation and community engagement.
>
> e. Development of a service specification for future needs.
>
> f. Transitional work to support move to a future placement.
>
> From the end of 2017 onwards following multi – agency CPA assessments it was considered that SF may be able to leave hospital if a suitable placement was found for her."

Hence, there was a specific plan for SF's treatment and management which had an end goal of transition to a future placement. That goal was achieved within two years of the move to England but there was then a long delay because of the difficulty finding a

suitable placement in Scotland. It has been the lack of a suitable placement that has thwarted SF's return to Scotland which otherwise would have occurred in early 2018.

18. It is useful to refer to two sources of evidence that give a flavour of SF's daily life. Both come from when she was detained in hospital, but the evidence as a whole shows that the issues raised continue in her daily life now. The first is a report from March 2021 from a Mental Health Officer for Aberdeenshire Council in support of the SGO renewal application. He interviewed SF and spoke to her parents, the Team Manager from Aberdeenshire Council, Ms H, who had worked with SF for many years, and a nurse from Hospital J. He reported on her agitation and aggression and the frequent use of restraint and, even more often, seclusion. SF would spend many hours in seclusion to calm her down and keep her calm. Another report is an Autism report from May 2021. This again mentions frequent threats against staff and periods of severe anxiety and agitation. It does mention that,

> "SF shares with another female peer and was very warmly welcoming to her on admission. There has been some positive engagement between them, but there have also been some verbal altercations and often, each own behaviour has impacted on the other."

The report refers to SF having occupational therapy and art therapy, but such work was often interrupted by episodes of agitation:

> "Overall incidents are frequent and at times prolonged requiring extra staffing to support for lengthy durations of time. They can be intense in nature, where SF is extremely agitated and aggressive towards staff and quite disruptive to peers regarding entering other patient areas, and the main corridors and offices and noise levels are increased and cause distress to neighbouring peers."

The impression is of a low level of interaction and integration with other residents at the hospital and of relationships with staff being interrupted by episodes of agitation or aggression requiring prolonged restraint or seclusion.

19. A very recent "Complex Care Pen Picture" completed on 9 June 2023 provides an insight into SF's current living arrangements in her supported living placement:

> "SF has 3:1 support during the day shift until approximately 4pm and she then has 2:1 staff ratio from then until the morning shift begins. She is supported at night with a waking night and sleepover member of staff and10 hours a week for management of the package. SF's home has been adapted to a specification specific to her needs, which has enabled her to live in the community until accommodation and care provider is found closer to her home in Aberdeenshire. SF needs encouragement on a daily basis to maintain her safety and independence. She requires daily ongoing support with taking her medication and

> following a healthy diet. SF requires support to follow a structure and routine, to attend health appointments. She needs staff who understand her and support her when she becomes anxious and to keep her safe living in the community."

20. I have had regard to a number of Court of Protection decisions on habitual residence. Each case turns on its own facts but I am bound to note the similarities between SF's case and that of the two protected persons in *DB and EC* [2016] EWCOP 30, a decision of Baker J. I have extracted some of the salient information from the judgment,

> "DB and EC are two men born and raised in Scotland. Each has a profound learning disability and complex behavioural problems. They have both been receiving treatment in the same specialist hospital in England for several year …
>
> On 13 September 2001, aged just 14, DB was made subject to a detention order in Scotland under the Mental Health (Scotland) Act 1984. Following legislative changes, he was subsequently made the subject of a compulsory treatment order under the Mental Health (Care and Treatment) (Scotland) Act 2003. He was detained in a series of residential units but the complexity of his case presented very considerable challenges to the team of professionals responsible for his care. At one point, his behavioural problems were of such intensity that the recommended staff ratio for his care was 4:1.
>
> On 26 August 2008, DB was transferred, pursuant to powers under a statutory instrument governing cross-border transfers of patients subject to detention requirements, to a hospital unit in England …
>
> In each case, the placement was intended to last indefinitely until such time as DB and EC were respectively able to return to Scotland. In each case, the individual's life has been based in the environment of the hospital. In each case, he is unable to communicate views concerning his residence and care. In each case, the individual's aggressive and difficult behaviour has moderated during his stay at the hospital and a good relationship has been maintained with other residents and hospital staff. Neither DB nor EC has attempted to leave the hospital. EC has family in Scotland with whom he is not in contact. DB's father and his wife visit him regularly every 6 to 8 weeks and have telephone contact once a week. DB's father is very keen that he should return to Scotland.
>
> The English local authority and the Scottish authorities all submit that in both cases the duration of their stay in England is such that it is highly indicative that each has acquired habitual residence. The nature of their stay has been for the purpose of

> receiving treatment, but this has had a sufficient degree of stability to acquire habitual residence. At the time each moved to X Hospital, the plan was for him to remain there for an indefinite period and it has been their home for a substantial proportion of their lives. It is accepted that neither DB nor EC can be said to have socially integrated in the community in the way that might ordinarily be expected for adults who have lived in another jurisdiction for such an extended period of time. Neither DB nor EC has employment, nor does either attend any kind of day care service outside the hospital. Neither has any friends in England outside the hospital. In assessing whether that is sufficient to establish habitual residence, however, the court must look at the individual circumstances in each case. The hospital forms the centre of interest for their lives and they are fully integrated there. Each has a degree of integration in the hospital community."

DB had spent the first 21 years of his life in Scotland and seven and a half years in England. Baker J found that both DB and EC were habitually resident in England.

21. In the present case I agree with Ms Roper KC that the issue of habitual residence is finely balanced. Aberdeenshire Council brings this application and contends that SF is habitually resident in Scotland. SF is either habitually resident in Scotland or England. I have approached the determination on the basis that I must consider whether the evidence establishes on the balance of probabilities that SF is habitually resident in Scotland or whether it establishes that on the balance of probabilities SF is habitually resident in England. There are many striking similarities with the case of DB in *DB and EC*. However there are also some differences. Firstly, before the move to England SF was very well integrated into family life and the social environment in Scotland because she had lived in the community with her family until the deterioration in her condition in her late 20's. She was not a long-term in-patient as a child. She always returned to the family home in Scotland when discharged from hospital as a young adult. Secondly, SF appears to have been even less integrated into the hospital community of staff and other residents than DB or EC. Thirdly, on moving SF to England there was not a plan for an "indefinite" stay. Rather, there was a specific management plan that was in fact accomplished within two years of the move to England and within a year of her being moved to the ward at Hospital J where the work could begin in earnest. The end goal of transition to a community placement, always expected to be in Scotland, was thwarted due to lack of resources. Fourthly, from as long ago as the end of 2017 there has been a continuing expectation of SF returning to Scotland as soon as possible and there are ongoing attempts to secure suitable accommodation and care for her in Scotland to allow her to return there. Fifthly, there was no finding by a Scottish court that DB or EC were habitually resident there. Whilst I have noted that there is no express finding to that effect for SF, the 2021 SGO enables me to conclude that the Scottish court found that it could be satisfied of SF's habitual residence in Scotland, even five years after she had been an in-patient in England.

22. SF's condition restricts her integration into the social environment wherever she is living. I am however struck by the connections SF still has with her family in Scotland.

Albeit she has been in England for several years now, her mother, brother and wider family remain in Scotland and she has a degree of integration with them. She has no family at all in England. Further, her residence in England has had a temporary nature throughout which, I find, has contributed to depriving her stay in England of a sense of stability. The inordinate delay in finding appropriate accommodation and care for her in Scotland has, if anything, underlined the instability of her living arrangements in England. In this case the fact that the Scottish court must have found that SF was habitually resident in Scotland in June 2021 is of considerable importance. For the reasons given, that finding cannot be challenged. Although circumstances have changed since June 2021, both in terms of the length of stay in England and SF's living arrangements, those changes do not appear to me to be of great significance when viewed in the context of the circumstances as a whole. There is no greater stability to SF's stay in England now than there was in June 2021. Weighing all the facts and matters available to me I have concluded that it is established that SF remains habitually resident in Scotland.

23. Although the principles to be applied are common to determinations of the habitual residence of a child who is the subject of an application under the 1980 or 1996 Hague Conventions, and an incapacitous person who is the subject of an application under the 2000 Hague Convention or the MCA2005, this case highlights the significant differences in the evidence and factors that the court may have to consider when applying those principles.

24. Directions will now be given in relation to the further issues to be determined on the application.