

Neutral citation: [2022] EWCOP 57

Case Number: 13339015

05/12/2022

IN THE COURT OF PROTECTION

IN THE MATTER OF THE MENTAL CAPACITY ACT 2005

IN THE MATTER OF P.

BETWEEN:

B R

Applicant

-and-

(1) N A R

(2) A J

(3) A M D

(4) D F D

(5) H M F

(6) C W D

(7) M R D

(8) THE OFFICE OF THE PUBLIC GUARDIAN

Respondents

JUDGMENT

THIS RESERVED JUDGMENT IS HANDED DOWN BY DISTRICT JUDGE MCILWAINE ARISES FROM PROCEEDINGS IN THE COURT OF PROTECTION.

IT IS SUBJECT TO A TRANSPARENCY ORDER.

1. Mrs EMD (hereafter referred to as P as per convention) is in the twilight of her years aged at the time of hearing 96. She has a diagnosis of advanced Dementia. P was said to be frail, but she was described in assessments as clearly well physically for her given age.
2. The applicant is the sole holder of two lasting powers of attorney for both Welfare and Property and Affairs for her elderly mother, P, born 9.5.25 and now aged 97 years of age.
3. The first respondent is the husband of the applicant. He fully supports the applicant's case. He was joined as a party to ensure that he was heard if he so required especially on the issue of building works. It is fair to say the applicant firmly took the lead on this aspect as with others.
4. P has 4 sons and 3 daughters who are respondents to the application numbered 2-7. All the family members self-represented throughout this case. The OPG is 8th Respondent and primarily contend that the applicant should be relieved of the Power of Attorney for Property and Affairs but does not seek at hearing to disturb the Power of Attorney for Health and Welfare.
5. P has been unbeknown to her, due to her advanced condition, the epicentre of an unedifying family dispute stemming from a combination of mistrust, miscommunication and misunderstanding between the applicant and her siblings. This has, in the Court's view, served only ultimately to blight the relationship with P for them all in one way or another. By way of example, this Court was to hear evidence that family members felt unable or unwelcome to visit P spontaneously or without tacit agreement of the applicant resulting in consideration at the end of this case of a memorandum of agreement to visits by family members to see their mother. I understand that this has not been agreed but has been overtaken by effluxion of time.
6. The applicant clearly in evidence has felt affronted that, having provided quality care to their mother, there is inferred criticism of her in the response to the application by her siblings. Ultimately during the substantive hearing the applicant divulged that, from her perspective, she considered the objections amounted to an attack on her honesty and her integrity.
7. This Judgment stems from that awful dynamic and the objections by the respondents to the alleged actions of the applicant during her time as Attorney for P. The underlying family discord witnessed in Court cannot be resolved by this court.
8. I do not for reasons articulated in this Judgment find the applicant is dishonest.
9. I find as fact having heard the evidence that the task of managing Ps affairs was burden too great against the backdrop of the high level of care and commitment the applicant provided to P and the family discord was such that at times this court

reasonably considers P's access to her other children was subordinate to the dispute.

10. At the outset the initial application to this Court made by the applicant asked for authority to be granted by the court for two measures as set out below in her own words.
 - a) *'To pay myself a carers allowance to myself of £90 per day in respect of caring duties for my mum as compensation for the fact that I have been unable to take up regular paid employment outside of the home since February 2014'* and.
 - b) *'Permission to pay for necessary adaptations to my house to enable my mother to continue to live with me here as per her own wishes (see capacity statement) and per the wishes of my father deceased since February 2014.'*
11. From this simple premise the case was to unfold requiring successive telephone case conference hearings deployed to assist to refine the issues needing decisions and the evidence needed to enable a decision to be reached if not by parties, then by the Court. It is fair to add the sheer volume of emails and attachments generated for the Court were of a magnitude unseen in any other case by this Judge in 13 years.
12. The Office of the Public Guardian ("OPG") became joined to proceedings following issues that arose and were represented by Counsel, Mr Cisneros, whose involvement at final hearing was of immense assistance to all and who has the gratitude of this court. The OPG kindly took carriage of preparation of the Bundle as no other legal representative was engaged and the volume of emails, statements, and time it would have taken this Judge and the Court staff to have done so would have been significant. I thus publicly thank the OPG for that on behalf of the Court.
13. The final hearing to which this Judgment ultimately relates occurred amid the Pandemic over a protracted three-day period on the 27th, 28th and 29th of September 2021.
14. The hearing was conducted via Cloud Video Hearing (CVP) and was observed by three psychologists who were members of the Transparency project who report on, and so help, highlight to the public the important and worthwhile work of the Court of Protection.
15. The final hearing was held on a hybrid basis in that the applicant and the first respondent attended Court in person and, following submissions, both had support of McKenzie Friends though in truth primarily to alternately assist and emotionally support the applicant. The McKenzie friends' perceived theatrics raised by the family respondents were in my view the response to stress by the applicant and genuine attempts by the McKenzie friends to support and aid her presentation of her case and that of the first respondent. It played no part in this decision.
16. The remaining seven parties appeared via CVP from far and wide including the USA, Eire, UK and Europe. An achievement that only months before would have been

almost impossible to have attained to the level that was in a provincial County Court. The hearing was not without technical issues that were overcome, and this Court expresses its genuine thanks for the good grace in which the parties coped with long days looking at respective screens and delays by technology still very much in its early phases of implementation.

17. By time of final hearing the issues distilled to the following headline issues

1) Issues relating to the administration of the Power of Attorney for finances and property;

- a. Should the applicants Power of Attorney be revoked, and a professional deputy be appointed to manage P's affairs and if so, who? If not, then
- b. Should the applicant be required to comply with Section 7.68 of the code of practice for those holding a power of attorney and ensure the applicant removes her name from those accounts as Joint account holder and with regard to accounts outwith the Jurisdiction of the Court the applicant be ordered to ensure that the accounts referred to in the special visitors' report are held solely in the name of P.
- c. Should the applicant be ordered to inform those banks in the EU State holding significant sums of money in P's name that P lacks capacity and the applicant be ordered to file confirmation of receipt of that information from the banks?

2) Renumeration for gratuitous care - the issues.

- a. Should the applicant receive £96,775.74 for gratuitous care based on a daily sum per day since 25th February 2014 and, if so, at what rate?
- b. Ought the applicant be *retrospectively* authorised to withdraw £40,629.16 which had been withdrawn without Court of Protection authority as an advance of the £96,775.76 claimed?
- c. What, if any, increase in the daily rate for care agreed in the original letter of comfort should be allowed and if so from what rate for future gratuitous care pursuant to *Re HC (2015) EWCOP29*?
- d. Should the court consider in its calculation £25,490.00 of Ps money spent by the applicant for a car acquired in the name of the applicant purportedly for the sole purpose of transportation of P and so doing also provide retrospective approval for that deduction?

- e. If so, should the net balance of £30,656.60 (assuming no variation from figures aforementioned) be authorised to be removed from P's account representing the balance of the £96,775.74 (if ordered).

3) Should the Court authorise building works for Ps benefit

- a. Should the works proposed to the applicant's home be authorised subject to the stipulation that payment should be made from P's account direct to the relevant builders capped as per the quotation i.e. £29,089.60? If so.
- b. Should the financial interest of P in such works if authorised and paid from the finances of P be protected / evidenced by the filing of a relevant entry on the land charges registry of P's beneficial interest? Said notice to be prepared by solicitors engaged by the applicant on Ps behalf remunerated from P's funds?

4) Flowing from a Joint statement dated 8.6.21 the 2-7th respondents invited this court to determine what contact P should have with her family.

18. It was my personal sincere regret, with little warning following the hearing my own serious ill health resulted in my significantly protracted absence from work and recent return and inevitably delayed provision of this Judgment. I convey my thanks to HHJ Gillespie and HHJ Reece who attempted to help in the interim.
19. That said, the central issue concerning the applicant's application were resolved by her revocation of her power of attorney for property and affairs mid hearing. Albeit on the condition the second respondent, her sister, resiled from being the nominated alternate as was provided for in the original power of attorney which occurred.
20. At hearing, the Court heard evidence from a Senior Investigator for the OPG in place of the original author of the S49 report who was unable to attend. This had been to ensure any issues with the report could be addressed. It transpired at hearing there was no objection to this, the substantive report largely based on information which was ultimately not disputed. The Court heard evidence from a social worker for the Authority Social Social Services, primarily concerning the building works application element. Thereafter the applicant was heard and was allowed to be cross examined by respondents on questions that related to the decision to be made. Understandable but unhelpful questions that did not address the central issues in this case and potentially inflamed the position of parties as regards their family discord were, I hope diplomatically, discouraged with explanation and were few as a result. Thereafter, each family member was given the opportunity to speak to their case and answer questions from the applicant and any respondent. This was subject to the

same caveat that the questions were relevant to the issues. Closing submissions were invited orally from all.

21. There is no doubt the applicant found the whole experience in Court deeply challenging. Time was given for reflection and account given for the fact all were self-representing. That said, the decision to bring P to the first day of hearing was not in the view of this Court in P's interests, served no ultimate purpose given all had, some time ago in directions, agreed P's participation was addressed by the parties' and the OPG's involvement and sadly resulted in this court having to set aside a consultation room to enable the family members supporting the applicant to be diverted to look after P in private. Fortunately, this was not repeated subsequently.
22. This court adhered as best as it was able to the President of the Family Division in guidance in the report titled 'The Road Ahead' issued during the COVID crisis which indicated a preference for proportional brevity in judgments. I therefore do not intend to recount all the evidence heard and assessed first-hand or volumes of emails read. I shall seek to refer to what I think is pivotal to give and explain the reasons for my decisions having had opportunity to consider the case.
23. This Judgment does not set out extensive discussion of the law but in this Judgment due regard has been given to it. The jurisdiction of the Court of Protection is only engaged if, on balance of probability, P does not have capacity as defined in Section 2 of the Mental Capacity Act 2005 ("MCA") and that lack of capacity renders P unable to make decisions on their own account as set out in Section 3 of the MCA.
24. The medical evidence is not disputed, nor is the opinion of the Special Visitor in that P has a diagnosis of Advanced Dementia and has no capacity to make the decisions in issue and so the Jurisdiction of this Court is engaged.
25. In discharging its duty making decisions where needed due regard must be given to the best interests of P as set out in Section 4 of the MCA.
26. I do not set out the test for removal of the Power of Attorney for during the hearing the applicant resiled from that authority making such decision superfluous. That said my own view was had that not occurred the applicant would have been removed from that position of financial control.

Background

27. At the time the application began there was no local authority social work assessment for P or a community care assessment. Thus, there was no formal assessment of P's needs. The reason being her family believing her assets were such that no help would be available. Even temporary respite for P or the Applicant in a home was negotiated by the family.
28. The Local Authority needs assessment commissioned during this case by this Court allied to recollection of parties painted a past picture of P as mother and wife to her

husband P enjoying life centred on their matrimonial home overseas and was a person whose family was important to her and who herself enjoyed large family gatherings and a love of listening to and who played music. I mentioned at hearing as I do in this Judgment, I cannot believe that P in full faculty would have found the sibling conflict evident to be a satisfactory situation.

29. P was first diagnosed with Alzheimer's Disease in 2007. It was not disputed that P's husband F cared for P until he himself became ill in 2013 when the family stepped in to care both for their parents the lead being taken by the applicant and the second respondent in coordinating visits and calls.
30. The evidence from the family I heard which was not disputed was that, as P's husband became ill, he asked the family to care for their mother and that he himself did not want P to live in a care home. The applicant took this as a wish that P live with her. I heard no evidence other family members proposed a full-time commitment to P's care but the email exchange in July 2014 gives a feel of better sibling relationship and is clear siblings expressed willingness to provide respite care with the applicant being primary carer and fully accept that for many carers and circumstances would mitigate against ability to do otherwise.
31. The Section 49 report commissioned by the Court from the OPG Supervision and investigation services December 2019 reports that P began living with the applicant and first respondent 22.2.14 following the passing of P's husband on 5.2.2014. At this point the evidence indicates that P's ability to care for herself had diminished to a point where she was said to be unsafe to be left alone in the matrimonial property.
32. The siblings agreed on it was said advice of Lawyers overseas a 'letter of comfort' proposing that a regular income would be paid to those caring for P to cover the loss of income for those from time to time caring for P, be that during respite for the primary carers or otherwise and in addition the associated expenses. An email 14.7.2014 detailed parameters and mentions £86 per day. That document in the bundle records the applicant agreed to the sale of P's home on the basis that she could no longer remember it.
33. The matrimonial property overseas was subsequently sold and there is for avoidance of doubt no reason to believe such would not have been appropriate if subject to a Court of Protection application by a Deputy. The funds were placed into a joint account held jointly between P and the applicant.
34. P has in fact significant liquid assets that are placed in accounts overseas totalling more than £590K. It is said four bank accounts exist one in the UK in joint names with the applicant and three overseas. Of those three accounts is a savings account held by P in her own name with approximately 312,576 euros. the other two are a savings account and current account in the joint name of both P and the applicant again with approximately 284,351 euros.

35. The powers of attorney were applied for in September 2014 prepared by a Solicitor indicating expertise in such matters and registered with the Office of the Public Guardian in November 2014. Under these the applicant has sole authority the only alternate to be her sister, the second respondent. Despite many siblings only the fifth respondent was nominated to be informed of the application.
36. I am frankly puzzled against this evidence how P was able to grant a power of Attorney in Sept 2014 given the care provided to her by her Husband and the stated and agreed needs going forward in emails 2014 at the point she moved to live with the applicant. However, I temper this as a) No party sought adjudication on the issue of capacity to ever enter into the LPA by P, b) No medical evidence regarding P at the point of the LPA being created is before me c) The solicitors attendance notes are not before this court d) The applicant in this hearing resiled from the Power of Attorney and any anomaly if any can be catered for by review from a Professional Deputy on appointment. However, my observations may have equal merit to the Power of Attorney as regards Health and Welfare though not challenged in this application.
37. It is not disputed that since 2018 to date of final hearing the applicant with defined times of respite care has lived with the applicant and her family. This under a private funding arrangement supplemented by gratuitous care. P received an attendance allowance, care allowance and was disregarded for Council Tax purposes due to severe mental health criteria being met.
38. There is no dispute that the applicant in principle ought to be recompensed for the care she has provided in line with the letter of comfort drawn up historically.
39. The Court heard evidence that a further period of respite care in a home occurred between July 2020 to December 2020. P was unilaterally and without informing the family removed by the applicant from that home the applicant being purportedly dissatisfied by the level of care for P as against the care P provided routinely with the applicant. This caused consternation to the respondents who had by then advocated a home was becoming more suitable for P. In any event P then continued to live with the applicant on a privately funded package with gratuitous care provided by the applicant thereafter. This was against a backdrop stated in the Section 49 report that the care given by the applicant created;
- 'a cumulative burden of such hands-on care giving is taking a heavy toll on (the applicant) and her Husband'.*
40. It should be noted that the care provided by the applicant was in the subsequent assessment viewed as the best possible outcome for P and calls by the local authority and the special visitor on P for purpose of reports raised no concerns at the level of care save the suggestion the applicant through her stipulations deprived P of contact with her children and vice versa. No action regarding this was taken.
41. The evidence of the applicant was whilst living with the applicant P paid 1/3 rd. contribution to utilities (totalling £10,537 at the time of the S49 report) and an

additional sum of £90 per day to compensate the applicant from her inability to obtain paid employment since 2014. In the emails of July 2014, the actual figure was £86 not £90. The tax position of this is not this courts purview.

42. Ms R informed the Court that Ps one third contribution declined to $\frac{1}{4}$ during times the applicants daughter lived with the family. No one disputed this evidence.
43. Relevant to this overview of P's contribution is the fact that the S49 report detailed that P had not paid rent since residing with the applicant. To be clear the issue of rent was not before this Court in this application.
44. By the date of final hearing parties except for the Office of the Public Guardian represented themselves the issues before the court could be grouped into four main categories and the issues in those categories distilled to discreet points which I set out for clarity.

1) The administration of the Power of Attorney for finance and property the issues:

- a) Should the applicants Power of Attorney be revoked, and a professional deputy be appointed to manage P's affairs and if so who? If not, then
- b) Should the applicant be required to comply with Section 7.68 of the code of practice for those holding a power of attorney and ensure the applicant removes her name from those accounts as joint account holder and with regard to accounts out with the Jurisdiction of the Court the applicant be ordered to ensure that the accounts referred to in the special visitors' report are held solely in the name of P.
- c) Should the applicant be ordered to inform those banks holding significant sums money in P's name out with this Court's jurisdiction that P lacks capacity and the applicant be ordered to file confirmation of receipt of that information from the banks?

2) Renumeration for gratuitous care - the issues?

- a) Should the applicant receive £96,775.74 for gratuitous care based on a daily sum of £10 per hours or £90 per day since 25th February 2014?
- b) Ought the applicant be *retrospectively* authorised to withdraw £40,629.16 withdrawn without Court of Protection authority as an advance of the £96,775.76 and

- c) What if any increase in the daily rate for care agreed in the original letter of comfort should be allowed and if so from what date for future gratuitous care pursuant to Re HC (2015) EWCOP29.
- d) Should the court consider in its calculation £25,490.00 of Ps money spent by the applicant for a car acquired in the name of the applicant purportedly for the sole purpose of transportation of P and so doing also provide retrospective approval for that deduction and.
- e) If so, should the net balance of the aforementioned equating £30,656.60 (assuming no variation from figures aforementioned) be authorised to be removed from P's account.

3) Should the Court Authorise the Building works for Ps benefit?

- a) Should the works proposed to the applicant's home be authorised subject to the stipulation that payment should be made from Ps account direct to the relevant builders capped as per the quotation i.e £29,089.60? If so.
- b) Should the financial interest of P in such works if authorised and paid from the finances of P be protected / evidenced by the filing of a relevant entry on the land charges registry of P's beneficial interest? Said notice to be prepared by solicitors engaged by the applicant on Ps behalf remunerated from P's funds?

4) Flowing from a Joint statement dated 8.6.21 the 2-7th respondents invited this court to determine what contact P should have with her family?

45. The first issue here is to determine namely the revocation of the Power of Attorney for finance and property. The position of the Applicant throughout the case management of this case had been a steadfast and on occasion robust refusal to remove herself from the Joint accounts held with P. This was despite the report of the special visitor that.

- a) The applicant and First respondent quite clearly did not realise the need to keep separate and detailed account of the costs differentiating between what were their costs and what the costs they incurred looking after their mother.
- b) The Author of the Section 49 Report recommended this be regularised.

46. The applicant initially at final hearing opposed her removal from the role of Attorney for P. The Joint statement of the 2-7th respondents supported the revocation of the

lasting power of attorney and the appointment of a Professional Deputy to manage Ms Ds financial affairs. This was also the position of the OPG.

47. This Court heard from a Senior Investigator with the Office of the Public Guardian, he confirmed that he was at all relevant times the line manager for the author of the various documents at B5, B26 and B61 in the bundle which the Court accepted in evidence.
48. He informed the Court that accounts held in joint names of the holder of the Power of Attorney and P was contrary to the relevant code of practice adjunct to the Mental Capacity Act to which those exercising the powers of attorney were required to observe.
49. The Court records that at some length in past case management it had raised these issues at directions hearings, and I certainly recall being recipient of robust refusal to consider same from the applicant.
50. This court was unclear as to what management save anticipated payment of benefits and then withdrawals had occurred, nor why the Banks out with this court's jurisdiction had not been informed that P had no capacity to manage her affairs and there also appeared a lacuna in evidence as to what investment decisions had been made to safely protect P's considerable financial liquidity or maximise within safe investments interest on that sum. The evidence of the applicant was most of the money in the accounts was in euros and as regards the account in Ps sole name there was no authority to manage that fund for investments.
51. It emerged during case management that an enduring power of attorney in another country was at one point in time contemplated but never registered. I had no clear understanding of why this came to be save cost.
52. It was against that backdrop that at the hearing reflecting on the evidence given on the point the applicant affirmed she accepted the need to change the accounts into P's sole name and on the first day of hearing the applicant informed the Court that steps had been taken to notify the overseas banks on the 19th May 2021. Evidence was requested but not provided during the hearing.
53. The respondents numbered 2-7 raised some issues as to specific withdrawals from the accounts of P not particularised before the hearing, they felt may be relevant to the final calculated figure of care to which the applicant might reasonably receive. When asked by the fifth respondent if the OPG requested the historic accounts for P administered by the applicant the latter confirmed voluntarily that such information as may be needed could be provided her actions being transparent. That level of organisation does not sit well with the observations in the Section 49 report. Specifically.

‘The special visitor has stated that they ‘...quite clearly agree that they had not realised the need to keep separate and detailed account of the costs differentiating between what were their costs and what the costs they incurred looking after their mother’.

54. Nor the inability of the investigator to accurately clarify actual care given. That said I believe it is possible to take an approximation of the latter on broad-brush approach. The respondents did not disagree.
55. The Senior investigator emphasised in evidence the differential between the role of the OPG under a Deputyship in which the administration of P’s financial affairs under a Deputyship are routinely monitored as opposed to those administering the LPA where it would not be unless issues were referred to it. As a result, this witness could not address issues raised by family members regarding any specific withdrawals before me. He went on to amplify that under a Deputyship the holder of that role would be usually obligated to secure a bond to ensure in the event of mismanagement the bond would operate to preserve P’s financial status to limit of the bond whereas under the LPA this did not operate.
56. The Court heard evidence that P has also beneficial interest in inheritance of two outstanding estates which may require further investment subsequent.
57. In any event by day 2 the applicant had clearly reflected on the overwhelming evidence heard on her position as attorney and indicated that she was prepared to resile from the Power of Attorney but subject to the condition precedent that her sister named as alternate did so too. If this occurred there being no other alternates the appointment of a professional deputy independent of the family would not be opposed. This was then agreed by all parties and so I gave short Judgment on that issue at the close of day three of the hearing bringing this aspect of the case to conclusion and progress the appointment of a panel deputy. This was not appealed.
58. Considering that decision of the applicant, I see no merit in proceeding further on this aspect of the case having authorised the engagement of a panel Deputy and as a result of same reasonably anticipating that the Professional Deputy will attend to regularisation of the accounts in both the UK and overseas and arrange such investment decisions as may be warranted subject to the oversight of the OPG as is usual. I think the applicants decision to have been prudent. It is only regrettable that having canvassed this in a telephone case conference in August 2020 it took a final hearing to resolve this.
59. The second cluster of issues relate to remuneration for gratuitous care. The principle of payment for this is not in issue.
60. The evidence of in various reports is that the exact daily level of care provided from outset to the point of the Section 49 and special visitors involvement triggered by this

Court is not clear.

61. What is clear is that it has increased. Having heard the frankly exhausting level of daily issues not disputed in closing submissions I accept that the level of care was extensive and required for example involved frequent night toileting and the family alternating cover at night by example Mr R taking the 1am to 9 am slot on occasion.
62. The second respondent supported the principle of payment. The third respondent did not oppose this in principle but disputed the factual maths under pinning the figure. The fourth respondent was neutral and aligned with the OPG on these issues. Mr fifth respondent did not oppose the principle of payment nor did the sixth or seventh respondents.
63. In my view there can be no departure from the starting position that the siblings agreed a letter of comfort drawn up by Lawyers overseas setting a daily rate of £86. The Court did not oppose a figure of £90 seemingly later agreed by all.
64. Unfortunately, I see that letter did not incorporate uplift to account for inflation over time or alternative methods of tracking and applying reasonable increases of that daily rate from time to time. I conclude on balance of probability the parties did not expect to address this issue, but they would have if they had turned their minds to it. The principle was not opposed.
65. I regret that the Court is not able to pluck from the ether such calculations. The Court is required to decide issues in P's best interests and not the applicants. It is for parties represented or otherwise to present evidence. That said the Court is tasked more and more with those that represent themselves.
66. During the case the Court heard evidence from the applicant that her headline figure and the sum of £40,629.16 was derived from data compiled on a spreadsheet. The Social Worker, in evidence stated that professional agency carers would charge in the order of £15 - £20 per hour for services.
67. It is my starting point that if it is possible to facilitate such issues being resolved it is infinitely preferable to do so within boundaries of allotting finite court resources proportionately to arrive at reasoned figures.
68. It is this Courts view that retrospective alteration of the rate of remuneration is not appropriate considering the letter of comfort, but such amendment should flow from the date of the initial application.
69. I concluded that it would be in all parties' interests that the professional deputy could consider and calculate this final figure due to the applicant for agreement as against the backdrop of the Court providing some parameters based on evidence heard.

70. In first instance there can be no dispute that the letter of comfort gives the applicant right to £86 per day for daily care of P (Page C75 of the bundle seemingly agreed by all to be £90 in Court) . That figure is a simple mathematical calculation from the date P came to live with the applicant as stated earlier in this Judgment to the originating application.
71. From that figure must be deducted the days when P lived with other family members (the Court understanding they have been remunerated as per the letter of comfort) and duration of stays in any nursing home. In addition, there was periods of time when a private care arrangement was set up by the Applicant and a carer provided care spanning January 2019 to November 2019. The evidence was that these carers came from 9.15 to 3pm and again in the evening but did not attend every day. These carers were employed directly, and I believe that these payments can be identified and taken into consideration as against the headline figure reached of £96,775.74. Counsel set out in submissions the calculations, but the headline figure equated to £71,158 crediting the £40,629.16 left a net balance of £30,528.84. I think therefore the Panel Deputy can against this backdrop refine the exact figure taking into account any relevant and evidenced respite care etc.
72. For the period 30th September 2021 to the date, I learned post hearing P moved into a care home I concluded having noted the route suggested by the OPG was sensible in absence of any alternative costed analysis. Namely a commercial daily rate of £106.80 gross less 20% for the gratuitous nature of the care a net of £84.80 or £12 per hour net and a night rate of £7.50 per call in absence of convincing evidence to rebut more likely than not a reasonable daily alternate rate given that in addition P funds the routine costs of the car ie tax , insurance , servicing as well as contribution to one third of the utility bills.
73. Having reached this net figure as at the date that P went into a home after the hearing, I conclude then the next issue is ought the applicant be *retrospectively* authorised to withdraw the £40,629.16 that was withdrawn without prior Court of Protection authority? If not how else may this court reasonably deal with that situation?
74. I start from the position that a properly formulated LPA required P with capacity to place trust in her daughter to administer her affairs properly, impartially, in her best interests and regarding the relevant code of practice. This is plainly not a case where P was dishonest indeed, she had made clear her intention to withdraw such sums and the evidence I heard was that the respondents either collectively or otherwise had made clear need to secure prior approval to do so. I heard no evidence that such request would be refused. Yet despite this that significant sum was nevertheless withdrawn with no prior approval. The OPG opposed retrospective approval of the court as result for the sums taken from the account of P without agreement. The

respondents similarly so.

75. In evidence the applicant gave me no real sense of why this did occur without prior approval. I heard no evidence of pressing financial imperatives or mitigating circumstances if same could ever properly justify this unilateral step.
76. I regret listening to the evidence my conclusion was that the applicant adopted a position of belligerence and proceeded in any event knowing this was inappropriate and the impact of this action upon on the siblings.
77. As a District Judge my decisions are of course not binding on any court or indeed my peers. However, against this finding I conclude to retrospectively approve an action the applicant knew was inappropriate is to tacitly say it is in order to do so when plainly it is not. Had there not been requirement to enable the applicant to be paid reasonable sums for gratuitous care more than £40,629.16 I would have simply refused the request for retrospective authority.
78. In these circumstances however, I conclude the just means of resolving the situation but accepting as I did in the hearing it may be pure semantics in any event is to refuse retrospective authority for this significant withdrawal for to do otherwise is to countenance something I find deeply unsatisfactory. However, in this instance given its unique facts I will permit this sum to be considered payment on account of gratuitous care and so deducted from the total calculated due. This is not opposed.
79. The Court was not asked to consider any award for interest on gratuitous care nor offset interest on the £40,629.16. This court therefore makes no such order in that regard.
80. I now come to the next significant sum in issue namely the car bought for £25,490. Counsels position statement for the OPG 1.9.21 detailed it was not clear that the applicant sought to convince this court that the purchase of the car in 2017 for should be offset from the amount recovered in care payments. The Car is a contentious issue. The accounts have highlighted that on 7.7.2017 P's finances were used to buy a new car costing £25,490 from a dealership which has been registered to the applicant. The purpose of this purchase was said to be to transport P to and from appointments. The OPG reported the bank statements show that P paid the yearly road license costs and at the time of the report a further £4,983.38 on running costs averaging £76.67 per month.
81. The evidence I heard at hearing from the applicant was that prior to purchase of the replacement car with P's money the applicant had access to a Volvo convertible unsuitable to transporting P and a Mazda 6 which was not without its mechanical problems.

82. The applicant's evidence was that P needed a car that was reliable and which she could enter and exit with ease. With seats that might be easily cleaned, and that P could be able to see out of the windows from.
83. The purchase of a new car came with the benefit of a warranty and crucially reliability. The evidence was this significant expense was required to transport P to the various GP appointments, Dental appointments and to the Garden centres and for various days out.
84. The applicant informed the car was used to travel to her own grandchildren, but such trips also involved P. I was told the Volvo C70 was used by the applicant for her own personal travel.
85. The applicant informed me that the vehicle had since purchase covered 21,647 miles and I noted that for the registration I was given according to the MOT check site operated by HMG in August of 2021 the milage was 21,277 and it rose to 25,088 miles by 17.8.2022 against a modest annual milage in years preceding circa 2000 miles per annum.
86. On balance I accept that at time this case came before myself the car purchased was used by the applicant for Ps use. I accepted that on balance of evidence before me the residual value of the car was circa £14,000 if sold privately and £17,000 if traded in.
87. That said I was not entirely convinced that such significant expense was in P's best interests nor justified given the plethora of reliable less expensive second-hand vehicles on the market for which a warranty might be procured.
88. However, I noted that in the hearing the OPG shifted its position and no longer objected to the acquisition of the car. Nor did the 2nd to 7ths respondents though comments made for example in hearing by the fifth respondent that half the cost of the car given it replaced the original family car ought to be borne by the applicant and or P charged a milage rate for transportation.
89. The question I think is answered by asking should this car be deemed Ps property or that of the Applicant? The vehicle was bought on the applicant's own evidence for the express purpose of P's needs. It was not used as a family car. The costs of tax and service were on the applicant's own evidence to this court met from Ps funds. Although the car was registered to the applicant that is not proof of title and considering these magnetic facts as to the source of funding I find as fact that the car must therefore be P's property.
90. It therefore follows if one accepts the applicant's evidence and there was no evidence to counter this point the solution is that upon P no longer needing the vehicle for her

own transportation to GP appointments and or entering a home or similar the car should be sold. It would seem fair to suggest the Deputy on appointment must put the family to their election to if they seek to retain the vehicle and so purchase it for fair market rate at time of purchase or it be sold but irrespective the proceeds should be reinvested into P's account. If the applicant seeks to acquire the car it may be the surplus funds due to her could be offset for that vehicle. That is a matter for the Deputy.

91. It therefore follows that the sum of £25,490 used to purchase P's car should not be retrospectively authorised in accordance with reasons given for the refusal to retrospectively approve other funds unilaterally withdrawn from P's account.
92. The ultimate outcome of this specific decision is a matter for the OPG and Professional Deputy to consider.
93. I now move to the question should the Court authorise the building works for P's benefit and if so, consequential orders required?
94. On 5th August the Court in a case management hearing was informed by the applicant in what was believed plainly a response to stress and a spontaneous decision that these works were no longer to be the subject of application. At that hearing allowing for the fact the applicant was self-representing and having heard applicant in times past concluded this decision that this deserved time to enable the applicant to reconsider given the demeanour of the applicant during that case conference.
95. The s49 report detailed that the creation of a private extension to the property would allow P to access more private areas and allow visits from her adult children especially considering the stipulation by the applicant that they would not be welcome in her own home and there would be need for at least a week's notice of any visit. At final hearing the applicant accepted the works were not necessary but would improve the life of the family and especially P better. The stated objective to step back and let professional care services take more hands-on role in p's care.
96. The cost of the works was thought not to be of significant detriment to P's liquidity by the author of the S49 report and the works could allow the caravan bought with P's money to be sold as the works could permit in house carers to be facilitated.
97. The works quoted would of course need revision upwards having regard to the substantial escalation in building materials and inflation.
98. The respondents in their joint statement filed considered the issue of building adaptations could only be determined if it was clear that P would remain living with the applicant and if the applicant did continue to seek authority a best interest's analysis would be needed considering likely benefit at her advanced age compared to

disruption the work would create.

99. The OPG deferred to the Local Authority on the issue of if living with the applicant was a long-term viable situation and if resulting from these adaptations were in P's interests.
100. Counsels position statement for the OPG dated 1.9.21 stated it was unclear if the applicant continued to pursue the costs to adapt the property following the case management hearing in August. I was informed this continued to be a live issue at final hearing and so considered it.
101. I heard evidence from an employee of the County Council Social Services FCC. Although she had not met P her evidence merely reinforced the obvious discord amongst the siblings and refusal to enable the adult children of P to visit her at P's home. The reason distils down to the applicant's open disdain for them.
102. I heard evidence from the Social Worker, that the space in which P lived effectively in a self-contained annex converted from a garage and connected to the main house by interconnecting door. There was no clear evidence of the planned works proposed by the applicant save a quotation.
103. Though the current bathroom area was small I was told by this witness it was 'adequate' subject to the caveat that if P declined further at some point, then needed aids and equipment would be difficult to position in the current space. The witness informed the court there were no identified safeguarding issues prevalent, but the situation had moved on and that further adult needs assessment on a holistic basis was now warranted.
104. The social worker could not assist the Court on the crucial point of if the construction was in P's best interests. The applicant asked of this witness if the shower as it currently was could be considered a high risk given at the time of hearing there was no suggestion that P was prone to repeated falls. The Social worker was unable to say. She opined that this would need further assessment against current needs and required her Occupations Therapy colleagues to assess. The evidence at C398 of the bundle indicate no substantive mobility decline as yet and the risk of fall described at last assessment as low.
105. The second respondent had supported the works being paid for but reversed her position in evidence in chief. The remaining family members did not support this expense and the office of the public guardian positively objected for reasons this court found magnetic namely that the space at present was shown on balance to be sufficient for Ps current needs, the costs lacked clarity the quote not having been updated to enable the court to approve an exact amount and the court ought not to provide tantamount to a blank cheque and most crucially the OPG did not believe

having heard all evidence this expenditure was ultimately in the best interests of P given her 96 years and potential short term use. I accept having considered the evidence that the OPG's case is overwhelming and so do not approve that expenditure. The consequential issues that may have flown from that element of the case fall away. Had I decided to the contrary I would have ordered P's beneficial interest be recorded with the Land Charges Registry.

106. I now move to the issue of the contact by the respondent's 2nd to 7th with their mother P. This court has significant sympathy with all the parties not least as litigants in person in this emotive case. I see no purpose is served by the airing of the unwashed linen of this family dispute save to say one views the situation unretrievable between the respondents and the applicant.

107. The evidence given by the social worker is that P no longer recognises people. Though she can write fluidly she would not without prompting keep a diary though on assessment was able to write that suggested to her but that she could not reason, understand or challenge that being asked of her to write and writing could be considered a more autonomic action than a conscious deliberated process. I have doubts social media or video conference would benefit P but can appreciate the adult children especially those overseas may find it beneficial for they from time to time to see their mother.

108. During this case the Court attempted to encourage exploration of agreement on the issue of contact. This Court found it unedifying particularly given P's health and her condition as I witnessed on day one when briefly she sat cared for by a family member at the back of Court 9 that it be seriously suggested in Court that P see her adult children only at a garden centre.

109. The applicant made abundantly clear and somewhat undermined her own case on building works that she would not abide family members visiting her home but would instead be willing to take P to their homes for respite and to enable them to have contact. It is evident that the applicant perceiving herself to be under siege was in part seeking to avoid the situation she perceived namely;

'I never know what I am going to be accused of next'...and later 'it's been like a witch hunt'

110. In reply to the fifth respondent's evidence the applicant highlighted she perceived the visit he made to see P as a means to report back to the siblings on the status of P in her home.

111. That said the applicant reflecting on the case amended her position by day 3 as regards contact to express the view that if P were to deteriorate then home visits to see P facilitated by the first respondent would be possible but that she wished no

involvement with her siblings. She would also agree to transport P to an agreed Holiday let so all might meet with her.

112. I record for parties that the response from the fifth respondent was that this concession was welcomed by the siblings. Be that as it may I must say having at times seen the impulsive decision making of the applicant in the context of appearing in Court I remained concerned that such facility would be maintained or moreover switched off on the whim of the applicant in response to some perceived criticism. I think that view justified for following the olive branch offered by the fifth respondent in reply the applicant said;

‘I accept you care about your mother I have allowed you to come but cannot allow you to see me I don’t want to repair bridges ‘

113. Against this backdrop there was not at any time a formal application regarding contact. The Health and Welfare Power of Attorney was not challenged.

114. The Court must deal with cases proportionately to resource available. I accept the issues in this case manifest and grow but in this matter Counsel for the OPG observed no evidence is before this court regarding P’s capacity to not make such decisions about contact. The point being this Court’s jurisdiction is only engaged if the issue of Capacity is such that P cannot make these decisions for herself.

115. I speculate to what such evidence would tell me having seen P, having read the evidence thus far and in light of the evidence of the social worker, who last saw P 11.11.2019 and considered her inability to consent due to lack of capacity established.

116. Yet speculation is not proof to any standard. I remind myself I am not an expert in the field required. To further assist at close of the hearing I invited a memorandum of understanding as to contact to promote agreement in the hope that having let all family members central to this case vent their issues and been heard this might in some way allow them to have breakthrough on this issue.

117. I was on return to duties informed this was not agreed in full, but given to understand that P has in fact moved into a Home. I therefore conclude that for these reasons no useful benefit is attained by further addressing this issue having now been rendered superfluous by effluxion of time.

118. It is for the OPG to consider if the Power of Attorney over health and welfare should remain in place given, at the time of hearing, it was not challenged.

119. Considering all the above I shall invite the representative for the OPG to draft an order to conclude matters shall give the Professional Deputy who has not been party

to these proceedings a full copy of the OPG prepared Bundle and for information this Judgment in unredacted form.

DJ McIlwaine. Nominated Judge of the Court of Protection.

The Court publicly thanks Mr Cisneros of Counsel for his invaluable help in anonymization of this Judgement for publication purposes by the National Archives.