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Neutral Citation Number: [2023] EWCOP 69

IN THE COURT OF PROTECTION
(Sitting at Newcastle upon Tyne)

No. 13512542

Newcastle Civil & Family Courts and Tribunals Centre
Barras Bridge
Newcastle upon Tyne
NE1 7PF

Thursday, 16 November 2023

**IN THE MATTER OF THE MENTAL CAPACITY ACT 2005
AND IN THE MATTER OF LM**

Before:

MR DAVID REES KC

(SITTING AS A TIER 3 JUDGE OF THE COURT OF PROTECTION)

B E T W E E N :

NEWCASTLE CITY COUNCIL

Applicant

- and -

LM

(by her litigation friend, the Official Solicitor)

Respondent

ANONYMISATION APPLIES

MR J GRAY (instructed by the Legal Services Department of the Local Authority) appeared on behalf of the Applicant.

MR B DAVIES (instructed by BHP Law on behalf of the Official Solicitor) appeared on behalf of the Respondent.

Hearing Dates: 15 and 16 November 2024

JUDGMENT

Mr David Rees KC:

Introduction

- 1 This is an application in the Court of Protection relating to a young woman, LM, who is 22 years old. The applicant is Newcastle City Council. LM is the respondent represented by her litigation friend, the Official Solicitor. Before me, the applicant is represented by Mr Justin Gray and LM by Mr Brett Davies. I am grateful to them both for their helpful submissions in writing and orally.

- 2 LM is of Bangladeshi heritage. She grew up in the Newcastle area and lived there until she was 16. I am told she considers herself to be a “Geordie”, a point which is of some relevance to the issue of jurisdiction that I will need to determine. LM is currently in a placement in Scotland subject to interim orders from this court which, among other matters, deprive her of her liberty. The application was originally brought in 2019, just after LM’s eighteenth birthday. As I explain in greater detail below, there has been significant delay in bringing this matter to a final hearing and throughout the hearings to date the court has proceeded on the basis of interim declarations concerning LM’s capacity and the question of her habitual residence.

- 3 The matter has come before me for a final hearing and I am now being asked:
 - (1) To make a finding (in order to found the Court of Protection’s jurisdiction over LM) that she is currently habitually resident in England and Wales.
 - (2) To make declarations as to LM’s capacity:
 - (a) to conduct legal proceedings;
 - (b) to engage in sexual relations;
 - (c) to make decisions in relation to her care and support needs;
 - (d) to make decisions concerning her contact with others;

- (e) to make decisions concerning her residence;
 - (f) to make decisions concerning her property and affairs; and
 - (g) to make decisions concerning her use of the internet and social media
- (3) To make declarations that it is in LM's best interests to continue to reside at her current placement subject to the local authority's most recent care plan and accompanying protocols.

4 There is a good deal of agreement at the Bar regarding these issues. In the light of the written evidence that has been filed and the oral evidence that I have heard, the only point of significant dispute remaining between the parties relates to the question of LM's capacity to make decisions regarding her use of the internet and social media. However, there are other points that I need to resolve in this judgment, not least questions that arise concerning this court's continuing jurisdiction to make orders in relation to LM. Before I do so, I will set out some of the background to this case.

Background

5 LM's mother has a significant learning disability and this impacted on her ability to care for her children, including LM. For the purposes of this judgment, I do not need to go into this in any detail, save to say that LM clearly had a very difficult childhood that required professional intervention at various points. In February 2016, the local authority obtained a forced marriage protection order in relation to LM and, later that year, in August 2016, after LM had alleged that she had been sexually abused, an interim care order was granted to the applicant local authority. Initially, LM remained in her mother's care, but later that year she was received into local authority foster care and a final care order was made in December 2016.

- 6 LM required a degree of care and attention beyond what could be offered in the foster placement and, in October 2017, she moved to a children's home in the Newcastle area. However, that placement too proved to be unsuitable and, in June 2018, the local authority moved LM to a placement in Scotland. At the time, this was not seen as a long-term placement and no application was made by the local authority under the Children Act 1989 for an order permitting LM to live in Scotland. However, as events have transpired, LM has continued to live in that placement and continues to live there to this day.
- 7 The placement has clearly been extremely successful. LM is settled and happy there, and it is clear from the evidence that I have seen that there have been significant improvements in her presentation over the years she has been there. At one point, it appeared that the placement might need to cease upon LM obtaining the age of 21, but I understand it is now agreed that this can be a long-term placement for LM.
- 8 LM is the only person living in the placement, which is in a rural area within Scotland's central belt. She is not free to leave the placement and there are two staff members present on the premises at all times, although arrangements have been considered to permit LM limited periods of time alone at the property subject to remote monitoring. LM is accompanied on trips into the community by one or two staff members and supervised whilst in the placement. It is clear that LM is subject to control and supervision such that her placement amounts to a deprivation of her liberty.
- 9 Following LM's eighteenth birthday in 2019, the local authority applied to the Court of Protection for orders and declarations relating to her capacity and best interests. The matter initially came before HHJ Moir in November 2019 and the judge made interim declarations that LM lacked capacity to make decisions regarding:

- (1) Her residence;
- (2) Her care arrangements;
- (3) Contact with others; and
- (4) Internet and social media use.

The judge made a further interim declaration that LM was habitually resident in England and Wales and made declarations as to the lawfulness of the care package that was in place. The order authorised the deprivation of liberty to which LM was subject as being lawful, necessary and proportionate to secure her best interests and the order was expressed to last “until further order”. An application for a further forced marriage protection order was made at the same time.

- 10 The matter has come back before the Court of Protection regularly since 2019, although no final hearing has taken place, the Covid pandemic being one factor in the delay. Further orders containing similar interim declarations and orders and a further interim declaration that LM lacked capacity to manage her property and affairs were made by HHJ Moir in December 2019 and again in April 2020, July 2020, September 2020, January 2021, July 2021, November 2021 and March 2022. On each of these occasions, the authorisation of the deprivation of liberty contained in the order was expressed to last until “further order”.
- 11 The matter was listed for a hearing before Gwynneth Knowles J in November 2022. In fact, two hearings took place that month before Knowles J, on 8 and 30 November. Both of the orders made by Knowles J at those hearings recite that:

“... and upon the court determining that, for the present purposes, it continues to have jurisdiction to make orders in relation to LM on the basis of the court’s determination at the start of these proceedings in 2019 on the then available evidence that LM was habitually resident in England and that jurisdiction continues.”

- 12 Knowles J determined that updated capacity evidence was now required and directions were given for the instruction of Dr Camden-Smith, who is a forensic learning disability consultant and lead for learning disability in autism forensic services at Oxford Health NHS Foundation Trust, to provide a single joint expert report. The matter was initially listed for a final hearing before Knowles J in May 2023.
- 13 In March 2023, the matter was reallocated to me sitting as a Tier 3 judge of the Court of Protection. Almost immediately, it became apparent that the original listing could not be maintained following delays in the preparation of Dr Camden-Smith's report. I agreed to the final hearing being adjourned until July 2023. Unfortunately, that fixture too had to be vacated, as I fell ill shortly before the start of the case and the matter was relisted to be heard before me on 15 and 16 November.
- 14 I should record that neither of the orders that were made by Knowles J in November 2022 nor the directions orders that I have made subsequently expressly refer to the continued authorisation of LM's placement or the deprivation of liberty. However, both Knowles J and I have been provided with updating evidence, including recent statements from Ashley Heir, LM's social worker, and from Victoria Burrows, LM's solicitor. LM has been represented at each of those hearings by her litigation friend, the Official Solicitor.
- 15 For my part, I have been satisfied throughout this case that the continuation of LM's placement remained in her best interests pending a final hearing and no party has sought to suggest otherwise. Nonetheless, I recognise that the formal authority for her deprivation of liberty has continued to be the orders of HHJ Moir, which were expressed to continue until further order and have not been superseded by subsequent orders. Whilst I am satisfied that LM's placement and the deprivation of liberty have been regularly considered by the court

pending this final hearing and are lawful, I recognise that good practice would be for the deprivation of liberty to be authorised specifically for a fixed period in each order.

- 16 The Scottish Central Authority has been invited to participate in these proceedings, but does not wish to do so. In January 2023, the orders of the Court of Protection dated 5 November 2019, 18 December 2019, 21 April 2020, 2 July 2020, 24 September 2020, 14 January 2021, 5 July 2021, 2 November 2021 and 30 November 2022 (the latter being the order of Knowles J) were recognised by the Scottish Sheriff's Court pursuant to Sch.3 of the Adults with Incapacity (Scotland) Act 2000.

LM's diagnosis

- 17 LM has a complex diagnosis. This is set out by Dr Camden-Smith in her report dated 19 July 2023, and she identifies three separate elements to it.
- 18 First, as a result of substantial and sustained childhood trauma in multiple settings over many years, LM has been diagnosed with complex post-traumatic stress disorder or developmental trauma disorder, which Dr Camden-Smith says is best understood as complex PTSD with onset during the development period. Dr Camden-Smith explained that LM has previously been diagnosed with attachment disorder, but that this is a childhood diagnosis that does not persist into adulthood, although the underlying condition may do so.
- 19 Dr Camden-Smith makes the point that it is worth distinguishing developmental trauma disorder from complex PTSD because the effects of trauma are much more profound on a developing brain than on an adult brain, and Dr Camden-Smith's report explains the impact of this disorder on LM as follows:

“Developmental trauma disorder is associated with high levels of impulsivity, poor emotional regulation, deficits in higher order cognitive processes (particularly executive functions), problems with relationships

and attachment, chronic feelings of emptiness, chronically heightened levels of anxiety and arousal, low self-esteem and a poorly constructed sense of self. It is a chronic and long-standing disorder that is amenable to amelioration by long-term therapy and sometimes medication, but that is likely to be present in varying degrees throughout the person's life. The lack of safe and secure attachments in childhood gives rise to difficulties in learning how to regulate emotions and chronic feelings of emptiness and loneliness. People with disrupted attachment and childhood trauma place extreme and unobtainable demands on those they depend on due to their underlying belief that their needs will not be met. They have a fear of abandonment and a belief that those they need will leave them, this can manifest as behaviours that pre-empt abandonment by rejecting people before they can be rejected (such as physical or verbal abuse, running away or hurting people they love). These unhelpful behaviours can then lead to a self-fulfilling prophecy in which those they love and depend on then find it impossible to meet their intense needs resulting in multiple disruptions of attachments.”

20 The second element of LM's condition relates to her cognitive function. Although Dr Camden-Smith considers that LM does not meet the diagnostic criteria for formal diagnosis of intellectual disability, her full-scale IQ of 73 is in the extremely low range and Dr Camden-Smith makes the point that LM's low level of cognitive function is a further matter that needs to be considered in the context of this case.

21 Thirdly, LM has been diagnosed with a language disorder. Her use of and understanding of language is significantly impaired and is lower than would be expected of someone with even her low verbal skills and cognitive abilities. She has particular difficulty with using her short-term memory to manipulate information and she benefits from writing things down to assist her in using the information.

22 Dr Camden-Smith summarises LM's position as follows:

“In common with many people with her diagnoses, LM has substantial deficits of executive functioning. Executive dysfunction is characterised as difficulties with the higher order cognitive functions affecting impulse and behavioural control, planning, abstract thinking, flexibility and disruptions in task orientated behaviour. People with executive dysfunction have difficulty with sequencing, planning and problem solving in unexpected situations.”

In terms of prognosis, Dr Camden-Smith's view is that:

“LM's cognitive dysfunction is lifelong and immutable. Her cognitive capacity will not change, however, her ability to operate at her full cognitive capacity has the potential to be maximised with emotional stability, learning and maturity. Similarly, LM's language disorder will not change. LM's developmental trauma disorder is amenable to therapy, however, this will require long-term therapy and stability. She has made great improvements in the last five years and there is the potential for her to improve further provided that any changes made are made in a slow and considered manner with restrictions gradually being reduced.”

Jurisdiction

23 Before turning to the substantive issues that I have to decide, I must first consider the preliminary issue of the jurisdiction of the Court of Protection to make orders and declarations concerning LM. This arises because LM is subject to a placement in Scotland and indeed has been for some time now.

24 The cross-border jurisdiction of the Court of Protection is to be found in Sch.3 of the Mental Capacity Act 2005. Section 63 of the MCA 2005 explains that Sch.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 (in so far as this Act does not otherwise do so), and
- (b) makes related provision as to the private international law of England and Wales.”

25 It should be noted that, although the United Kingdom has signed the 2000 Hague Convention on the International Protection of Adults (“the 2000 Convention”), it has been ratified and brought into force only in relation to Scotland. The 2000 Convention is not yet in force in England and Wales, and that means several of the provisions of Sch.3 MCA 2005 are themselves not in force (see para.35 of Sch.3).

26 One of the provisions that is in force is para.7 of Sch.3 MCA 2005, which explains the Court of Protection's jurisdiction. This provides that:

“The court may exercise its functions under this Act (in so far as it cannot otherwise do so) in relation to –

- (a) an adult habitually resident in England and Wales,
- (b) an adult's property in England and Wales,
- (c) an adult present in England and Wales or who has property there, if the matter is urgent, or
- (d) an adult present in England and Wales, if a protective measure which is temporary and limited in its effect to England and Wales is proposed in relation to him.”

27 Thus, it can be seen that the Court of Protection’s jurisdiction to make declarations under s.15 MCA 2005 and decisions and orders under s.16 in welfare matters (described as its “full, original jurisdiction” - see *Re MN* [2010] EWHC 1926 (Fam) per Hedley J at [20]) is largely confined to cases where P is habitually resident in England and Wales. Presence in the jurisdiction can give rise to a limited protective jurisdiction (under MCA 2005 Sch.3 paras 7(c) and (d)), but it is not relevant in the present case.

28 I must, therefore, begin by considering where LM is habitually resident. Habitual residence is not defined either in the MCA 2005 or in the 2000 Convention. However, it is now settled law that it is the same overarching concept as applied in other family law instruments, such as the 1996 Hague Child Protection Convention (“the 1996 Convention”) - see *An English Local Authority v SW* per Moylan J [2013] EWCOP 43.

29 In *The Health Service Executive of Ireland v IM & Ors.* [2020] EWCOP 51, Knowles J extracted the following principles from the authorities:

- “(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]) [Similarly *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]).”

30 In the case of *Aberdeenshire Council v SF* [2023] EWCOP 28 at [15], Poole J added the following comment to that summary:

“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.”

Poole J concluded at [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 MCA 2005, this case highlights the significant differences in the

evidence and factors that the court may have to consider when applying those principles.”

31 As identified above, the conditions and reasons for a person’s stay in a specific jurisdiction are relevant to the question of habitual residence. This may be particularly so where those conditions amount to a deprivation of liberty. In the case of *HSE of Ireland v PA & Ors.* [2015] EWCOP 38, Baker J, as he then was, was considering applications in relation to a number of young adults who were being held in secure mental health placements in England and Wales pursuant to orders of the Irish High Court. The Irish court’s orders had proceeded on the basis that, notwithstanding that the adults had been present in England and Wales for some period of time (in one case nearly four years) they remained habitually resident in Ireland. Baker J held at [53] and [54] of his judgment:

“In any event, I conclude that, in each of these cases, the findings made by the Irish Court as recorded in the relevant orders were in line with the clear authority of the CJEU and the Courts of this jurisdiction. In each case, Ireland remains the place of integration in a social and family environment. PA, PB and PC are all in this country on a temporary basis for the purposes of treatment, each hoping to return to Ireland at the earliest opportunity, and their cases are subject to regular review by the Irish Court to determine whether the adult concerned should return or remain for the time being in this country.

This point was put succinctly by counsel in the Irish Court – as it happens, Senior Counsel acting for PA, Mr Gerard Durcan SC – who submitted to O’Hanlon J at the hearing on 2nd March (as recorded at internal page 70 of the transcript) that:

‘the fact that all the time PA’s stay in England is on foot of short term Irish High Court Orders always subject to review, always temporary, it seems to be simply, to use the expression of the Court, is not conducive to a finding there is a change in habitual residence. I just think somewhere in your judgment, Judge, you need to deal with this because the English Court will find it very helpful indeed to have a finding from the Irish Courts’.”

32 On the other hand, in the case of *Re DB* [2016] EWCOP 30, Baker J held that two Scottish men who had been held in a specialist hospital in England for 7.5 years and 6 years respectively were habitually resident in England and Wales. However, I note that, in that case, their detention was authorised, first, under the Mental Health Act 1983 and

subsequently by standard authorisations made under the MCA 2005 (that is to say, pursuant to an English statute).

33 In LM's case, both counsel argued that LM remains habitually resident in England and Wales and I have been directed to the following features of this case.

- (1) LM was born in England to English parents;
- (2) Prior to her current placement, LM had lived all her life in Newcastle;
- (3) She has always considered herself to be a "Geordie".
- (4) The arrangements for her care and support have been made by Newcastle City Council pursuant to its statutory responsibilities.
- (5) The original need for a Scottish placement arose from the lack of a suitable resource in England.
- (6) This was never a case where LM made a positive choice to move to Scotland.
- (7) The local authority has looked for other long-term placements for LM elsewhere, including in England.
- (8) LM has been deprived of her liberty throughout her time in the placement. She is not free to come and go and is subject to supervision and monitoring. Since November 2019, this has been authorised by orders of the Court of Protection, albeit on the basis of interim declarations.
- (9) The orders of the English court have been recognised by the Scottish courts pursuant to the Adults with Incapacity (Scotland) Act 2000.
- (10) LM's integration in Scotland has been extremely limited. For the majority of her time, she has had no friends there and has not been in education, although she has been attending various college courses now since May 2022.
- (11) The majority of LM's interactions are online and with individuals, the majority of whom are in England.
- (12) Her family are in England and she has made visits back here to visit her mother.

34 Against this can be balanced the fact that she is registered with health services in Scotland. She started a college course in Scotland in May 2022 and, since October 2022, I understand she has been attending an educational course one day a week and, since January 2023, for two days a week. There is no doubt that LM is settled and making good progress at her current placement. So far as time is concerned, she has now been living in Scotland for nearly five and a half years.

35 I have little doubt that, at the outset of these proceedings, LM was habitually resident in England and Wales. At that time, she had been in Scotland for only around 15 months and the placement was not considered to be necessarily a long-term option. The restrictions that existed on her liberty meant that she had little chance to achieve any stability or integration and, although HHJ Moir's initial order contained what was expressed as an interim declaration as to LM's habitual residence as at that date, I am satisfied that she was habitually resident in England and Wales when these proceedings began and that the Court of Protection definitely had jurisdiction as at that date. However, these proceedings have now been on foot for four years and, though I am now asked to make a final order, I must first consider afresh the question of habitual residence.

36 There is weighty authority that the doctrine of *perpetuatio fori* does not apply to cross-border incapacity cases. In *Re O (Court of Protection: Jurisdiction)* [2014] (Fam) 197 at [21] (another case involving a person moving from England to Scotland), Sir James Munby held, albeit *obiter dicta*, that the principle of *perpetuatio fori* has no application in this context. The President's comments were derived from a consideration of the 2000 Convention and the explanatory report thereto. This report makes clear that:

“Where the change of habitual residence of the adult from one state to another occurs at a time when the authorities of the first habitual residence are seised of a request for a measure of protection, the

perpetuatio fori ought to be rejected in the sense that the change of habitual residence *ipso facto* deprives the authorities of the former habitual residence of their jurisdiction and obliges them to decline its exercise.”

This statement was made in the context of Art.5 of the 2000 Convention, which provides:

- “(1) The judicial or administrative authorities of the Contracting State of the habitual residence of the adult have jurisdiction to take measures directed to the protection of the adult's person or property.
- (2) In case of a change of the adult's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.”

37 The 1996 Convention is expressed in very similar terms to the 2000 Convention and has been the subject of a recent decision by the Court of Appeal in the case of *London Borough of Hackney v P* [2023] EWCA Civ 1213. There, the court recognised that the doctrine of *perpetuatio fori* did not apply in cases to which the 1996 Convention applied and held that the court, in order to make orders, must retain jurisdiction at the date of the final substantive hearing.

38 Given the similarities between the 1996 Convention and the 2000 Convention, I am satisfied that the same analysis must apply to cases in which the 2000 Convention applies. Of course, the 2000 Convention is not yet in force in England and Wales. However, given (a) the clear and close relationship between the 2000 Convention and those aspects of Sch.3 MCA 2005 which are currently in force and (b) the comments of Sir James Munby in *Re O*, I am satisfied that there is no scope for the doctrine of *perpetuatio fori* to apply in Sch.3 MCA 2005 cases, even in circumstances where the Hague Convention is not yet in force. Therefore, in order to continue to exercise jurisdiction in this case, I have to be satisfied that LM remains habitually resident in England and Wales.

39 Taking all matters into account, I have reached the conclusion that she remains habitually resident here. LM has clearly been living in Scotland for a significant period of time and there is no doubt that she is settled in her placement. Nonetheless, I need to consider the conditions and reasons for her stay and these, in my view, point towards her remaining habitually resident in England and Wales. She was initially placed in Scotland because there was no suitable placement closer to her home in Newcastle and, in my view, that remains her principal place of integration and social and family environment. She has been deprived of her liberty throughout her time in Scotland, which means her experience there is very different to an individual who is not subject to those restrictions. Most importantly, and a factor which I consider has magnetic importance in this case, her stay has, since the outset of these proceedings, been constantly subject to interim orders of the Court of Protection authorising the placement and the terms of the restrictions on her liberty.

40 Those interim orders were only ever intended to govern the position until a final hearing in this case, but their interim nature emphasises the inherently precarious nature of LM's placement absent a final conclusion to these proceedings.

41 In my judgment, whilst this matter is not on all fours with the position in *Re PA*, the fact that LM's living arrangements have been subject to review and approval by the Court of Protection on the basis of interim orders throughout the continuation of these proceedings points towards her habitual residence remaining in England and Wales, and I note that the Scottish courts have been willing to recognise and give effect to those orders. I, therefore, agree with the submission that has been made to me by Mr Davies that the interim nature of the orders that have thus far been made authorising her placement in Scotland, deprives LM's residence there of the necessary degree of stability which might otherwise have led to a change in her habitual residence.

42 I am fortified in this conclusion by other submissions that have been made to me by the parties. Mr Gray has pointed me to the decision of Hedley J made in a children context regarding interim placements. In *Re H (Residence Order: Placement out of the Jurisdiction)* [2004] EWHC 3243 (Fam) at [9], the judge held:

“Although the children live in the UAE and although everybody anticipates that that will be permanent, as of this moment they live there under interim care orders which would, of course, entitle the local authority and the court to recall the children at any stage to this jurisdiction. I think it must follow from that that they cannot have acquired habitual residence as yet in the UAE. As they remain the daily responsibility of the local authority in this jurisdiction under interim care orders, it seems to me that inevitably this is their habitual place of residence even though a temporary placement elsewhere has been authorised, a placement which can only be temporary until a permanent order is in place.”

43 Similarly Mr Davies for the Official Solicitor has referred me to the concerns raised by Peel J in the case of *H v R* [2022] 2 FLR 1301 (and recognised by the Court of Appeal in *Hackney* at [89]) that a party might seek to delay proceedings or seek to take advantage of delay to procure a jurisdictional advantage. Therefore, as the Court of Appeal identified in *Hackney* at [123], there should normally be substantial grounds in order to justify the court reconsidering the issue of jurisdiction after it has decided it.

44 The case of *Hackney* also identified that, in cases where there is a change in habitual residence involving a move to a non-contracting state, although the doctrine of *perpetuatio fori* does not apply, the courts of England and Wales may nonetheless be able to retain jurisdiction by virtue of their domestic law. Given that the 2000 Convention does not apply at all in the present case, I therefore explored with counsel whether (if I concluded that there had been a change of habitual residence) there was any applicable domestic law which could be used in this case to make orders regarding LM. The MCA 2005 does not assist in this regard as the Court of Protection’s jurisdiction is limited by Sch.3 para 7 to cases where the person is habitually resident in England and Wales. Mr Davies identified the inherent

jurisdiction as being a possible route to making such orders, as this can be used to protect the interests of vulnerable British nationals in certain circumstances. However, I do not consider that it would be appropriate to use the inherent jurisdiction in a case where, assuming there had been a change in her habitual residence, LM would be subject to the protective jurisdiction of the courts of Scotland, and indeed it is not clear that the inherent jurisdiction can be used to authorise a deprivation of liberty of an incapacitous adult at all (see the comments of Cobb J in *Wakefield MDC v DN* [2019] EWHC 2306 (Fam) at [48]). Ultimately, this issue does not arise in the present case given my finding that LM remains habitually resident in England and Wales.

45 For the reasons that I have set out above, I am satisfied that LM remains habitually resident in England and Wales. However, I recognise that changes in her circumstances may alter this position. In my view the making of a final order in this case which will not be temporary and not be subject to an ongoing review is likely to tip the scales such that LM will then acquire habitual residence in Scotland fairly rapidly thereafter. Even though that final order will be time limited, it will be a final order. The current proceedings will be at an end and my order will not be subject to any further automatic review by the Court of Protection. Assuming that such an order does indeed cause a shift in LM's habitual residence then any future application to approve changes to the restrictions on her liberty, or to extend the duration of the authorisation will lie to the courts of Scotland.

46 Having regard to the decision of the Court of Appeal in the *Hackney* case (in the context of the 1996 Convention) I would make the following observations on the issue of jurisdiction for future cases where issues arise under MCA 2005 Sch.3:

(1) In any case with a cross-border element, the Court of Protection's jurisdiction must be established or determined at the commencement of the proceedings (See *Hackney* at [87] - [89] and [112] - [113]).

- (2) If it is not immediately apparent, then a provisional determination should be given pending a prompt determination of the issue (*Hackney* [89]).
- (3) The doctrine of *perpetuatio fori* does not apply in cases involving the Court of Protection's jurisdiction whether or not the 2000 Convention is engaged (*Re O* at [21]).
- (4) The Court of Protection must, therefore, keep the question of jurisdiction under review throughout the proceedings and must be satisfied that it retains jurisdiction at the date of the final substantive hearing (*Hackney* at [116]).
- (5) In cases where the 2000 Convention applies (assuming that it is eventually brought into force in England and Wales), a change in habitual residence to another contracting country will mean that the court will automatically lose jurisdiction under Art.5 (see *Hackney* at [116]).
- (6) However, a change in habitual residence to a non-contracting country may not prevent the English court from retaining jurisdiction by reference to domestic law (see *Hackney* at [117]). Whilst the MCA 2005 will not be available in such circumstances, the inherent jurisdiction may, in some cases, provide an alternative source of domestic authority to enable the High Court to take steps to protect an incapacitous individual who is habitually resident outside England and Wales in a non-contracting country. However, there are likely to be limits on the circumstances under which the inherent jurisdiction could be utilised and the orders which could be made thereunder.

Capacity: The Legal Tests

47 Having established that this court has jurisdiction to deal with the substantive issues, I now turn to the question of LM's capacity. The statutory test for capacity is set out at s.2 MCA 2005:

- “(1) For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.

- (2) It does not matter whether the impairment or disturbance is permanent or temporary.
- (3) A lack of capacity cannot be established merely by reference to—
 - (a) a person's age or appearance, or
 - (b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about his capacity.
- (4) In proceedings under this Act or any other enactment, any question whether a person lacks capacity within the meaning of this Act must be decided on the balance of probabilities.”

48 The definition of an inability to make a decision is to be found at s.3 MCA 2005:

- “(1) For the purposes of section 2, a person is unable to make a decision for himself if he is unable –
 - (a) to understand the information relevant to the decision,
 - (b) to retain that information,
 - (c) to use or weigh that information as part of the process of making the decision, or
 - (d) to communicate his decision (whether by talking, using sign language or any other means).
- (2) A person is not to be regarded as unable to understand the information relevant to a decision if he is able to understand an explanation of it given to him in a way that is appropriate to his circumstances (using simple language, visual aids or any other means).
- (3) The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him from being regarded as able to make the decision.
- (4) The information relevant to a decision includes information about the reasonably foreseeable consequences of –
 - (a) deciding one way or another, or
 - (b) failing to make the decision.”

49 The approach that should be taken to these questions was made clear by the Supreme Court in the case of *A Local Authority v JB* [2021] UKSC 52. The first question to be considered is

whether P is unable to make a decision for him or herself in relation to the matter. If so, the second question addresses the issue of whether there is a causative nexus between that inability and an impairment of, or disturbance in, the function of the mind or brain of P.

50 There is a presumption of capacity under s.1(2) MCA 2005 and s.1(4) provides also that a person is not to be treated as unable to make a decision merely because he or she makes an unwise decision. Where a person lacks capacity, then any decision taken on their behalf under the MCA 2005 must be made in their best interest having regard to the factors set out in s.4 MCA 2005.

51 Capacity under the MCA 2005 is time and decision specific, and the relevant information that a person must be able to understand, use and weigh varies from decision to decision. The information relevant to specific types of decision have been set out in a number of different cases. There is no dispute about the applicable law at the Bar and in this judgment I will set out in detail the law concerning relevant information only in relation those matters where there is a disputed issue concerning LM's capacity that I need to decide.

52 The relevant law in relation to capacity to conduct litigation, can be found in the decisions of the Court of Appeal in the pre-MCA 2005 cases of *Masterman-Lister v Brutton and Co* [2003] 3 All ER 162 and *Bailey v Warren* [2006] EWCA Civ 51 and in the judgment of the Supreme Court in *Dunhill v Burgin* [2014] UKSC 18. Capacity to engage in sexual relations was considered by the Supreme Court in *Re JB*, which I have already referred to.

53 Capacity to make decisions in relation to care and support needs, to make decisions in relation to contact with others and to make decisions in relation to residence were all considered by Theis J in *LBX v K* [2013] EWHC 3230 (Fam). I do not need to say anything about the first

two of these – that is to say care and support needs and contact. As to capacity to determine residence, Theis J held at [43] that the relevant considerations are:

- “(1) what the two options are, including information about what they are, what sort of property they are and what sort of facilities they have;
- (2) in broad terms, what sort of area the properties are in (and any specific known risks beyond the usual [factors] faced by people living in an area if any such specific risks exist);
- (3) the difference between living somewhere and visiting it;
- (4) what activities [P] would be able to do if he lived in each place;
- (5) whether and how he would be able to see his family and friends if he lived in each place;
- (6) in relation to the proposed placement, that he would need to pay money to live there, which would be dealt with by his appointee, that he would need to pay bills, which would be dealt with by his appointee, and that there is an agreement that he has to comply with the relevant lists of ‘do’s and ‘don’t’s, otherwise he will not be able to remain living at the placement;
- (7) who he would be living with at each placement;
- (8) what sort of care he would receive in each placement in broad terms, in other words, that he would receive similar support in the proposed placement to the support he currently receives, and any differences if he were to live at home; and
- (9) the risk that his father might not want to see him if [P] chooses to live in the new placement.”

54 Capacity to manage property and affairs was considered in *ABC v XYZ* [2013] EWHC 2400 COP by Hedley J and in the case of *Masterman-Lister* that I have already referred to.

55 Capacity to make decisions in relation to internet use was considered by Cobb J in *Re A (Capacity: Social Media and Internet Use: Best Interests)* [2019] EWCOP 2 at [28] and [29], where he held:

- “28. It is my judgment, having considered the submissions and proposals of the parties in this case and in *Re B*, that the ‘relevant information’ which P needs to be able to understand, retain, and use and weigh, is as follows:

- i) Information and images (including videos) which you share on the internet or through social media could be shared more widely, including with people you don't know , without you knowing or being able to stop it;
- ii) It is possible to limit the sharing of personal information or images (and videos) by using 'privacy and location settings' on some internet and social media sites; [see paragraph below];
- iii) If you place material or images (including videos) on social media sites which are rude or offensive, or share those images, other people might be upset or offended; [see paragraph below];
- iv) Some people you meet or communicate with ('talk to') online, who you don't otherwise know, may not be who they say they are ('they may disguise, or lie about, themselves'); someone who calls themselves a 'friend' on social media may not be friendly;
- v) Some people you meet or communicate with ('talk to') on the internet or through social media, who you don't otherwise know, may pose a risk to you; they may lie to you, or exploit or take advantage of you sexually, financially, emotionally and/or physically; they may want to cause you harm;
- vi) If you look at or share extremely rude or offensive images, messages or videos online you may get into trouble with the police, because you may have committed a crime; [see paragraph below].

29. With regard to the test above, I would like to add the following points to assist in its interpretation and application:

- i) In relation to (ii) in [28] above, I do not envisage that the precise details or mechanisms of the privacy settings need to be understood but P should be capable of understanding that they exist, and be able to decide (with support) whether to apply them;
- ii) In relation to (iii) and (vi) in [28] above, I use the term 'share' in this context as it is used in the 2018 Government Guidance: 'Indecent Images of Children: Guidance for Young people': that is to say, 'sending on an email, offering on a file sharing platform, uploading to a site that other people have access to, and possessing with a view to distribute';
- iii) In relation to (iii) and (vi) in [28] above , I have chosen the words 'rude or offensive' – as these words may be easily understood by those with learning disabilities as including

not only the insulting and abusive, but also the sexually explicit, indecent or pornographic;

- iv) In relation to (vi) in [28] above, this is not intended to represent a statement of the criminal law, but is designed to reflect the importance, which a capacitous person would understand, of not searching for such material, as it may have criminal content, and/or steering away from such material if accidentally encountered, rather than investigating further and/or disseminating such material. Counsel in this case cited from the Government Guidance on 'Indecent Images of Children' (see (ii) above). Whilst the Guidance does not refer to 'looking at' illegal images as such, a person should know that entering into this territory is extremely risky and may easily lead a person into a form of offending. This piece of information (in [28](vi)) is obviously more directly relevant to general internet use rather than communications by social media, but it is relevant to social media use as well."

56 Counsel are agreed that these are the relevant legal tests.

Evidence

57 In assessing LM's capacity, I have received a variety of evidence. I have a number of capacity assessments from 2019 prepared by Katie Thompson, LM's then social worker. These looked at each area of decision-making and concluded that LM had capacity to engage in sexual relations, but lacked capacity in all other relevant regards. More recently, I have an assessment dated 19 July 2023 and an addendum report of 27 September 2023 from Dr Camden-Smith regarding LM's capacity. I have heard oral evidence from Dr Camden-Smith. I also have statements from Ashley Heir, LM's social worker, from Michelle Tait, LM's placement manager, and from Victoria Burrows, LM's solicitor. Ashley Heir gave oral evidence and was cross-examined by Mr Davies for LM.

58 Dr Camden-Smith was not asked to report on LM's capacity to engage in sexual relations. LM had previously been assessed as having such capacity by Ms Thompson and neither party considered that there was any evidence to suggest that this capacity had changed. Dr

Camden-Smith was asked to consider the remaining six issues on which capacity is placed before the court. She originally considered that LM had capacity to make decisions about residence and about internet and social media use, but lacked capacity in other regards. Following further questions posed to her by the parties, Dr Camden-Smith in her addendum report changed her view regarding LM's capacity for internet and social media use, but remained of the view that LM had capacity to make decisions about her residence.

59 Both parties take issue with Dr Camden-Smith's decisions regarding residence, taking the view that she has wrongly interpreted the test in *LBX v K*. For LM, Mr Davies also challenges Dr Camden-Smith's most recent conclusion regarding internet and social media use. The remainder of Dr Camden-Smith's conclusions are accepted by the parties, and I agree with them. I will turn now to deal with the issues in dispute.

Residence

60 I can deal quite briefly with the issue of residence. In her report of 19 July 2023, Dr Camden-Smith concluded that LM had capacity to make decisions about her residence. However, this was subject to a qualification that this capacity existed "provided that she is offered a choice of residences that meet her care needs." Although Dr Camden-Smith stuck to her view on this point in her addendum report of 27 September, both Mr Gray and Mr Davies have argued that this qualification imposed by Dr Camden-Smith misunderstands the test set out by Theis J in *LBX v K*, which requires *inter alia* that the relevant information that the person should be able to understand, use and weigh in the case of residence includes what sort of care he or she would receive in each placement in broad terms. Both counsel argued that Dr Camden-Smith's qualification means that LM fails to meet this test.

61 In cross-examination, Dr Camden-Smith accepted that LM was not able to understand the need for support and accepted that she would only have capacity to make a decision about

residence if she was presented with two options, both of which fulfilled her care needs. Dr Camden-Smith accepted that, if the test required LM to be able to understand, use and weigh information about the suitability of placements to meet her care needs, then she would not meet this test. I agree with counsel that, having regard to the test outlined by Theis J in *LBX v K* the sort of care that LM would receive in each proposed placement forms part of the relevant information that LM would need to be able to understand, use and weigh in order to have capacity on this issue, and that in the light of Dr Camden-Smith's concession in her oral evidence, I have concluded that LM lacks capacity to make decisions about her residence.

Internet and Social Media Use

62 LM's capacity to make decisions regarding internet and social media use was more contentious between counsel, and both Dr Camden-Smith and Ms Heir were cross-examined on this issue. Until now, LM has had access to the internet and social media through a desktop computer. She has previously been supervised in her use of this through a mirroring app, but this was discontinued in May of this year and she is not now directly supervised in her use of the computer, although she has a five hour daily limit imposed on that use. She has not hitherto had access to a mobile phone. However, yesterday, with both counsel in agreement, I approved as being in LM's best interests the provision to her of a smartphone, subject to the internet and social media protocol that has been devised by the local authority, pending my decision on the issue of her capacity on this issue.

63 It is clear that social media is a fundamentally important part of LM's life. Given the restrictions that are imposed on her placement, it is her principal means of communicating with the world and finding friendships. Nonetheless, there have been a number of historic concerns regarding LM's social media use. As her support plan states:

“LM has many social media acquaintances mostly formed via Facebook. LM's social media relationships can be formed very quickly and intensely and end in the same way. LM will often identify herself as being in a relationship with someone very quickly even after only exchanging a few messages.”

LM also has a history of engaging in “snowball” searches - seeking out friends of friends, and has, in the past, been rude or abusive to individuals online or acted in a way that is likely to be considered to be harassment.

64 Dr Camden-Smith's first report followed a three hour meeting with LM. Following that interview, Dr Camden-Smith concluded that LM understood that someone on the internet might pretend to be someone other than who they really are. LM identified that there may be things online which are inappropriate to access and explained to Dr Camden-Smith that photos shared online could then be made more widely available. She also understood that things posted online could upset other people, although Dr Camden-Smith did not think that LM really understood that her previous actions in contacting others had upset them and could have got her into trouble with the police. Nonetheless, overall, Dr Camden-Smith concluded that LM had capacity to use the internet and social media.

65 There then followed an incident on 9 August 2023. This is detailed in the witness statement of the placement manager, Michelle Tait, of 17 August 2023 and in the fifteenth witness statement of Asheley Heir of the same date. Ms Tait describes what occurred as follows:

“On Wednesday, 9 August, I received a call from a member of the care team to inform me that LM had asked her not to go into the living room as she was going to get changed into her pyjamas. The member of the care team overheard LM asking if ‘they liked it.’ ‘Does it look the same as the last time you saw it?’ ‘Is it looking more tanned now?’ ‘Don’t get too excited.’ ‘Oh, wait, you can take a screenshot of that.’ ‘Now it’s you, show me something.’ LM used a seductive voice and giggled whilst saying these words. This has all been recorded in an incident form on Mobizio. It is believed that LM was still online to her boyfriend while having this conversation. However, the member of the care team did not witness this.”

66 The obvious concern raised by this report was that LM was acting in a manner in which intimate pictures of her could be placed online. This incident was discussed with LM the following day with Ms Heir. LM told Ms Heir that it had not happened and, even if it had, she would not tell her. LM also stated “So what if I was naked anyway.” Ms Heir’s evidence continued:

“I explained it is not appropriate to be naked in the communal areas of the house, discussed the possible consequences of sharing video images of her naked body, the fact that these can be recorded or screenshots taken and circulated or held without her knowledge or consent and these could potentially not be recovered. LM said this could not be done. I explained to her that I was not accusing her she denied this occurring but if she did expose her body on social media there would be risks associated to it. LM told me that this would not be her problem it would be their problem (meaning those taking images). I advised yes the other party should not be doing this but that this would be LM’s problem if she did not know about the images, did not consent to this or was coerced or pressured into doing this and that the staff team and I would like to offer support around this. LM shouted that it was none of my business, that it is not her problem and is ‘their problem, there’s nothing I can do about that.’”

67 This evidence was provided to Dr Camden-Smith, who revised her opinion on this point, as follows:

“I acknowledge the difficulty in assessing decision-making in the abstract, rather than the real world, and agree that LM has almost certainly learned what the ‘right answer’ is to questions on internet safety. It is clear from the updated evidence provided to me that she is not capable of using and weighing the relevant information at the material time and, therefore, it is now my opinion that LM lacks capacity to make decisions about the use of the internet and social media.”

68 Dr Camden-Smith and Ms Heir were both cross-examined about their views by Mr Davies and Mr Gray. Dr Camden-Smith explained that she considered that the incident showed that LM’s actions went beyond making an unwise decision. She considered that LM’s developmental disorder made her unboundaried, leading her to obsessively seek romantic relationships with men and that she would, in the moment, do acts, such as the sharing of pictures, to maintain a relationship. She was concerned that LM, although aware that support

was available, would not, because of her condition, use that support and was not learning from her mistakes. Ms Heir too reported that LM can become intensely involved in a relationship after just a few messages, for example, describing herself to Dr Camden-Smith as being engaged to somebody whom she had met online only recently.

69 I am satisfied that the incident of 9 August 2023 took place as Ms Tait describes it. She was not challenged on her statement and I did not consider that there is any real likelihood that the member of the care team was mistaken about what they heard taking place that evening. I am, therefore, satisfied on the balance of probabilities that, on this occasion, LM placed herself in a position of having private or intimate images of herself being made available to whoever she was in a conversation with and that this posed the risk that those images could be used further. I note also from LM's discussion with Ms Heir that LM was not able to properly understand the risk to her of sharing such images. She was able to identify that the third party who received those images could themselves be in trouble if they shared those images more widely, but she did not, in the course of that conversation, appear to be able to understand the risks to her of those images being shared.

70 I accept that this is the only occasion where such sharing has been identified recently, although I note that, since mirroring ceased, it is difficult to monitor LM's online interactions in any event. I also accept there have been occasions where LM has asked the staff for support in relation to online interactions, and Ms Tait gives an example in her witness statement. Nonetheless, I am concerned that LM's conversation with Ms Heir following the 9 August incident demonstrates that she is not able to understand, use or weigh information about the first of the points identified by Cobb's J in *Re A*.

71 There are other concerns too regarding LM's actions in the past, both in relation to the terms in which she has expressed herself and the intensity and frequency of her responses to others,

that means she may not fully understand that her posts may be considered offensive by others or may upset other people. For LM, Mr Davies described the issue of LM's capacity on this issue as finely balanced, and indeed the Official Solicitor does not go so far as to assert a positive case that LM has capacity on this issue, but Mr Davies questions whether the presumption of capacity has been discharged in this case.

72 I agree with him that the issue is not straightforward. Since she has been in the placement, there has been a significant improvement in LM's presentation and it is clear that her ability to understand information in relation to use of the internet and social media is improving. Nonetheless, overall and taking all of the evidence into account, I have concluded that LM currently lacks capacity in relation to internet and social media use. Whilst I recognise that the event of 9 August is the only significant incident that has been identified since mirroring ceased nearly six months ago, I do consider it to be of importance; both the fact that it happened and LM's reaction to it raise doubts as to her capacity in this regard.

73 I accept Dr Camden-Smith's evidence that LM's response went beyond impetuosity on her behalf and was, in these circumstances, a facet of her underlying conditions. The other concerns about LM's past online interactions lend further support to my conclusion that LM is not currently able to understand, use and weigh aspects of the relevant information in this field, specifically the risk that pictures shared by her could be shared more widely and also that placing offensive material online could upset or offend others.

74 I fully recognise that my decision on this issue will be particularly disappointing for LM who feels that she is being held to a different standard to her capacitous peers. However, as I will explain in a moment, I am satisfied that it is nonetheless in her best interests to be given access to a smartphone in accordance with the protocol devised by the local authority, and this will, I consider, assist her in her use of social media and enable her to continue to learn

and build her skills in this regard. Moreover, it was clear from Dr Camden-Smith's evidence that she considers that this is an area where LM's capacity may well improve in the future and, although I have found today that LM currently lacks capacity in this regard, this is clearly an issue which needs to be kept under careful review.

Conclusions as to capacity

75 I will, therefore, make the following declarations.

(1) LM has capacity to engage in sexual relations.

(2) LM lacks capacity to conduct litigation and to make decisions about

(a) care and support needs,

(b) residence,

(c) contact with others,

(d) her property and affairs and

(e) internet and social media use.

Best interests

76 The local authority has prepared an updated care plan for LM dated 8 June 2023. This should be read alongside an updated protocol for LM's contact with others, also dated June 2023, and an internet, social media and mobile phone support plan dated November 2023. The Official Solicitor agrees that these plans and protocols are in LM's best interests. I too agree. They have clearly been carefully considered and I will approve them as being in LM's best interests. I will, therefore, make the declarations and orders sought by the local authority. These will be for a period of 12 months. However, these are final orders and will conclude the current proceedings. Any application for further orders will require a fresh application before an appropriate court.

77 Given the findings I have made regarding habitual residence, it seems to me to be likely that LM will gain habitual residence in Scotland within a short period of time following the conclusion of this case and any further proceedings will need to be brought before the Scottish courts under the Adults with Incapacity (Scotland) Act 2000.

Property and Affairs

78 I need to add a few words about LM's property and affairs. These consist solely of benefit payments and are managed on LM's behalf by the local authority as her appointee. I am told that LM now has a balance of around £12,000 in savings. This seems to me to be quite a large sum to be held under an appointeeship and I have considered whether a deputyship would now be more appropriate.

79 However, there are two factors which have meant that I have decided not to make such an order today. Firstly, I am told that the local authority is considering whether there should be an increase in LM's contribution to care fees and, if this is implemented, there may be a corresponding reduction in her savings. Secondly, I am conscious that the likely effect of my making a final order is that LM may soon become habitually resident in Scotland. If she does so, although the English Court of Protection will have concurrent jurisdiction with the Scottish courts over any property of LM's that is situated in England and Wales (as LM's savings are), it may be more appropriate that future orders in relation to these matters are dealt with by the Scottish court alongside issues of LM's welfare. I will, therefore, simply deal with these matters today by recording in my order that the local authority should keep these issues under review. My order will also record that it is in LM's best interests to be supported to take steps to develop an understanding of managing her own benefits, regular payments and other aspects of her finances when she feels able to do so.

Conclusion

80 I should conclude this judgment by saying a few words about LM. She was present in court throughout the hearing yesterday and it is clear that she has made great progress in her current placement. That she has done so is a credit to everyone involved in this case; to the local authority and its social work team; to the dedicated staff at LM's placement; to those who represent her and, of course, to LM herself. As a result of my judgment, she will now have access to a phone (subject to the support plan that I have approved) and it is clear from Dr Camden-Smith's evidence that LM's capacity to make decisions in relation to this and indeed other matters may improve in the future. The declarations and orders that I have made today will clearly need to be reviewed by the appropriate court in due course. LM has my best wishes for the future. That is my judgment.

Postscript

Following the delivery of this judgment, the parties held further discussions regarding LM's property and financial affairs. The local authority indicated that, contrary to its understanding at the hearing, LM did not owe a debt in relation to her assessed contribution to care costs. I was therefore invited by consent to make an order appointing the authorised officer for property and affairs deputyships of Newcastle City Council as LM's deputy for property and affairs. Given this change in the local authority's position and the amount of funds that it held for LM, I was satisfied that it was in her best interests to make this appointment forthwith whilst LM remained habitually resident in England and Wales rather than leave the matter to the Scottish courts in due course. I therefore made the deputyship order sought.

CERTIFICATE

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