Neutral Citation Number: [2024] EWCOP 34 (T1)

Case No: 14142690

IN THE COURT OF PROTECTION

IN THE MATTER OF SECTION 21A OF THE MENTAL CAPACITY ACT 2005

AND IN THE MATTERS OF MA

Date: 19 June 2024

Before :

DISTRICT JUDGE SIMPSON

Between :

MA **(by her litigation friend the Official Solicitor)**	**Applicant**
- and –	
Gateshead Council (1)	**First Respondent**
SIA (2)	**Second Respondent**
TA (3)	**Third Respondent**
DA (4)	**Fourth Respondent**

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Mr Francis (instructed by **David Gray Solicitors)** for the Applicant
Mr Barclay-Semple (instructed by in house legal team) for the First Respondent
All other parties in person

Hearing dates: 18 & 19 June 2024

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JUDGMENT

Please note references in this Judgment to "the Act" are references to the Mental Capacity Act 2005 and references in bold are to the relevant document in the trial bundle.

Introduction

1. This matter is listed for a contested hearing to determine whether it is in MA's best interests to have a trial placement back at her home together with a package of care. It is not to determine a permanent move back to her home address.

2. MA is a 90 year old lady who has a diagnosis of Dementia. She is widowed and has 4 sons TA, DA, MAA, SIA and a daughter SA.

3. TA, DA and MAA act as MA's attorneys by way of LPAs for both her health and welfare and property and affairs. MA's attorneys are of the view that it is in her best interests to continue to reside at Placement 1. MA's daughter SA (who resides in out of the jurisdiction and is not a party to the proceedings) and SIA are of the view that it is in MA's best interests to return home for a trial placement together with a fresh package of care. The package of care would consist of 4 care calls each day to include a 60 minute care call in the morning, a 45 minute call at lunchtime, a 45 minute call at teatime and a 45 minute call at bedtime.

4. MA was admitted to hospital on 1 June 2023. This followed a fall at home. Prior to which MA resided in the community at her home together with a package of care which comprised of 3 care calls per day which were short in duration. MA is objecting to residing at Placement 1 and wishes to return to reside in the community at her home.

5. The proceedings are brought under section 21A of the MCA 2005 and continue as a challenge as to whether the best interests requirement of the standard authorisation is met.

Issue

Issue: Care and Residence.

5. Is it in MA's best interests to have a trial placement back at her home together with a package of care.

The Positions of the Parties

6. It is submitted on behalf of the applicant that there is sufficient evidence before the court to satisfy s.48 MCA 2005 and engage the court's jurisdiction. Capacity is not a live issue within these proceedings at the present time. What is in issue, is where it is in MA's best interests that she should live.

7. On behalf of MA it is submitted that she should have a 2 week trial placement at home and this is supported by her son SIA and daughter SA.

8. On behalf of the Local Authority who are supported by sons TA, DA and MAA, it is submitted that MA should not have a trial placement at home and that she should continue to reside at Placement 1.

The Law

Capacity

9. It is a prerequisite for the Court being able to make any best interests' decision on behalf of MA that she must lack the capacity to make a decision on the relevant issue for themselves at the relevant time.

10. Dr Mohammed has provided a capacity assessment in the Form 4 dated 10 July 2023 [F24-27]. Dr Mohammed opines that MA has a diagnosis of dementia. In terms of the functional test of capacity MA is unable to understand, retain and weigh or use the relevant information. Dr Mohammed concludes that MA lacks capacity to decide whether or not she should be accommodated in the care home for the purpose of being given the proposed care and or treatment. It is submitted on behalf of the applicant that there is sufficient evidence before the court to satisfy s.48 MCA 2005 and engage the court's jurisdiction. Capacity is not a live issue within these proceedings at the present time.

11. In those circumstances, I am satisfied that MA lacks the capacity to conduct proceedings and to make a decision for herself as to where she should reside and receive care and support and, therefore, the Court has the jurisdiction to make a best interests' decision on her behalf about those issues.

Best Interests

12. Section 4A of the Act applies in respect of MA's current residence as she is deprived of her liberty there and provides:

4A Restriction on deprivation of liberty

(1) This Act does not authorise any person ("D") to deprive any other person ("P") of his liberty.

(2) But that is subject to—

(a) the following provisions of this section, and

(b) section 4(b).

(3) D may deprive P of his liberty if, by doing so, D is giving effect to a relevant decision of the court.

(4) A relevant decision of the court is a decision made by an order under section 16(2)(a) in relation to a matter concerning P's personal welfare.

(5) D may deprive P of his liberty if the deprivation is authorised by Schedule A1 (hospital and care home residents: deprivation of liberty)

19. In respect of a standard authorisation the supervisory body must be satisfied of the six qualifying requirements set out in paragraph 12 of Schedule A1 to the Act. The paragraph of relevance in the present case is paragraph 16 of Schedule A1 to the Act which sets out the best interests qualifying requirement:

16(1) The relevant person meets the best interests requirement if all of the following conditions are met.

(2) the first condition is that the relevant person is, or is to be, a detained resident;

(3) the second condition is that it is in the best interests of the relevant person for him to be a detained resident;

(4) the third condition is that, in order to prevent harm to the relevant person, it is necessary for him to be a detained resident;

(5) the fourth condition is that it is a proportionate response to –

(a) the likelihood of the relevant person suffering harm, and

(b) the seriousness of that harm for him to be a detained resident.

20. Pursuant to section 21A of the Act, a court can intervene in respect of a number of matters where a dispute arises in relation to a standard or urgent authorisation.

21. Section 21A provides:

(1) This section applies if either of the following has been given under Schedule A1 –

(a) a standard authorisation;

(b) an urgent authorisation.

(2) Where a standard authorisation has been given, the court may determine any question relating to any of the following matters—

(a) whether the relevant person meets one or more of the qualifying requirements;

(b) the period during which the standard authorisation is to be in force;

(c) the purpose for which the standard authorisation is given;

(d) the conditions subject to which the standard authorisation is given.

(3) If the court determines any question under subsection (2), the court may make an order—

(a) varying or terminating the standard authorisation, or

(b) directing the supervisory body to vary or terminate the standard authorisation.

22. Once an application is made pursuant to section 21A of the Act the court's powers are not confined to determining that question. The court has a discretionary power to make declarations pursuant to section 15 of the Act and decisions on P's behalf pursuant to section 16 of the Act[1].

1. Whilst this case stems from a section 21 challenge, for the purpose of this hearing I am simply being asked to determine whether or not it is in MA's best interests to have a two week trial of residing at her home or whether she should remain at placement 1.

2. Section 16(3) of the Act makes it clear that the court's powers under section 16 are subject to the provisions of the Act and, in particular, to section 1 and to section 4 of the Act. What governs the court's decision about any matter concerning personal welfare is the person's best interests. Where a person is unable to make a decision for themselves, there is an obligation to act in their best interests[2]. When determining what is in a person's best interests, consideration must be given to all relevant circumstances[3], to the person's past and present wishes and feelings[4], to the beliefs and values that would be likely to influence their decision if they had capacity[5], and to the other factors that they would be likely to consider if they were able to do so[6]. Further, account must be taken of the views of anyone engaged in caring for the person or interested in their welfare where practicable and appropriate[7].

[1] CC v KK and STCC [2012] EWCH 2136 (COP) at [16] per Baker J
[2] Section 1(5) of the Act
[3] Section 4(2) of the Act
[4] Section 4(6)(a) of the Act
[5] Section 4(6)(b) of the Act
[6] Section 4(6)(c) of the Act
[7] Section 4(7)(b) of the Act

3. The overarching principle is that any decision made on behalf of a person who lacks capacity must be made in their best interests and Section 1(6) MCA provides that:

"Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action."

4. The leading case as to the application of the best interest's criteria is the decision of the Supreme Court in Aintree University Hospitals NHS Foundation Trust v James and others [2013] UKSC 67. At [23] in Aintree (supra), Baroness Hale noted that the Act gives limited guidance about best interests and that every case is different [36] and at [39] stated that:

'*the most that can be said, therefore, is that in considering the best interests of this particular patient at this particular time, decision makers must look at his welfare in the widest sense, not just medical but social and psychological; they must consider what the outcome of that treatment for the patient is likely to be; they must try and put themselves in the place of the individual patient and ask what his attitude to the treatment is or would be likely to be; and they must consult others who are looking after him or are interested in his welfare, in particular for their view of what his attitude would be'*

5. At [45] her Ladyship added:

'The purpose of the best interests test is to consider matters from the patient's point of view. That is not to say that his wishes must prevail, any more than those of a fully capable patient must prevail. We cannot always have what we want. Nor will it always be possible to ascertain what an incapable patient's wishes are. ....

But insofar as it is possible to ascertain the patient's wishes and feelings, his beliefs and values or the things which were important to him, it is those which should be taken into account because they are a component in making the choice which is right for him as an individual human being'.

6. In Re A [2001] 1 FLR 549, Thorpe LJ stated that the *"evaluation of best interests is akin to a welfare appraisal" and a judge should "strike a balance between the sum of certain and possible gains against the sum of the certain and possible losses. Obviously only if the account is in relatively significant credit will the judge consider that the application is likely to advance the best interests of the patient."*

7. The Supreme Court has held that the jurisdiction of the Court of Protection was limited to a decision that a person is unable to take for himself and the court has no greater power to oblige others to do what is best than P would have himself. This means that, just like P, the court can only choose between the available options[8].

8. In Briggs v Briggs (Preliminary Issue) (No.1) [2017] EWCA Civ 1169 King LJ stated at [95]: *Contact, for example, is an issue capable of going to the heart of whether being detained is in a person's best interests; it may be that in an ideal world P's best interests would be served by a deprivation of liberty in the form of her living in a care home properly looked after, where the appropriate medication regime will be adhered to and P will have a proper balanced diet. Desirable as that may be, and such a regime may well provide the optimum care outcome for P, but it may also be the case that unless, regular contact can be facilitated to a particular family member, the distress and confusion caused to P would be such that it would be no longer in her best interests to be detained, and that what might amount to sub optimum*

[8] N v ACCG and Others [2017] UKSC 22

physical care would ultimately be preferable to no, or insufficient contact. The weighing up of such options are part of the best interests assessment process in relation to which the professionals who are eligible to be assessors are peculiarly qualified to conduct.

9. In ITW v Z. M and Various Charities [2009] EWHC 2525 (Fam) Munby J stated at 32(iii):

"…there may, in the particular case, be one or more features or factors which, as Thorpe LJ has frequently put it, are of "magnetic importance" in influencing or even determining the outcome: see, for example, Crossley v Crossley [2007] EWCA Civ 1491, [2008] 1 FLR 1467 , at para [15] (contrasting "the peripheral factors in the case" with the "factor of magnetic importance") and White v White [1999] Fam 304 (affirmed, [2001] 1 AC 596) where at page 314 he said "Although there is no ranking of the criteria to be found in the statute, there is as it were a magnetism that draws the individual case to attach to one, two, or several factors as having decisive influence on its determination…"

10. It is submitted on behalf of MA that her wishes and feelings should be the factor of magnetic importance. However, the Local Authority have cautioned against that and referred to the same case where Munby J also stated:

a. P's wishes and feelings will always be a significant factor to which the Court must pay close regard;

b. The weight to be attached to P's wishes and feelings will always be case-specific and fact-specific;

c. The Court must have regard to all the relevant circumstances when considering the weight to be attached, including:

i. The degree of P's incapacity;

ii. The strength and consistency of the views expressed by P;

iii. The possible impact on P of the knowledge that her wishes and feelings are not being given effect;

iv. The extent to which P's wishes and feelings are, or are not, rational, sensible, responsible and pragmatically capable of sensible implementation; and

v. If given effect, whether P's wishes and feelings can be accommodated in the Court's overall assessment of what is in her best interests (at [35]).

11. Notwithstanding that, it is submitted on behalf of the applicant a need to guard against making overly protective or overly paternalistic decisions. As was referred to by Mr Justice Baker (as he then was) in Re KK; CC v KK [2012] EWHC 2136 (COP), Munby LJ's observations in this context are important for the court to keep in mind:

"66. In a recent lecture to the South Central Regional Branch of Solicitors for the Elderly, entitled "Safeguarding and Dignity: Protecting Liberties – When is Safeguarding Abuse?" (now published in Brunswick Mental Health Care Review 2012 Vol 7 issue 18), Munby LJ observed:

"The fact is that all life involves risk, and the elderly and the vulnerable are exposed to additional risks and to risks they are less equipped than others to cope with. But just as wise parents resist the temptation to keep their children metaphorically wrapped up in cotton wool, so too we must avoid the temptation always to put the

physical health and safety of the elderly and the vulnerable before everything else. Often it will be appropriate to do so, but not always. Physical health and safety can sometimes be bought at too high a price in happiness and emotional welfare. The emphasis must be on sensible risk appraisal, not striving to avoid all risk, whatever the price, but instead seeking a proper balance. We must be willing to tolerate manageable or acceptable risks as the price appropriately to be paid in order to achieve some other good – in particular the vital good of the elderly or vulnerable person's happiness and dignity. The State must be careful to ensure that in rescuing a vulnerable adult from one type of abuse it does not expose her to the risk of treatment at the hands of the State which, however well intentioned, can itself end up being abusive of her dignity, her happiness and indeed of her human rights. What good is it making someone safer if it merely makes them miserable? None at all! And if this is where safeguarding takes us, then is it not, in truth, another form of abuse – and, moreover, abuse at the hands of the State?"

12. Whilst s.1(6) MCA 2005 provides an encumbent duty upon any local authority to identify the least restrictive care setting. A trial placement at home need not be perfect. Peter Jackson J (as he then was) stated in the matter of A & B (Court of Protection: Delay and Costs) [2014] EWCOP 4 that

14. Another common driver of delay and expense is the search for the ideal solution, leading to decent but imperfect outcomes being rejected. People with mental capacity do not expect perfect solutions in life, and the requirement in Section 1(5) of the Mental Capacity Act 2005 that "An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests." calls for a sensible decision, not the pursuit of perfection.

13. The local authority stated that The Court must not only have regard to the risk posed to the person, but also how a decision might affect the person's quality of life. Munby J summarised the position in Local Authority X v M [2007] EWHC 2003 (Fam) at [120]:

"The fact is that all life involves risk, and the young, the elderly and the vulnerable, are exposed to additional risks and to risks they are less well equipped than others to cope with. But just as wise parents resist the temptation to keep their children metaphorically wrapped up in cotton wool, so too we must avoid the temptation always to put the physical health and safety of the elderly and the vulnerable before everything else. Often it will be appropriate to do so, but not always. Physical health and safety can sometimes be bought at too high a price in happiness and emotional welfare. The emphasis must be on sensible risk appraisal, not striving to avoid all risk, whatever the price, but instead seeking a proper balance and being willing to tolerate manageable or acceptable risks as the price appropriately to be paid in order to achieve some other good—in particular to achieve the vital good of the elderly or vulnerable person's happiness. What good is it making someone safer if it merely makes them miserable.

14. The local authority's view on that passage being that MA's quality of life will deteriorate at home, whereas the Official Solicitor and SIA would say not being at home would make her miserable.

15. I was reminded by Mr Francis that whether or not a person has the capacity to make decisions for herself, they are entitled to the protection of the European Convention of Human Rights (ECHR). In the present context, the relevant rights are found in Article 8 (the right to respect for a private and family life). Further, it is an aim of the UN

Convention on the Rights of Persons with Disabilities to secure the full enjoyment of human rights by disabled people and to ensure they have full equality under the law.

16. Article 8 of the ECHR provides that:

> Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

17. On occasion, it is necessary for the Court of Protection to consider whether the provisional conclusion of its best interest analysis: i) amounts to a prima facie breach of Article 8(1) ECHR; and ii) if so, whether that breach is nonetheless necessary and proportionate so as to be justified under Article 8(2) ECHR [9]. I am not being asked to make such a decision in this case, but I am being asked to give due consideration whilst considering MA's best interests, to her Article 8 rights.

The Evidence

18. I have been provided with a bundle for MA containing 9 factual statements from 6 different individuals.

19. I have heard oral evidence from MA's social worker, DP; and MA's sons SIA, TA and DA.

[9] K v LBX and Others [2012] EWCA Civ 79

20. A summary of the most relevant oral evidence from each witness is set out below.

21. DP, the social worker for MA told me that:

a. He has been the social worker for MA since August 2023 and has visited her on 3 or 4 occasions and has attended her home on one occasion.

b. MA has dementia and has issues with urine continence typically 3 times per day when she is unable to reach the toilet in time.

c. If the court were to authorise a two week trial at home for MA, she could be provided with a "lifeline" or "Care Call" pendant or watch. This would enable her to summon help via the system and a family member could then attend the property to assist her. DP was concerned that due to her lack of use of the call facility at Placement 1, even when she is in pain or hungry etc he is unsure whether she would use the Care Call pendant at home. The watch can detect falls but this is only 80% reliable. DP was worried MA would not remember what the pendant is for.

d. It was accepted that the main intervention of carers is prompting as MA can dress (with assistance as to the sequence of clothing), wash and feed herself. DP said MA needs assistance to get out of her chair and to get up from bed. There were concerns that she doesn't mention when she is hungry.

e. DP was concerned that the family were not close by to respond to any issues promptly, that MA may become lonely and deteriorate without the on-site interaction of carers. Whilst a comprehensive care package could be provided, human interaction would only be for a small portion of the day – some 3 hours 15 minutes (subject to any family visits).

f. MA declines to wear continence pads. Should she return home there is concern from the social worker that there is a step down from the kitchen to the toilet which is a fall risk. The social worker accepted that there was no evidence of any night time needs.

g. MA is robustly resistant to carers at home and has said she wanted no more than one visit per day and that 4 visits would be a deal breaker. She previously didn't want them to help her with the roles they were there to fulfil. It was accepted that the previous package of care had issues in that the sessions were too short and the private contractors did not follow the care plan. This was rectified when the Councils own PRIME team took over but that is more of a short term (no more than six weeks) troubleshooting service. DP confirmed he would enquire as to whether the PRIME team could assist with the two-week trial but worried that the slots they could offer may be different to that of the eventual private contractor so opined that the private contractor should be used from day 1 for consistency.

h. The risks to returning home to MA are not being able to raise the alarm if she needed assistance; being resistant with carers; risk of being lonely and then of low mood. MA could get mixed up and put herself at risk as she is frail and unsteady on her feet. There is only a limit as to what risks technology can mitigate.

i. It was accepted that after visits outside of placement 1, including to her own home, MA returns willingly to placement 1.

j. If a trial at home was authorised then carers would keep notes which would be made available to the family. Success would be a lack of concern by carers

and family members and an absence of major mishaps.

k. The benefit of placement 1 is that if MA does not wish to get up when roused by carers then they can attend to another resident and return later. Where there is care at home – there is only the allocated timeslot available.

l. DP accepted he had not had sight of the medical records of MA and therefore could not confirm if she was suffering from depression due to her stay at placement 1. In his view she was always jovial and appropriately witty when he met her.

22. My impression of the social worker was that he was professional, honest and straightforward in giving his evidence. It was clear he had worked hard for the benefit of the parties to ensure all available options had been considered.

23. SIA, the second respondent and son gave evidence that:

a) SIA visits MA weekly and would continue to do so if a trial at home was authorised. He is willing to be an emergency contact for Care Call – he is a self employed farmer and is able to drop everything to attend to his mother. He lives around 40 minutes away by car.

b) MA has always said to SIA do not put me in a care home. MA has lived in her home for 64 years and is very familiar with the surroundings. He believes her aversion to care homes and carers comes from her mothers job as a matron in a care home.

c) MA did not cope well with care only once or twice per day. Having 3 meals per day made a massive difference to her health. SIA believes

MA knows she can't go home without carers being there but may forget.

d) SIA agrees MA needs prompting to eat meals, he opines she could prepare a meal but couldn't be relied upon to do this on a regular basis.

e) SIA agreed MA was unsteady on her feet and without a walking aid was a risk of falling over. He opined that the effort she uses to get out of her chair may cause her continence issues. SIA is of the view that MA forgets to use the continence pads rather than refuses. She is able to change soiled garments herself.

f) SIA accepts if MA falls at home then the result could be catastrophic. He has stated that it has never happened and the risks are comparable between placement 1 and her home.

g) SIA accepts that MA overestimates her abilities to live back at home. His clear view is that if she doesn't accept the carers then she will need to return to placement 1. He accepts that the recovery of MA and improvements in her health are a credit to placement 1, but does not accept MA would have a better quality of life there when her stated wish is to return to her home.

h) SIA was unsure what MA's expectations were of a return home and understood it may be different for her than before due to neighbours moving or passing on. However, on balance it was his mothers past and present wish and in his view it should be trialled to see if it could work.

24. My impression of SIA was that he was honest and doing his best to assist the court. He was courteous and had the best interests of MA at the forefront of his mind.

25. TA gave evidence that:

a) He would visit MA fortnightly for 2 to 3 hours. MA returning home is raised in every visit, initially these discussions were tearful but are now more of a discussion with less of a display of distress. MA is fiercely independent and has a long-term aversion to care homes and social services in general. On one occasion he visited at lunchtime and a carer she had taken a dislike to had made a sandwich which she refused to eat so gave it to TA.

b) MA has declined steadily over the last 5-6 years and over that time paid carers have been required to do more and more. Physically her mobility has declined and when TA took MA to a pub lunch, she was exhausted walking to and from the car.

c) TA's view is if there is a risk MA could come to harm then the option should be discounted. His worries include falls and a decline in mental health through loneliness. He does not believe a two-week trial is a good yardstick and is worried of losing MA's place in placement 1.

d) TA agreed that MA does not have nursing needs but needs prompting for personal care, that she was not a "wanderer" who may go out and get lost or fall in the community, accepts the proposed plan for trial at home does mitigate the risk but, in his view, not sufficiently to try it.

e) In April 2024 he received a call (which was made on MA's behalf by a carer in placement 1) whereby MA was in a distressed state. She was unable to recall why she was distressed or a week later remember the call was made. If this happened during the home trial, then she would have needed someone to personally attend to calm her down.

f) On questioning on MA's historic attitude to risk TA did not think she was overly cautious nor was she cavalier. She was protective of her family.

26. I found TA was open and honest in his evidence and made appropriate concessions. He clearly has the safety of MA in mind when considering her best interests.

27. DA gave evidence that:

a) He made his statement in December 2023 and since that date he feels MA is not weaker and less physically able. He is a retired GP and has visited MA weekly for the past 7-8 years.

b) MA was admitted to hospital twice in the same week in 2023 following a fall and the hospital noted weight loss and blood tests pointed to malnutrition. Around the same time his brother MAA raised concerns about the care MA received at home.

c) MA finds it difficult to get out of her chair and gets short of breath walking. She tries to mobilise without a walking aid and needs to be prompted to use it.

d) MA has previously used Care Call and lost the pendant. She has also used the pendant to advise she had ran out of bread so he has concerns she does not know what the pendant is for, or will remember after being told.

e) DA would say that prior to admission to placement 1, MA had a trial at home with carers and it didn't work. Her needs have now increased and she needs 24/7 care. His main concern is her risk of falling and the fact that she has stated to him that she doesn't need carers or visitors if she moves back home.

f) DA does not agree that MA is able to shower herself. He says she needs vigorous prompting and 5 years ago struggled to wash/ attend to her personal care before any package was in place.

g) DA accepts her wishes and feelings are that she doesn't like care homes or carers and to go home is in line with her wishes and feelings. However, he feels it is simply not safe to do so.

28. I found DA to have a detailed knowledge of MA's situation and how it has developed over the years. He gave honest answers to questions and was considered in his responses.

Analysis

29. The evidence of all the witnesses in this case was consistent as to MA's past wishes and feelings that she would want to return home and was resistant to Care Homes and Social Care involvement including at her home. The local authority and TA and DA

would say her present wishes and feelings aren't as vocal or emotive as they once were and in their view the risk is not worth any short term gains.

30. The Official Solicitor and SIA state that a trial placement at home should be tried so it can be properly ruled in or out, and on balance that has to be in MA's best interests. The local authority view is that how MA will present after two weeks at home following an extended period of 24/7 care is not representative of how she will present in the longer term. They also believe an assessment of compliance with care at home requires a longer review, but that is not possible whilst keeping MA's bed at placement 1 available.

31. Since being at Placement 1, MA's needs have been described as follows [DP's third statement, pp8-19]:

a. Nutrition: MA needs prompting to eat and drink, or would be at risk of malnourishment and dehydration. Her meals need to be made for her, due to a history of cooking in an unsafe manner and leaving food to become mouldy. The family appear agree that malnourishment was an issue prior to June 2023 [G14; F13-15]. DA and TA advise that MA had refused food prepared by carers in the community [G39; G47]. SIA considers that MA's poor condition prior to her hospital admission was due to care staff not prompting MA to eat [G45].

b. Incontinence: MA struggles to get to the toilet on time. Support would be needed to ensure MA has clean clothes and to maintain her dignity.

c. Personal hygiene: MA requires prompts for grooming, bathing, and showering.

d. Clothing: MA requires prompts to change out of dirty clothes.

e. Maintaining a habitable environment: MA requires support with shopping, housework, post, and managing her money. MA appears to have recognised this to an extent when speaking with DP [G14].

f. Mobility: MA has a history of falls and currently requires support from staff to mobilise from her bed or out of a chair. Carers have described her declining to use her Zimmer frame and is unsteady on her feet [F15-16].

g. Safe use of appliances: MA has demonstrated difficulty in using household appliances, such as leaving her gas cooker on and breaking her washing machine and causing flooding. The incidents are detailed in DA's statement [G39].

h. Accessing the community: MA requires 1:1 support to access appointments in the community.

i. Medications: MA requires support to ensure she takes the correct medications. It has been suggested that MA struggled to accept medications in the community [F14], but she is compliant with the same at Placement 1.

32. There is no great dispute as to MA's needs but the argument has been made that they can be adequately met by the proposed care package at home. The local authority state that the risk of falls are increasing as time goes by as MA is becoming more unsteady on her feet as compared to the period prior to her admission at placement 1. It was a series of falls which resulted in her hospital admission and subsequent admission to placement 1 and therefore it cannot be in MA's best interests to revisit that risk.

33. On behalf of MA it is stated you can't eliminate all risks, and as per the dicta of Mumby J as set out above, "physical health and safety can sometimes be brought at

too high a price in happiness and emotional welfare." However, there is also evidence to suggest at paragraph 6 on page G62 of the bundle that MA would get fed up and lonely when she was at home.

34. The local authority (and this is not fully disputed) have stated that MA is happy at placement 1, she socialises with residents, takes part in group activities, has her needs attended to and therefore we shouldn't automatically conclude that giving her a trial at home will necessarily make her happy.

35. On behalf of MA when considering the section 4 checklist, I was referred to MA's past wishes and feelings and her lifelong aversion to care homes. It is obvious she would desire a trial placement at home, that should be the magnetic factor in the balancing exercise and it is the least restrictive option and avoids misplaced paternalism.

36. MA's position is that on balance there should be a trial at home because the evidence supports she does not have nursing care needs, only personal care needs which can be resolved via prompting; her wishes and feelings are clear and a trial return home would support her Article 8 rights; there is an appropriate care plan proposed supported by assisted technology; it is accepted there is a level of risk but this can be proportionately managed at home.

37. SIA accepts that MA needs some form of care. He said he made a promise to her not to put her into a care home. He thought that placement 1 was merely for recovery rather than any permanence. He accepts the time at placement 1 was a success but that MA is now eager to get home and therefore that option should be tried. SIA states that MA has her role to play in ensuring the trial is a success and that the trial is the only

fair way to ascertain MA's ability to receive care at home and to respect her long standing wishes.

38. TA stated that if capacitous he does not think MA would find her treatment at placement 1 amounted to abuse. He accepts having heard all of the evidence that there is no perfect solution but on balance that remaining on placement 1 is in the best interests of MA.

39. DA explained that the family had tried to assist MA to remain in her home previously by providing a riser/ recliner chair which she never used, Occupational Therapy provided an orthopedic chair which she dismantled, and she refused to eat food prepared by carers. DA stated that whilst he doesn't recognise the words "deal breaker" to be used by MA when responding to multiple care visits a day at home, he does recognise the sentiment.

40. DA raised the question as to which of MA's past wishes and feelings are the most prevalent, not living in a care home or not having carers at home. Whichever decision the court makes today, in DA's view one of MA's strong held views would be ignored.

41. DA's view is that as MA has never been abusive to the care home staff, is well nourished, speaks highly of her care there and after visits including to her own home has returned to placement 1 without issue. He feels that MA would be better off remaining in placement 1. He feels the most important thing to her is not to have interference in her actual home life, and as such the care plan for the trial at home would be against her long held wishes and feelings.

Issue : Care & Residence

42. ***Available Options:*** There is an opportunity for a trial at home but only for two weeks. After two weeks the room at placement 1 would no longer be held for MA and a decision would need to be made at that point whether the trial was successful enough to continue and release the room at placement 1 or return to it. That, however, is not an issue I need to tackle today.

43. ***Best Interests:*** I accept that when capacitous, MA had chosen to live at home and had been there for 64 years. It is accepted that she has been vocal and resistant at times to care at home and does not wish to reside at placement 1 despite her accepting the care she receives is good. I accept this would likely influence her decision if she had capacity, I also accept she has been resistant to care in her home in the past which resulted in her admission to hospital and then placement 1.

Conclusion

44. I set out below the balance sheet exercise of the advantages and disadvantages in respect of the Issue of whether MA can have a trial placement at home rather than reside at placement 1 on the basis of the findings I have made in relation to the evidence.

Placement 1 Advantages	**Home Trial Advantages**
MA is settled in placement 1 and they are meeting her needs	Reflects MA's lifelong wishes and feelings
MA has made a number of friends in this placement and therefore will not	MA's dignity will be preserved as there will be a limited number of

become lonely	carers who will be aware of any continence issues – whereas at placement 1 other residents may be made aware
MA has good connections with staff who have shown commitment to MA and her wellbeing	If MA tries to mobilise without aids and falls, her lifeline/ care call watch is 80% likely to detect it so help can be summonsed
If MA tries to mobilise without aids, there may be someone there to remind her to minimise the risk of fall	SIA is willing to be on 24/7 call via the lifeline/ care call service
	This is the least restrictive option which can be properly managed via a care plan

Placement 1 Disadvantages	**Home Disadvantages**
Not in accordance with MA's expressed wishes and feelings	There are hazards such as steps to the toilet and loft space which are a

	fall hazard
The placement is suggested to be too risk averse when considering MA's actual needs	MA may become lonely as she will be alone for the majority of the time with family around 40 – 60 minutes away in the event of a need

45. In the circumstances, when balancing those factors, the outcome is finely balanced. There is no difference in the care and treatment MA would receive at either placement, save for any response times of staff or family if any issues arose.

46. A trial placement at home would be the least restriction option, be in accordance with MA's wishes and feelings and can be undertaken for a short two week period whilst her room at placement 1 remains open to her in the event of a breakdown. On that basis I authorise the trial placement at home.

47. To conclude, I am grateful to the legal representatives and all parties together with the professionals involved who have worked incredibly hard to ensure that there has been a full appraisal of the issue as to whether MA can have a trial period at home whilst ensuring her best interests are observed.