Case No: **COP14216699**

Neutral Citation Number: [2024] EWCOP 70 (T3)

IN THE COURT OF PROTECTION
Sitting in private at Haverfordwest Family Court

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22.07.24

Before:

Mrs Justice Morgan sitting as a judge in the Court of Protection

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Between:

HYWEL DDA UNIVERSITY HEALTH BOARD

Applicant

-and-

[1] P
(by her Litigation Friend, Beth Owen)

[2] CEREDIGION COUNTY COUNCIL

Respondents

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Rachel Anthony (instructed by **Hywel Dda Health Board**) for the **Applicant**
Ian Brownhill (instructed by **CJCH Solicitors**) **for the 1st Respondent**
Hannah Meredith-Jones (instructed by **Ceredigion County Council) for the 2nd Respondent**

Hearing dates: 16 and 17 July 2024

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Approved Judgment

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MRS JUSTICE MORGAN

This judgment was delivered in private and a transparency order is in force. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the young person and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Mrs Justice Morgan sitting in private as a judge in the Court of Protection

1. P is nearly 19. She lives with her mother ZJ, one sibling who is an adult and another who is a young person in their mid to late teens. P and her family live in West Wales and have done so for the last 14 years. Before that they had lived in England from where they had fled to refuge accommodation. It is unnecessary to reflect the nature of those earlier living arrangements here but the fact that they were necessary and the lasting consequences of them has meant that it has been appropriate, unusually, for these proceedings, to be conducted in private. It is unlikely to be appropriate for this judgment to be reported at least until later.

2. Dr Bayley, who is a Consultant Clinical psychologist with expertise in adults with learning disability has had long involvement with this family. Reviewing P's medical records, Dr Bayley observes that she was assessed in 2010 (at which time she was about 5) by a consultant paediatrician as exhibiting global developmental delay and that much later when P was 16 she was assessed to have a diagnosis of Autistic Spectrum Disorder (ASD). It is the view of Dr Bayley, from whom I have heard oral evidence at this hearing, that P would likely meet the criteria for diagnosis of Learning Disability though formal assessment to confirm that view has not been conducted for reasons bound up with the circumstances giving rise to the need for these proceedings.

3. Within her home, P has been subject to restrictions which include locked windows, medication cupboard and recording. The motivation for those restrictions as I understand it has been in large part her mother's wish to prevent P from causing herself harm. Given these restrictions, there has been discussion with ZJ by professionals about the prospect of Court of Protection involvement. I have been told in evidence that she expressed herself as very keen to avoid the need for court involvement and had responded by proposing that any restrictions might be removed so as to have that effect. The restrictions however have remained in place. That is not surprising given the likely danger to P were they to be removed.

4. Hywel Dda University Health Board issued an application on 28th February for what was expressed to be s16 orders. Lying behind its application is an urgent need to achieve assessments of P. The matter was considered by Theis J who made an order dated 8th March in terms requiring a draft order setting out what directions were sought by the applicant and why and listing the matter for 13th March 2024. On 13th March, the case came before Cohen J who made further case management directions. He also allocated the case to, and listed it before, me. He directed that the matter should continue to be heard in private and without notice to ZJ. The application brought by the Health Board is an unusual application made more so by the fact that neither P nor ZJ has been given notice of it. That is because it has throughout been asserted that there is a risk of flight should proceedings become known to ZJ. Further whilst a Litigation Friend has been appointed for P it has been impossible for her to fulfil a significant part of her intended function in such a case by communicating with and seeking the views of P so as to enable the court to make informed decisions. What the Litigation Friend has done which has in those circumstances not only safeguarded P's position from a legal perspective but has greatly assisted the court is to instruct from the first hearing and throughout specialist counsel on her behalf.

5. The consensus of all parties has been that these proceedings should continue to be heard in private. For reasons which appear elsewhere in this judgment I agree with and accept the submission that this case, exceptionally should continue at least for the time being to be heard in private.

6. I have had 3 hearings without notice to ZJ. I have on each occasion kept under active review that aspect. At this hearing the position of the parties as to notice to ZJ has been as follows. The applicant invites a hearing and the making of orders ex parte with no notice to ZJ. The Local Authority submits in writing that ZJ should be given notice before any order is made against her and reluctantly agrees that this hearing should be without notice but is anxious, not least because of its own workers wish to work openly and honestly with the family, that ZJ should be given notice as soon as possible after interim decisions are made at this hearing. The Litigation Friend, cautiously and balancing in particular the flight risk (as to which more later) submits that before there is any prospect of a move of P from the family home, ZJ should have the opportunity to make submissions, and thus must by then have notice. This, submits the Litigation Friend is an approach which accords with that of the court of appeal in *Re G (Court of Protection: Injunction) [2022] EWCA Civ 1312.* I determined that it is appropriate to permit this application to be made without notice to her at this hearing. By reason of the decision I make today she will have notice of future hearings.

The Position Of The Parties And The Orders Sought

7. The applicant Health Board contends that at this hearing that amongst the orders I should make should be an injunctive order under the inherent jurisdiction which would have the effect of removing P from her home immediately and without notice to her family for the purposes of assessment elsewhere. The Health Board had modified its position by the time Mrs Anthony came into court and following prehearing discussions to the extent that it stepped away from its earlier contention that this should be ordered under the inherent jurisdiction even if the criteria under the MCA 2005 s48 were not met. It now contends that I should find the threshold in s48 of the MCA is crossed and that there is reason to believe that P lacks capacity to make decisions as to her residence; as to her care and support and lacks capacity to refuse an assessment of her needs. The applicant further contends that I should direct assessments and that I should grant injunctive relief to permit those assessments to be carried out away from the family home and to remove P for that purpose from the home. In the event that I am not satisfied that the Applicant has established its case in relation to s48, it agrees with the orders proposed by the Litigation Friend.

8. The Litigation Friend contends that the threshold is not crossed to permit the Court to make orders under s48 of MCA 2005. The Litigation Friend asserts that P is undoubtedly a vulnerable adult within the meaning of *Re SA [2005] EWHC 2942* for whom the inherent jurisdiction may be invoked. The Litigation Friend asserts that there is evidence of a pattern of constraint by ZJ such that the Court could grant injunctive relief but that such relief should be the least interventionist possible to mitigate what is accepted is a flight risk. The Litigation Friend strongly opposes any order which has the effect of removing P from her home without evidence of her wishes and feelings

Issues

9. The distillation of the issues to be determined set out in the skeleton argument for the Litigation Friend was agreed by all parties and I adopt it here.

A) Is the section 48 MCA 05 threshold crossed, if so, in respect of which decisions?

i. What is the section 48 MCA 05 threshold?

ii. Is there reason to believe that P lacks capacity to refuse an assessment of her needs

iii. Is there reason to believe that P lacks capacity to make decisions as to her residence

iv. Is there reason to believe that P lacks capacity to make decisions as to her care and support?

B) If the section 48 MCA 05 threshold is *not* crossed, is P a vulnerable adult within the meaning of *Re SA* [2005] EWHC 2942 (Fam)

C) What is the likelihood of P being removed from her family home by her mother if she becomes aware of these proceedings?

D) Assuming that a jurisdiction is available to the court, should the court continue to consider this matter

i. In the absence of P's mother?

ii. In private?

E) What assessments are necessary?

F) Where should the assessments take place?

G) What, if any, injunctive relief is required to allow the assessments to take place?

H) If P is to be removed to an alternative address, what care and support will she receive?

Evidence

10. At this hearing I heard oral evidence from Dr Bayley and Ms Hewson a social worker from the adult learning disability team. I have read carefully their written evidence as well as hearing the way each expanded orally on their views. ZJ has made complaints about Dr Bayley and others. Dr Bayley has not seen P since February of this year. She has not carried out a capacity assessment of P. Dr Bayley's view is that P lacks capacity in the domains of residence care and treatment. Her written evidence is that

that lack of capacity as she sees it is caused but a disorder of the functioning of P's mind or brain. In her oral evidence however, when asked questions for the Litigation Friend, she appeared to accept to a greater degree than had seemed to be that case in writing that other factors such as the actions of ZJ, constraints on P's upbringing, her lack of life experience as well as not having the opportunity of awareness of information also fed into P's ability or otherwise to formulate and express wishes and feelings. Dr Bayley explained that P is very much someone who thinks in terms as she put it of '*the here and now'*.

11. I was interested therefore to hear that P had at one point been able to express to Dr Bayley a wish to leave the family home and live elsewhere. So limited however, is P's life experience, that her only concept of what elsewhere might be, was 'hospital' and so that is where she indicated she would like to go. This it emerged was because other than a short hospital stay for an infection, P had no experience or concept of not living at home with her mother. It did appear however to indicate that, at a point during Dr Bayley's engagement with P, P whilst lacking the vocabulary and life experience to give it a name was able to engage in, and on Dr Bayley's evidence to raise herself, the possibility of a different way of living. Of course, I am in no position to know or evaluate the extent of P's understanding or appreciation of that, given the paucity of assessment, and so I am careful not to give it too much emphasis, but in considering the question of the s 48 threshold and the evidence of Dr Bayley about P's thinking being in the 'here and now' it is something that does not sit easily. It gives pause for thought when considering – even at the lower threshold of reason to believe that she lacks capacity – whether the evidence relied on by the health board establishes that the functional deficit is by reason of a disorder of the functioning of the mind or brain. Dr Bayley was also of the view that once a view had seemed to be articulated by P in which she expressed a wish to live otherwise than her present arrangements, that this was swiftly followed by rejection by the family of professionals and a shutting down of access to P. That aspect of her evidence likewise speaks more of the effect of the actions of others on P's decision making than the effect of any disorder of P's mind.

12. Ms Hewson, who has a relationship with P which is less well established than that of Dr Bayley but is more recent and thus far not attended by conflict with the family, has seen her more recently. She did not experience P expressing a wish to live elsewhere and her evidence of the home circumstances, some time on, was more positive than that which had been experienced by Dr Bayley and reported by health. Ms Hewson did not give an account which had the same sense of obstruction and difficulty, but it is right to see that in the context that she did not find herself challenging ZJ in the sense of giving a professional view which was contrary to ZJ. Ms Hewson's oral evidence was that in her view (though she had to concede this was not a view based on a capacity assessment) she regarded P as having capacity to refuse assessment. Ms Hewson explained that P had spoken to her of an interest in taking part in for example arts and crafts activities and expanded in her evidence on the discussions she had had with P as to whether that was something she could do at an activities centre; perhaps accompanied by family members perhaps without family members. Again this evidence of Ms Hewson's discussion with P, more recently than those of Dr Bayley embraced an element at least of hypothetical options rather than concrete thinking.

13. Ms Hewson went on to give evidence that she had explained to P that there would have to be an assessment – this is pursuant to the Social Services Wellbeing (Wales)

Act 2014. P was not willing to agree to the assessment - and a person with capacity may by the terms of the 2014 Act refuse consent. Ms Hewson's clear evidence to me was that she formed the view that P refused an assessment of her needs understanding the consequences of so doing. Neither Dr Bayley nor Ms Hewson carried out capacity assessments. Each in their different way comes to the case with expertise in, and experience of, working with adults with learning difficulties and disorders of functioning in respect of whom issues of capacity may arise. The view they each form from their work with P and of which they gave evidence, as Mr Brownhill pointed out in submissions is each contradictory of the other.

The Relevant and Applicable Law

14. Save in respect of a dispute at the time of the start of the case between Mr Brownhill and Mrs Anthony as to whether or not I should apply the principles in *DP v Hillingdon* 2020 EWCOP 45 to the decision to made in relation to s48 of the MCA, there has been agreement between Counsel as to the relevant and applicable law. As appears elsewhere, by the time Mrs Anthony came to make her closing submissions she no longer disagreed with Mr Brownhill. I have been provided with an extensive bundle of authorities and case law and have been taken to those parts on which the parties each rely or to which they draw my attention in support of their arguments. It is neither necessary nor purposeful to set out in this judgment all of those decisions but I will set out some of that which has been of most relevance. I have, given the unusual circumstance of this case been more assisted than is sometimes the case by the detail of Counsel's submissions in relation to the law.

15. Part 1 of the Mental Capacity Act 2005 contains at the outset the following principles in section 1

> (1) The following principles apply for the purposes of this Act.
>
> (2) **A person must be assumed to have capacity unless it is established that he lacks capacity**.
>
> (3) A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
>
> (4) A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
>
> (5) 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.
>
> (6) 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.
>
> [emphasis added]

16. The core tenet of an assumption of capacity, though basic, is in P's circumstances something of which it is important not to lose sight.

17. The provision of the Mental Capacity Act which has been the focus of most attention at this hearing has been that which appears at section 48:

> 48 Interim orders and directions
>
> The court may, pending the determination of an application to it in relation to a person ("P"), make an order or give directions in respect of any matter if—
>
> **(a) there is reason to believe that P lacks capacity in relation to the matter,**
>
> (b) the matter is one to which its powers under this Act extend, and
>
> (c) it is in P's best interests to make the order, or give the directions, without delay
>
> [again emphasis added]

18. At this hearing it has been necessary to examine whether on the evidence upon which it relied the Applicant Health Board has established the situation contemplated by s48 (a). In respect of that aspect I have paid close attention to the way in which s48 has been considered by other judges and developed having regard to:

    i) the principles emerging from *Re F [2009] EWHC 30*, the development of (and doubt cast upon) those principles following the consideration of Hayden J in *The London Borough of Wandsworth v M and Others [[2017] EWHC 2435* which was not a Court of Protection but within which context Hayden J nonetheless had cause to consider the s48 threshold.

    ii) The differing approach taken by Parker J in *DA v DJ [2017]EWHC 3904* shortly after the *Wandsworth* case.

    iii) Hayden J's consideration again of the s 48 threshold sitting by then as Vice President of the Court of Protection in *DP v Hillingdon [2020] EWCOP 45.* The consideration and observation made there were obiter. I have nonetheless found them useful in the particular circumstances of this case and agree with Counsel's characterisation of the case as the most recent and authoritative approach to the application of s48. I accept also the joint invitation of counsel to apply the approach in DP to the particular circumstances of P in this case.

19. In respect of the determination of whether, outwith the question of the provisions under s48, P is a vulnerable adult I have had regard to the decision in *Re SA [2005] EWHC 2942*. It is established that the inherent jurisdiction of the High Court for the protection of vulnerable and incapacitated adults persists despite the coming into force of the Mental Capacity Act 2005.

20. P's situation which results in my being invited, exceptionally to make without notice orders and including orders for injunctive relief ex parte makes it appropriate for me to have regard to the Court of Appeal decision in *Mazhar v Birmingham Community Healthcare NHS Foundation Trust and Others [2020]EWCA 1377.* Though that appeal had its roots in an application to and orders made by the out of hours urgent business judge, I have found it helpful in making decisions about P and her situation

to hold in my mind that which is set out at the conclusion of the Judgment of Baker LJ as 'lessons to be learnt' following an observation that any guidance would be more appropriately given by the President

21. Since here I am invited to make orders for injunctive relief, I have taken account of the decision of Keehan J in *SF (Injunctive Relief)[2020] EWCOP 19* and have accepted that the proper approach her is to limit that injunctive relief to the minimum required to address the potential harm to P. Since ZJ has had no opportunity at this hearing to make any submissions or have her view heard I have taken care so far as I can to accord with the approach of the Court of Appeal in *Re G (Court of Protection: Injunction)* [2022] EWCA 1312 so as to enable her to have the opportunity to participate at a return date to be listed soon after service of the order

Discussion

22. I have found it convenient to approach the decisions which I have to make in this case by addressing the following questions which emerge from Counsel's agreed issues for determination:

23. **Should the court continue to consider the matter without notice to ZJ (and therefore also as a consequence absent any informed view as to P's wishes and feelings garnered by the Litigation Friend) and make an order ex parte.**

24. At this hearing the Health Board is inviting me to make an order which removes P from her family home. The unchallenged evidence is that P has only ever been away from her family and the home in which that family has been living at different times in her life for a single period of about 24 hours when she was admitted to hospital. The evidence I heard from Dr Bayley that the extent to which P had an understanding that there was somewhere else, other than home that she could live came from that hospital admission was compelling. I have no doubt that in the event that I accede to the Health Board's application there will be a significant impact on her as a result. As matters stand the Litigation Friend has not been able to speak to P herself and so is not able to communicate her wishes and feelings. It has nonetheless been very helpful indeed to have the assistance of the Litigation Friend in safeguarding P's interests by careful scrutiny of the evidence relied on by and position of the two public bodies concerned. I accept Mr Brownhill's submission that *Mazhar v Birmingham Community Healthcare Foundation NHS Trust & Ors (Rev 1)* [2020] EWCA Civ 1377 assists in determining as to whether an order could or should be made without P meeting with her Litigation Friend in the absence of ZJ.

25. I agree that the propositions emerging from *Mazhar (*albeit that in that case there was the added layer of complexity because the application had been made as an urgent application out of hours) and applicable to the orders sought in respect of P are:

    i) To make an order under the inherent jurisdiction without notice to the vulnerable adult concerned (here P) is an exceptional course:

    ii) The court should be mindful of the 'protection imperative'

iii) One of the most important factors when exercising the inherent jurisdiction (and under the statutory framework of the MCA 05) is the wishes and feelings of the adult concerned.

26. In this case I am satisfied on the evidence that the circumstances in which P is living with ZJ make it impossible having regard to that which appears below in relation to flight risk either to give notice to the adult concerned or to obtain her wishes and feelings in advance of this hearing. I readily accept that only very rarely is it right to proceed in this way and I am satisfied that P's circumstances are such.

27. **Should the court continue to hear the matter in private?**

28. I am satisfied that at this hearing I should continue to hear the matter in private. Doing so enables the court to consider the question of the differing options contended for by the parties which include on the case contended for by the Health Board, unheralded removal of P from the home. It also enables the court to assess the risk (identified as a real risk) of ZJ absconding with P if she has notice. It is likely that that risk of flight will be increased by the prior knowledge that at least one of the parties before the court seeks removal of P.

29. **Is the threshold for section 48 MCA 05 threshold crossed and if it is in respect of which decisions?**

30. As this hearing began, it had appeared that Mrs Anthony on behalf of the Health Board took issue with Mr Brownhill as to whether the approach to Section 48 MCA 2005 threshold should be following that of Hayden J in *DP v Hillingdon [2020] EWCOP 45* . By the time of her closing submissions however Mrs Anthony submitted explicitly '*we agree DP v Hillingdon should apply'* . Whilst Mrs Anthony went on to make detailed submissions as to why, working through her analysis of the decision of Parker J in *DA v DJ [2017] EWHC 3904*, that was so, it is unnecessary, in the light of her concession, for me to consider that further in the circumstances of this case. All accept as do I that the words of the statute 'is there reason to believe' that P lacks capacity in the respect of the matter under consideration requires no gloss. As I have sought to reach conclusions in respect of the s 48 threshold as it applies to P and her circumstance, I have held in my mind the formulation at paragraph [62] of DP. I accept Mr Brownhill's submission that although obiter the observations of the then Vice President of the Court of Protection there represent the most recent and authoritative approach to the application of s48.

31. There is a particular difficulty in this case that in contrast with the more usual position the court is not presented with assessment of P's capacity to make the relevant decision which I may then analyse in the context of the other evidence to reach a conclusion on the s 48 threshold. So it is that here I am left to consider whether the cogency of the available evidence leads me to conclude that there is reason to believe she lacks capacity.

32. Turning now to the question: Is there reason to believe that P lacks capacity to make decisions as to her residence? As to this question the two public bodies concerned take differing positions Having read and listened carefully to all of the evidence and the oral submissions which have amplified and developed the arguments which had been set out in writing, whilst I am satisfied that the Applicant has established on the

evidence the existence of a functional deficit in respect of P, when I move to the second stage and consider whether the applicant has established that functional deficit is caused by a disorder of the functioning of the mind or brain I am not persuaded. The more I listened to the evidence and submissions, the less persuaded I was of the applicant's case in this respect. Dr Bayley, on whose evidence the health board relies acknowledged herself in highlighting the complexity of the situation and the need for proper assessment the relevance of P's early life and lived experience to that deficit as well as the provision of information to her. I accept the submission of the Litigation Friend that the causal nexus between the identified deficit in decision making and P's ASD and learning disability is not established on the evidence as it stands. I reach this conclusion even having regard to the relatively low threshold applying the ordinary language of 'reason to believe'

33. I reach the same conclusion in relation to whether there is reason to believe that P lacks capacity to make decisions as to her care and support. At this interim stage and on the evidence presently available the applicant has not established that P is unable to make decisions because of a disorder of functioning of the mind or brain rather than for other reasons.

34. As to the consideration of whether P has capacity to refuse to consent to an assessment of her needs under the *Social Services and Wellbeing (Wales) Act 2014*, an unhelpful circularity has crept into the local authority approach and has I find confused matters. I make that observation not so much by way of criticism of either the local authority as a public body or of Ms Hewson whose evidence I have heard at this hearing but more as a reflection of how complex a situation faces all those trying to disentangle that which is in play in relation to capacity here. The Local Authority had until very shortly before this hearing adopted the position that it would not complete an assessment of P's needs since she had refused to consent. That is a stance consistent with Ms Hewson's evidence to me of her own opinion that P had indeed refused consent understanding the consequences of so doing and in a way which Ms Hewson took (rather than assessed) P to be capcacitous. From the witness box, Ms Hewson reminded Counsel in response to questions that the starting point of the MCA and thus hers too, is presumed capacity. In the run up to the hearing the Local Authority having been reminded by the Litigation Friend that capacity (including to refuse consent) was one of the issues, the local authority both reasserted its social worker's view that so far as possible without undertaking a formal assessment P had capacity and then offered to undertake a formal assessment of that capacity. I agree with the Litigation Friend's submission that against that evidential background I should not make a s 48 order.

35. **In the event that the section 48 MCA 05 threshold is not crossed, is P a vulnerable adult within the meaning of *Re SA* [2005] EWHC 2942 (Fam)?**

36. By contrast however, having determined as I do that the s 48 threshold is not crossed, when I turn to consider whether P is a vulnerable adult within the meaning of *Re SA* I have no hesitation in concluding that she is precisely that. Within her witness statement made in April of this year Dr Bayley described obstruction by ZJ to services and assessments for P and to the putting into effect to decisions. In her oral evidence Dr Bayley amplified this and was explicit that she had come to the view that a wish P had been able to articulate to her of living elsewhere and in a different way had been

affected by ZJ and that rejection of professionals and access to P thereafter was a result.

37. In her witness statement made in June 2024 Dr Bayley characterised this as 'undue influence'. I accept her evidence in this respect. I accept also the Litigation Friend's submission that the thrust of the evidence (at least at this interim stage) is that P is unable to make a decision as to her care and support needs because of ZJ's actions. In this respect I have taken particular note of the lack of response to clinicians during periods of difficulty; of refusal to allow community learning disability nurses entry to the family home; declining assistance and visits and of reported changes in P's own presentation from open and polite to hostile and refusing to engage.

38. I am satisfied that on the evidence filed by the applicant Health Board that there is reason to believe at this stage that P is subject to coercion control or constraint, and I accept the consensus of submissions made in that respect by the applicant Health Board, the Local Authority and the Litigation Friend.

39. **What is the risk of P being removed from the family home by ZJ if ZJ becomes aware of these proceedings?**

40. The evidence establishes that in the past ZJ has responded to threats to her family (or at least what she perceived as threats) by fleeing with her children from the area. When these proceedings were contemplated and were placed before the VPCOP and thereafter before another Tier 3 Judge and since April of this year before me, the risk of further flight if notice were given to ZJ of the application was a matter of real concern. As the Litigation Friend puts it in the skeleton for this hearing '*put simply there is an obvious risk that ZJ may attempt to abscond with her children should she know about these proceeding and the prospect of [ZJ]'s removal'.* I agree that risk has persisted.

41. I take a rather different view now of the situation <u>following</u> any order made today by which ZJ will become aware of proceedings. It is my view that fleeing with 3 small children, the account of which I have read involving, for example hiding them in toilet cubicle of trains to avoid detection, is a very different prospect than fleeing with 2 adults and one late teenager. There is a lack of clarity about whether ZJ holds a driving licence but the family doesn't own or have access to a car. Were ZJ to undertake flight, such evasive action as she might contemplate would have to be undertaken using the public transport facilities of West Wales. It is well-recognised that those facilities are not plentiful. I have also heard in the course of the evidence in this case that such is P's life experience, and such are her personal characteristics so far as they are known, it is reasonable to infer that sudden and unexpected travel and change is unlikely to be something she would experience as comfortable. It would be surprising to me if ZJ could easily flee with P even if she tried, without attracting attention and being apprehended. I bear in mind the evidence I have read of P having 'meltdowns' when experiencing changed circumstances and the evidence that so limited has been her life experience that the concept of a cafe, where someone might go and buy food and drink, was novel to her. I further accept the point made by the local authority that ZJ is reliant on benefits and that presents a route for tracing her.

42. Weighing the evidence I have, I conclude that there remains a risk, that risk must be seen in the light of the resources which ZJ is likely to have to put any such plan into

effect, and in the light of any steps available to the court by way of injunctive relief to ameliorate that risk. I regard it also as important to hold in my mind two additional considerations, the first is that inevitably, in thinking about risk, what is contemplated is the worst-case scenario. I have not at the moment heard from or made my own assessment of ZJ's response and I don't assume that she would flee. The second is that on the evidence I have seen, ZJ very much loves her daughter P and will have seen and experience for herself her pitch of distress and 'meltdowns'. I should not too readily work on the basis that ZJ would willingly, were she thinking rationally at the time, put her daughter in a position likely to result in harm.

43. **What assessments in respect of P are necessary?**

44. Those assessments which are immediately necessary are of her capacity to:

i. Conduct these proceedings;

ii. Make decisions as to her residence;

iii. Make decisions as to her care and support;

iv. Make decisions as to her medication

v. Make decisions as to her property and affairs.

Additionally in relation to care support and treatment:

i. A medication review;

ii. A review of her treatment needs;

iii. An assessment of P's care and support needs

45. It would be unsurprising if further assessment needs were to be identified emerging from those listed above. The Applicant has identified in tabular form a very detailed breakdown of assessments. I am unconvinced that the assessments intended should be micromanaged by the court as distinct from by her treating clinicians. Equally, I anticipate that this is a matter which will require further hearings at which matters of detail of assessment if contentious may be the subject of further scrutiny. Most pressing from the perspective of the court are assessments relating to capacity. On the evidence I have heard I do not expect the process of assessment to be a short one.

46. **Where should those assessments take place -ie at the family home or, as contended for by the Health Board elsewhere**

47. Whilst I recognise that the Health Board through Mrs Anthony has expressed great reservations that it will be possible to carry out assessments in the home environment, I must balance that against the alternative I am being asked to consider. Noone suggests – and nor could anyone sensibly do so – that a realistic option is simply to do nothing. To leave P in her present unsatisfactory situation.

48. It is likely that the making of orders to permit the assessment of P wheresoever that may be, carries with it the risk of harm both to P and to ZJ as well as to P's wider family with the potential knock-on effect for P. It was sobering to hear Dr Bayley's oral evidence that she could not choose between the 2 options as to which would likely cause the greater degree of distress and disruption for the family. Sobering also to hear her view that either option carried with it also the risk of hospitalisation for P (though it is of course unpredictable) and perhaps also for ZJ (also unpredictable). If it is not to be assessment at home, what is contemplated is a wholesale change in living arrangements. It is proposed that it will be assessment at a place which would be about a 45 minute drive in light traffic were this family possessed of a car. Since they are not it will be a 2 bus journey on the sparse transport links across West Wales. This for a young person who has been away from home for one 24-hour period in her life to date. It may be that there comes a time when the court is driven to conclude that assessments must be carried out away from home. I would anticipate that would be only:

i) After having heard argument informed by P's own wishes and feelings obtained by her Litigation Friend

ii) After having heard the views of those members of her family most particularly ZJ who should be given an opportunity to be heard

iii) If there is strong evidence that continuing efforts to assess at home are contrary to P's welfare.

49. I will not at this hearing sanction the removal of P from her home address when I know nothing of her wishes and feelings; when I am making an order exceptionally ex parte and when I recognise the effect that the orders I make today will have on the rights life and emotions of P and her family. Rather I will make the minimum order required to address the potential harm to P. I am persuaded that the injunctive relief sought is necessary. The thrust of the evidence I have heard and read at this hearing is strongly suggestive of ZJ controlling access to and 'gatekeeping' P and absent the injunctive relief is more likely than not in my judgment to resist or interfere with the intended assessments.

50. **What if any injunctive relief is required to permit any assessments to take place**

51. In an extremely helpful way, counsel have agreed the injunctive relief that I should grant to permit the assessments to take place. That relief set out in the order which I will approve enables entry and access to P for assessment purposes at the home and prevention of her removal from that address by her mother or by others on the instruction of her mother.

52. P's Litigation Friend rightly criticised the Applicant for not having provided in their document at the outset a brief account of what would most likely have been have been ZJ's position had she been on notice of the application for ex parte injunctive relief. Mrs Anthony sought to make up that deficit orally. To be clear in reaching the

conclusion that I should grant the minimum level of injunctive relief that I do, I have held in my mind that ZJ would be likely to adopt the following position.

i) That she has no intention of absconding from the address with P, wants only the best for her and has sought to at all times to keep her safe including by putting in place the restrictions such as locked windows for which she has been made aware there is likely to be involvement sought from the Court of Protection.

ii) Knowing that others are likely to involve the Court of Protection because of those restrictions has not led her to abscond to avoid that;

iii) She and her family have their home established, she has other children living with her and a new puppy to care for;

iv) P's presentation is improving and as a family they are entitled to live their lives without the scrutiny of the public bodies;

v) She has demonstrated that she will seek appropriate support for P when required and continues to do so;

vi) The primary evidence upon which the Health Board relies comes from Dr Bayley. Dr Bayley's evidence should be treated with caution considering that ZJ has made formal complaints about Dr Bayley's conduct.

vii) Furthermore the fact that ZJ has made complaints about Dr Bayley and other professionals should not be as it were held against her in considering whether she will cooperate with professionals carrying out assessments of her daughter if ZJ agrees those assessments are necessary.

viii) ZJ is likely to be the person who knows her daughter best.

53. I have also thought it right that I should provide a short return date which will be 30th July 2024; that I should invite Counsel to provide ZJ with details of specialist practitioners to assist her in obtaining legal advice and representation should she so wish; that I should, unusually, list that return date as a remote hearing so as a) to enable a listing as close to 7 days from service of the order on her as possible b) to enable ZJ to attend without the need for excessive travel at a time when she is likely to be in a state of heightened anxiety about P c) to give her the best opportunity to secure at relatively short notice appropriate legal representation.

54. The remaining question which had been identified by Counsel and would have arisen had I reached a different conclusion in respect of the Health Board's application namely: **If as the Health Board contends, P is to be removed from her home to another location and assessments carried out there what is the care and support that will be provided to her** no longer arises.

55. Before concluding this judgment, I make one further observation. It has caused me some disquiet to find that the court is invited to make orders at this stage in the Court

of Protection with, as one of the respondents to the application, the Local Authority which has been the Local Authority responsible for the welfare of the young adult with whom I am now concerned and that of her siblings when all were children. Whilst it is not the focus of the applications before me I cannot easily understand how it can have been that the Local Authority worked with this family in PLO, as I am told it did, and was sufficiently satisfied that the children's welfare did not give cause for concern such as to lead it to make application under s31 of the Children Act. This in circumstances where the evidence now before me suggests it must have been known that there were continuing causes for concern at the very least in relation to educational welfare and emotional welfare as well as their living conditions. At this hearing the fact that I have been considering whether a threshold under s48 MCA 2005 has been crossed has more than once caused me to reflect on how it can be that at a much earlier stage in the life of P and of her siblings another court was not invited to consider whether the threshold under s38 and or s31 of the Children Act 1989 was established. Such opportunity as there may have been in that respect is no longer available.

56. It remains only to express my thanks to all Counsel for the quality of their written and oral arguments in this most unusual and difficult case. I will invite counsel to draw an order reflecting the decisions I have made and will approve it accordingly.