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Neutral Citation Number: [2020] EWCOP 23

Case No: 11333949

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
COURT OF PROTECTION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/05/2020

Before :

MRS JUSTICE LIEVEN

- -

Between :

VE

Applicant

and

(1) AO
(By her litigation friend, the Official Solicitor)

First Respondent

(2) THE ROYAL BOROUGH OF GREENWICH

Second Respondent

(3) SOUTH EAST LONDON CCG

Third Respondent

- -
- -

Ms Alev Giz (instructed by **TV Edwards Solicitors & Advocates LLP**) for the **Applicant**
Mr Parishil Patel QC (instructed by **Bindmans LLP**) for the **First Respondent**
Mr Michael Paget (instructed by **The Royal Borough of Greenwich, Legal Services**) for the **Second Respondent**
Ms Anita Rao (of **Capsticks Solicitors LLP**) for the **Third Respondent**

Hearing dates: **20 April 2020**

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MRS JUSTICE LIEVEN

Mrs Justice Lieven :

1. This is an application in the Court of Protection by VE for an order that it is in her mother, AO's best interests to be allowed to leave the care home, "TO", in which she is currently living and move to live with her daughter and her family. I first heard the application on Thursday 16 April but adjourned for further evidence. I then held the final hearing on Monday 20 April 2020. Given the extreme urgency of the situation in terms of AO's terminal cancer and the risk of AO contracting Covid 19 I made my order at the end of the hearing but reserved my reasons, which I now set out in this judgment.

2. VE was represented before me by Ms Giz, AO through the Official Solicitor by Mr Patel QC, the local authority by Mr Paget of counsel and at the second hearing the CCG by Ms Rao of counsel. I am very grateful to all of them and their instructing solicitors for their handling of the case.

3. The issue before me was originally framed as a challenge to the deprivation of AO's liberty under the Mental Capacity Act 2005 (MCA) and thus a case concerning article 5 ECHR. However, as the matter progressed it became increasingly clear that it was really a case about AO's best interests under the MCA and the proportionality of the interference in her family life under article 8 ECHR.

4. AO is an elderly Nigerian lady whose age is thought to be either 78 or 87, her birth not having been registered. She has a history of having suffered from mental illness. The full diagnosis is not clear in the papers before me but it certainly involved paranoid schizophrenia. She came to the UK about 20 years ago to live with her daughter, VE, and her family. On 22 September 2010 an order was made by DJ Ralton that it was in AO's best interests to live at a care home, TO, and to have staying contact with VE. It is not clear whether there has been a standard authorisation under the MCA, but no reviews of any such authorisation appear to have taken place. The staying contact with VE was alternate weekends from Friday to Monday and four separate weeks each year. This contact has been taking place since 2010.

5. When AO was staying with VE over Christmas 2019 VE became concerned about her mother's health and her swollen abdomen. She took AO to the GP who referred her to King's College Hospital for a scan. She was diagnosed with advanced terminal ovarian cancer which had spread to her other vital organs. AO had stayed with VE for some six weeks over Christmas. She was admitted to King's College Hospital (KCH) in mid-January 2020. Unsurprisingly perhaps, VE was very concerned about the care of her mother at TO and applied for the 2010 order to be discharged and for AO to be allowed to move to live with her.

6. On 6 March 2020 VE issued an application for personal welfare orders in respect of her mother seeking AO's discharge from hospital into her care. Within those proceedings VE issued a further application on 9 April 2020 and the proceedings have now been reconstituted as a s.21A Mental Capacity Act challenge to AO's deprivation of liberty. Various directions were made for the Official Solicitor to be invited to represent AO and for evidence to be produced.

7. AO's capacity had been assessed by a doctor at KCH on 28 February and AO had been found to lack capacity in respect of a decision as to where she lives. The form states that AO could not understand the concept of going somewhere else; was unable to

summarise the information given to her; and could not retain that information or weigh it up. She was able to communicate but then could not remember what she had said. The conclusion was that she lacked capacity in respect of the decision in issue. AO was subsequently assessed by consultant psychiatrist Dr Cairns, pursuant to a direction under section 49 MCA 2005, who, in her report dated 18 March 2020, concluded that AO lacks capacity to make decisions about her residence, care and support." I note that all parties accept that AO does not have capacity in relation to decisions about where she lives. There is nothing in the later documentation which would lead me to doubt that AO does not have capacity either to litigate or to decide where she lives and I proceed on that agreed basis.

8. On 20 March 2020 DDJ Kaufman made an order that it was in AO's best interests at that time to be discharged from KCH to TO and that evidence should be produced as to AO's wishes and feelings, and the support that VE and her children could give her should AO move to live with VE. A further hearing was listed.

9. It was on that same day that, in the light of the emerging Covid 19 pandemic, the Department of Health and Social Care produced guidance preventing family members from visits to care homes except in exceptional situations such as end of life.

10. AO was discharged from KCH on 23 March 2020 back to TO. Since that date she has not had any face to face contact with her family. TO, for very understandable reasons in the light of the current pandemic, is not allowing any visits from family members to residents. Some contact has been maintained by telephone calls and, on one occasion, a video call using a carer's mobile phone but, given AO's condition, this is not an effective way of maintaining contact with the family. There was some suggestion at the first hearing of AO using an iPad or similar device to maintain contact but, again, given her mental state, this was not a practical or effective solution in the longer term. Therefore, adequate contact could not be maintained at the present time between AO and her family, and this was accepted by all parties by the hearing of 20 April 2020.

11. I first heard this matter on 16 April 2020 and ordered that further statements be produced for the second hearing (20 April 2020) and that the AO's representative (Ms Hobey-Hamsher) speak with the manager of TO and produce a note of that conversation. I am extremely grateful to Ms Hobey-Hamsher for doing this so quickly and efficiently.

12. At the hearing on 20 April, I had written evidence from VE and her daughter BA; an attendance note from Ms Hobey-Hamsher of her conversation with the manager and AO's principal carer at TO; evidence from the local authority and documentation from King's College Hospital as to AO's stay there and diagnosis; and I heard from Ms Clegg of the CCG.

13. The evidence from VE and BA is that AO is of Nigerian origin and that was a very important part of who she is. She has a large number of children, but only VE lives in the UK. AO came to the UK about 20 years ago to be with VE and VE's children. VE herself has nine adult children and many grandchildren (AO's great grandchildren) and the evidence suggests that it is a large and close family.

14. In the time AO has been living at TO she has been spending four days every second weekend with AO and her family. She has also spent holidays each year with them.

According to VE, and I have no reason not to accept this, AO has been happy at VE's home and has much enjoyed being with her and the children and grandchildren. VE speaks about AO enjoying dancing and Nigerian music and having African food. Food is something of an issue because at TO she can generally only have English food and she is currently not eating very much. She enjoyed telling stories and jokes about Nigeria. AO was also in an environment where she could speak her native languages Hausa/Yoruba. From VE and BA's evidence I have no doubt that AO is happy and content with VE and her family and it is highly likely that if she was in a position to express a choice she would want to live with them.

15. VE's evidence also covered the care that could be provided by her and the family at home. VE lives in a moderately large house, with four bedrooms. There are four other family members living in the house during the lockdown, including her son C who is 28 and well able to lift and turn his grandmother when needed. There is a room downstairs where AO sleeps when she comes on visits and a toilet and shower on the same level. VE has an appropriate bed for AO which prevents her falling out of bed and has a pressure mattress to alleviate the risk of bedsores. VE explained that AO can be fully cared for in terms of basic care needs by the family, including there being people who can help her get out of bed, go to the toilet and turn her in bed when necessary. VE proposes to sleep in the room with AO so that if she needs to get up in the night assistance will be immediately available.

16. There have been issues between VE and BA and the staff at TO. It is neither necessary nor appropriate for me to seek to delve too far into these. VE says that she has at times raised issues about the quality of care that AO has received and both she and BA say that they stopped regularly visiting AO in the Home because of the poor atmosphere. They both felt it was better for AO to see them when she came every second weekend for visits. VE was naturally very concerned that staff at TO had not picked up the signs of AO's developing cancer. BA said that she regularly saw AO (every second weekend) at VE's house. The evidence suggests that AO's family have shown a strong level of commitment to her and are extremely keen to have her home for her last days.

17. Ms Hobey-Hamsher talked both to the manager of TO and the staff member who has had the most contact with AO. In terms of AO's condition, it seems that she is significantly more dependant than when she was admitted to Hospital. It was not clear the degree to which her condition had changed since she had returned to TO in March. There were slightly conflicting views as to how ill AO currently is. However, it appears that she is not yet entirely bed bound and she can communicate. There was also a somewhat unclear situation at the time of the hearing on 20 April 2020, by which Ms Hobey-Hamsher had been told that AO had a cough and was being isolated within the home.

18. The Manager told Ms Hobey-Hamsher that TO had not accepted any residents who had tested positive for Covid 19 and none of the existing residents had themselves tested positive. However, this is in the context where none of the existing residents were being tested. She said that there were residents who were showing symptoms which could indicate they had Covid 19 and they were being cared for in isolation. There were residents who had recently died who might have had the virus, but it was not possible for the carers to know given that they had not been tested for Covid 19. The Home is doing everything it can to prevent infections and to stop any spread within TO. TO is in lockdown with no outside visitors. Bio-security measures are being taken including

handwashing, and separation/isolation of residents within the Home. It has to be said however that it is inevitably going to be extremely difficult to prevent spreading the disease within a home such as TO.

19. TO has approximately 71 residents and is split into a number of units. AO herself now stays in her unit (14 residents) and a very limited number of people care for her.

20. There is some lack of clarity as to whether if residents get sick they will be admitted to Hospital. The Manager stressed that this would be a decision made clinically by the emergency services and the hospitals. However, there did seem to be a strong possibility that if AO did develop Covid 19 at TO then she would stay at TO rather than being taken to hospital.

21. Ms Clegg gave oral evidence at the second hearing. She is an Associate Director of Integrated Commissioning within the South East London Clinical Commissioning Group (the CCG), previously the Lambeth Clinical Commissioning Group. The CCG had not assessed AO's needs so necessarily what she said about care that could and would be provided to AO was in general rather than specific terms. She said that staff, such as district nurses, were still visiting people in their own home and that staff had access to Personal Protective Equipment (PPE) where appropriate. The service to those being looked after at home has not changed with the current pandemic, and in fact the CCG has commissioned additional capacity. In terms of the care that a district nurse would provide to AO, Ms Clegg said that there would be support for the family, ensuring that AO had the right equipment and any basic nursing care that AO needed at home. It was clear from Ms Clegg's answers that there was no reason to believe that AO would not get appropriate support from the CCG if she went home. At the moment the only pain relief that AO is receiving is paracetamol and obviously that can be provided at home.

22. The other important area covered by Ms Clegg was the end of life care that AO would receive. Ms Clegg said that the CCG were very familiar with providing that type of care for people at home, including people lacking capacity. End of life care would be provided through St Christopher's Hospice, and a community based palliative care service. Pain relief can be provided, as appropriate, through pain relief patches and subcutaneous infusion and the district nurses can set this up. The district nurse service is familiar with, and sensitive to, issues around the patient's dignity towards the end of life including respecting cultural beliefs and privacy. Mr Paget asked Ms Clegg about the levels of support that could be provided, and Ms Clegg said that it was difficult to answer such questions without a full assessment. She initially said that an assessment would take 4-6 weeks, but it was quite clear from her evidence that if there was a need an assessment could be carried out more quickly. She said that she could not rule out the need for AO to be in a 24 hour residential setting at the end of her life, but said that could be left open as an option and the CCG would endeavour to do its best for her to remain at home.

The law

23. The application before me was made under s.21A Mental Capacity Act 2005 as a challenge to the legality of AO's deprivation of liberty at TO. The real question for the court was, however, whether or not it was in AO's best interests to continue to reside at TO or to move to live with VE and her family. Any decision as to deprivation of

liberty would inevitably follow the best interests assessment as to where she lived. All parties agreed that AO does not have capacity to litigate or to decide where she lives.

24. Section 4 MCA deals with the assessment of best interests;

> *4 Best interests*
>
> *(1)In determining for the purposes of this Act what is in a person's best interests, the person making the determination must not make it merely on the basis of—*
>
> *(a)the 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 what might be in his best interests.*
>
> *(2)The person making the determination must consider all the relevant circumstances and, in particular, take the following steps.*
>
> *(3)He must consider—*
>
> *(a)whether it is likely that the person will at some time have capacity in relation to the matter in question, and*
>
> *(b)if it appears likely that he will, when that is likely to be.*
>
> *(4)He must, so far as reasonably practicable, permit and encourage the person to participate, or to improve his ability to participate, as fully as possible in any act done for him and any decision affecting him.*
>
> *(5)Where the determination relates to life-sustaining treatment he must not, in considering whether the treatment is in the best interests of the person concerned, be motivated by a desire to bring about his death.*
>
> *(6)He must consider, so far as is reasonably ascertainable—*
>
> *(a)the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity),*
>
> *(b)the beliefs and values that would be likely to influence his decision if he had capacity, and*
>
> *(c)the other factors that he would be likely to consider if he were able to do so.*
>
> *(7)He must take into account, if it is practicable and appropriate to consult them, the views of—*
>
> *(a)anyone named by the person as someone to be consulted on the matter in question or on matters of that kind,*

> *(b)anyone engaged in caring for the person or interested in his welfare,*
>
> *(c)any donee of a lasting power of attorney granted by the person, and*
>
> *(d)any deputy appointed for the person by the court,*
>
> *as to what would be in the person's best interests and, in particular, as to the matters mentioned in subsection (6).*
>
> *...*
>
> *(11)"Relevant circumstances" are those—*
>
> *(a)of which the person making the determination is aware, and*
>
> *(b)which it would be reasonable to regard as relevant.*

25. In BP v Surrey CC 2020 EWCOP 17 Hayden J (Vice President of the Court of Protection) was dealing with an application by the daughter of an 83 year old to leave the home he was in in order to go home and live with her. The position was that the care home had, in accordance with appropriate guidelines produced to deal with the pandemic, stopped all family visits to residents. It was argued that there was a breach of articles 5 and 8 by the refusal to allow BP to leave the home and the refusal to allow him visits from his family. The factual position was materially different from that of AO, in particular because BP was not terminally ill. In BP the main argument was as to whether the care home could be required to reinstate family visits. Hayden J found at [36] that the plans for BP to return to live at home, cared for by family members, was not in truth a realistic option, and therefore the consideration of the court focused on the issue of contact with the family.

26. Hayden J referred to the relevant articles of the ECHR and a number of the important principles that lie behind a decision such as this, at the present most extraordinary time. He considered the issues under article 5 and then said;

> *18.The other key convention right which falls to be considered is, self-evidently, Article 8 ECHR, which provides:*
>
> > *1.Everyone has the right to respect for his private and family life, his home and his correspondence.*
> >
> > *2.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.*
>
> *19.Article 14 of the Convention provides that the rights within it shall be secured to all, without discrimination, including on the grounds of disability.*

20.Article 15 permits derogation from Articles 5 and 8 in situations of public emergency, threatening the life of the nation. It also requires to be set out:

> *Article 15 Derogation in time of emergency*
>
> *1.In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law*
>
> *2.No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.*

21.On 20th March 2020 the Council of Europe's European Committee for the prevention of torture published a Statement of Principles relating to the treatment of individuals deprived of their liberty in consequence of the COVID-19 pandemic. Saliently, these include:

> *"1)The basic principle must be to take all possible action to protect the health and safety of all persons deprived of their liberty. Taking such action also contributes to preserving the health and safety of staff.*
>
> *[…]*
>
> *4)Any restrictive measure taken vis-à-vis persons deprived of their liberty to prevent the spread of COVID-19 should have a legal basis and be necessary, proportionate, respectful of human dignity and restricted in time. Persons deprived of their liberty should receive comprehensive information, in a language they understand, about any such measures.*
>
> *5)As close personal contact encourages the spread of the virus, concerted efforts should be made by all relevant authorities to resort to alternatives to deprivation of liberty. Such an approach is imperative, in particular, in situations of overcrowding. Further, authorities should make greater use of alternatives to pre-trial detention; commutation of sentences, early release and probation; reassess the need to continue involuntary placement of psychiatric patients; discharge or release to community care, wherever*

> *appropriate, residents of social care homes; and refrain, to the maximum extent possible, from detaining migrants."*
>
> *22.Additionally, Article 25 of the CRPD emphasises the Right to Health of people with disabilities:*
>
> *Article 25 Health*
>
> *States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender- sensitive, including health-related rehabilitation. In particular, States Parties shall:*
>
> *a)Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;*
>
> *b)Provide those health services needed by persons with disabilities specifically.*

27. Hayden J then went on find that there was undoubtedly a public emergency within article 15 that would justify a derogation from article 5. He then referred to the UK Government Guidance on residential care provision during the Covid 19 pandemic, which was current guidance at the time of the hearing. The Judge found that the proposals by the care home for indirect contact were proportionate given the extraordinary circumstance of the current pandemic.

28. The principal factual difference from AO's case to that of BP is that AO has been diagnosed as having terminal cancer and is likely to have something between a few weeks and 3-6 months to live. This case concerns, as BP did not, questions as to whether it is in AO's best interests to be allowed to live with her family in the last period of her life. The ability to die with one's family and loved ones seems to me to be one of the most fundamental parts of any right to private or family life. That how a person dies can fall within the ambit of article 8 is now well established, see as but one example Pretty v UK [2346/02] at [65]. I have not been able to find any case law on the degree to which an inability to die with one's family engages article 8, but it would seem to me self-evident that such a decision by the state that prevents someone with a terminal disease from living with their family, must require a particularly high degree of justification under article 8(2). Wider public health considerations, such as the protection of the community by restricting visits to a care home were considered in BP, but are not the issue in the present case. It was not argued that there was any public health reason to prevent AO leaving TO to live with her family.

29. In this case the central question concerns whether it is in AO's best interests, as a person without capacity, to be allowed to leave TO to go to her family to die. In respect of a best interests decision in similar circumstances in A NHS Trust v DU and others 2009 COPLR 210 Hedley J said as follows;

> *[10] This case illustrates the breadth of the concept of best interests which the court is bound to apply. The focus of the case was very much on treatment and where she should be. But, of course, the introduction of the possibility of Nigeria adds a new dimension. It is an integral part of the concept of best interests when dealing with a person of this age that the court recognises the imminent possibility of death and the importance of making arrangements so as to secure that the experience of death may be in a context which is the most congenial and peaceful that can be devised. Also implicit in the concept of best interests is the importance of the country and culture of origin and the whereabouts of the family. They will often take precedence over, for example, the question of risk avoidance or the exact quality of care that may be available. It is not possible to travel without some incidence of risk, but that is a risk that may be easily outweighed by the benefits of successful travel. It may be the case, insofar as it is remotely the business of the court to investigate it, that the quality of care at the point of destination may not be the same as the quality of care at the point of departure. Those are matters also which may easily be overcome by the benefits of relocation, and it is in consideration of those matters that the question in principle of this lady's transfer back to Nigeria is no longer controversial. It is clearly in her interests, having regard to her condition, her background and the whereabouts of her family, that she should if possible be transferred to Nigeria, and the evidence suggests that that is probably practicable.*

The submissions

30. Ms Giz, on behalf of VE, argued strongly that it was in AO's best interests to move to live with VE for whatever time was left to her. She argued that AO had had a very close and loving relationship with her family and that if she had been in a position to express her wishes and feelings it would have been to live with her family at this time. It was clear that the family were in a position to provide care for her despite the problems of the present lockdown. She also argued that there was no need to wait for further assessments in the light of the evidence of Ms Clegg. To the degree further assessments were needed, particularly in respect of end of life care, these could be undertaken once AO was living at VE's house.

31. Mr Patel, on behalf of AO through the Official Solicitor, was by the time of the second hearing supporting Ms Giz's position. He agreed that the court could assume that AO would have wished to spend her last days with her family and to die with them around her. He also agreed that the evidence supported a finding that the family could provide sufficient care at home to ensure that AO's best interests were met.

32. Mr Paget on behalf of the local authority argued that I should not make an immediate order for AO to leave TO and live with VE. His position at the first hearing and the start of the second hearing was that it was premature to make such an order and it remained in AO's best interests to stay at TO. He pointed out that she had lived there for 10 years and had not expressed a desire to leave and that no assessment had been carried out in relation to provision of care at VE's home. The concerns he raised related to whether sufficient care could be given by the CCG, whether there was sufficient family support and whether appropriate equipment was available. By the end of the second hearing his position had somewhat softened, but he still said I should not make an immediate order

for AO to leave TO, but rather should order a quick further assessment in the hope that AO might be able to move to VE's home within 4-5 days.

33. Ms Rao did not make submissions about AO's best interests.

Conclusions

34. I made the decision at the end of the second hearing that it was in AO's best interests to leave TO and go to live with VE immediately. The order took immediate effect and AO moved on the evening of 20 April 2020. I must stress at the outset that the arguments before me turned on the fact that AO had terminal cancer and was going to die within a relatively short time. Nobody argued before me that I should not allow AO to leave TO because of the risk of Covid 19, or that any possible public interest in not allowing her to move outweighed her best interests, or her article 8 rights. At the time I made my decision it was not clear whether or not any of the other residents at TO had Covid 19, and it was not being said that AO had Covid 19, but this is a possibility given some accounts of her current symptoms. This is important because this judgment is solely about what is in AO's best interests in circumstances where she had terminal cancer and her family wanted her to die at home with them.

35. I start with the basic proposition that most people would strongly wish to die with their family around them. I entirely agree with what Hedley J said in DU that the court should seek to ensure circumstances of P's imminent death that are as peaceful and dignified as possible. Given the Covid 19 pandemic, the need to minimise the spread of the virus and the current Government guidance if AO were to stay at TO, then the most contact that she would be likely to have would be one short visit from one family member at or around the time of her death.

36. Further, there is strong evidence that AO has enjoyed a close and loving relationship with VE and her family, over the 10 years AO has been living at TO. She has been very regularly spending weekends and holidays with VE and it seems clear that AO has much enjoyed the company of her daughter, grandchildren and great grandchildren. She has also plainly enjoyed the contact with her African heritage that spending time at home with VE has allowed in terms of food, language and things such as dancing and films. None of this is possible at TO, particularly at the present time.

37. I therefore conclude that if AO was capable of expressing her wishes and feelings it is highly likely that she would say that she wished to leave TO and spend the time left to her with VE.

38. The next issue is whether AO can be properly cared for if she moves to live with VE. In terms of day to day care, such as feeding, washing and taking AO to the toilet, I have no doubt that this can all be managed appropriately by VE and her family who are living with her during the lockdown. AO has been regularly staying with them, and indeed was staying there for about six weeks before she was admitted to King's College Hospital in January. Family members will be able to assist AO with her basic needs and turn her in bed if that needs doing. The equipment that is needed in terms of an appropriate bed and mattress are already at VE's house.

39. I was much more concerned about end of life palliative care, and in particular pain relief. However, Ms Clegg made clear that the CCG could commission such care, and

this would include visits by district nurses who could ensure appropriate palliative care was provided. I am very grateful to Ms Clegg for the very straightforward and realistic evidence she gave, and the efforts the CCG is going to in these most difficult of times, to continue to provide end of life care to people at home. In those circumstances I have no hesitation in finding that AO can be fully and properly cared for at home, and I am no longer concerned that she will suffer unnecessary pain at the end of her life.

40. In the light of Ms Clegg's evidence, I saw no benefit to AO in acceding to Mr Paget's suggestion of a delay so that further assessments could be carried out. To the degree further assessment was necessary it could be done once AO was living with VE.

41. Finally, there is the issue of whether it was in AO's best interests to leave TO by reason of the risk to her of contracting Covid 19. The order I was being asked to make, unlike that in the BP case, did not involve any increased risk to either residents or staff at TO. At the time of the hearing it was wholly unclear whether anyone at TO had contracted Covid 19. The manager, when speaking to Ms Hobey-Hamsher, said that she simply did not know because no residents were being tested. In terms of the risks of AO contracting Covid 19, that was necessarily a matter that I and everyone else in the case was conscious of, but it was not possible to quantify. Nor was it possible to know whether there was any risk of AO contracting Covid 19 and spreading it to her family if she moved to live with VE. This risk was not raised as a factor for me to take into account at the hearing.

42. The approach I took at the hearing was simply to assess what was in AO's best interests, and to conclude it was in her best interests for her to go to live with VE and to spend her last days with her family. Other considerations of wider public interest which might have arisen in another case were not raised in this case.

43. The conclusion I reached was that it was in her best interests for AO to move to live with VE and her family. This accorded with the history of her relationship with her family and her background and known values. It also accords with the views of her family. I also concluded that it was in her best interests to move immediately.

44. It was necessary to consider the Health Protection (Coronavirus Restriction) Regulations 2020 (SI 2020/350) in order to ensure that in allowing VE or a family member to collect AO from the care home I was not inadvertently allowing a breach of the Regulations. Regulation 6(1) prohibits any person from leaving home without a reasonable excuse. Regulation 6(2) lists, apparently non-exhaustively, matters that would amount to a "reasonable excuse". At regulation 6(2)(d) these include providing care or assistance to a vulnerable person. For a family member to collect AO from TO is to provide assistance to a vulnerable person and thus falls within that sub-regulation. It would in any event also accord with the order of the court. I therefore made the order sought so that AO could move on the evening of Monday 20 April 2020.

Postscript

45. After the hearing, but before I had completed this judgment, I was informed that AO had moved to VE's home on 20 April 2020 in accordance with the order but had sadly died on 22 April 2020 with her family around her. I do not know what she died of and whether she had, indeed, contracted Covid 19.