



Neutral Citation Number: [2008] EWHC 2824 (Fam)

Case No: FD06P02361

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/11/2008

Before:

MR. JUSTICE RODERIC WOOD

Between:

PM	<u>Claimant</u>
- and -	
KH	<u>1st Defendant</u>
-and-	
HM	<u>2nd Defendant</u>
(By the Official Solicitor as her Litigation Friend)	
-and-	
The States of Guernsey	<u>Interested Party</u>

The Father Appeared in Person
Miss Gillian Irving Q.C. for the Mother
Miss Jenni Richards for HM
(By the Official Solicitor as her Litigation Friend)
Mr. Jonathan Bennett for the States of Guernsey

Hearing dates: 3rd to 7th November 2008

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.

MR. JUSTICE RODERIC WOOD

This judgment is being handed down in private on 21st November 2008 It consists of 40 pages and has been signed and dated by the judge. The judge gives leave for it to be reported.

The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name or location and that in particular the anonymity of the children and the adult members of their family must be strictly preserved.

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Mr. Justice Roderic Wood:

The Proceedings:

1. On 16th November 2006 PM (sometimes referred to by the initials PM and sometimes referred to as "the father") issued an originating summons seeking to invoke the inherent jurisdiction/wardship jurisdiction of the High Court.
2. The subject of the proceedings is his daughter HM. She was born on 22nd December 1988 and is thus a few weeks short of her 20th birthday.
3. HM's mother is KH (sometimes referred to by those initials, and sometimes referred to as "the mother").
4. For reasons which shall appear hereafter, the Health and Social Services Department of the States of Guernsey (hereinafter called simply "Guernsey", but not to be confused however with the Royal Court of Guernsey) are interested parties.
5. By order of Charles J. of 5th December 2006 the proceedings were directed to be continued pursuant to the provisions of Part 8 of the Civil Procedure Rules.
6. The proceedings continue in the High Court under the inherent jurisdiction by virtue of Article 3 of the Mental Capacity Act 2005 (Transitional and Consequential Provisions) Order 2007, relating as they do to a young woman who lacks capacity to decide upon issues relating to her care.

Representation:

7. The father appears in person, although he has had the benefit, throughout this hearing, of a McKenzie Friend. His McKenzie Friend has provided a letter in support of the father's case, it being appended to one of PM's earlier statements. I nevertheless decided, despite his suggested status as a possible witness, that he could, subject to me evaluating his position throughout the trial, act as PM's McKenzie Friend. I also ruled that he would not give oral evidence, but that I would treat his written testimonial to the father as evidence in the case.
8. The mother at this hearing had the advantage of pro-bono representation by Miss Gillian Irving Q.C.
9. The States of Guernsey Health and Social Services Department (hereinafter called "Guernsey") were represented by Mr. Jonathan Bennett.
10. An establishment called DLC, to which I shall refer later, applied at the outset for permission for a solicitor to attend on a "watching brief". That application was granted.
11. HM is a protected party within the definition of the Civil Procedure Rules (see part 21, rule 21.1 (2)). She was made a party to the proceedings by Charles J. on 5th December 2006, and following an order of Sumner J. on 28th February 2007 the

Official Solicitor was appointed as her Litigation Friend, he having consented to take that role. He has, this week, been represented by counsel, Ms. Jenni Richards.

HM's Capacity:

12. It is agreed by all parties, the Court making formal declarations to this effect on 28th February 2007, that she does not have the capacity to make decisions about her treatment and care, and on 26th July 2007 that she lacks the capacity to make decisions about her medical treatment.

The Issues:

13. I am asked to determine the following issues:

- i) Where HM should live for the foreseeable future;
- ii) If she does not live with her father, the extent of his contact with her;
- iii) If she transfers from her current placement at DLC (school) to DLC (college) what, if any, structures can I, and/or should I, erect around the dealings between the father and DLC (college);
- iv) If she does live with her father, the extent of the mother's contact with her;
- v) The arrangements, if any, to safeguard HM's personal dignity and privacy in relation to her intimate care when seeing/ living with her father.

Other Litigation:

14. Before turning to any other matters it is necessary to give a flavour of the litigation landscape over the last ten plus years. I do so particularly because the Royal Court of Guernsey (Matrimonial Causes Division) has made a number of orders in relation to HM which still continue in force as un-discharged orders, even though various aspects of those orders have either been ignored (by the father) or overtaken by orders of the English Court. Thus the issue of comity arises starkly.

Guernsey:

15. Over many years there was litigation in Guernsey concerning the proper arrangements for HM. Her parents, who had married on 23rd January 1983, and whose marriage had ended with a decree absolute pronounced on 28th June 1998, have been in extensive litigation with each other.

16. The repeated and acrimonious applications in that stream of litigation centred for a considerable period around issues of contact. The mother did not escape censure, she having at one stage for many months stopped contact between HM and her father. However, as the proceedings continued year after year the predominant weight of censure fell upon the father. In due course there arose for consideration the proper residential provision for HM. It was clear that this could not be provided on the island of Guernsey, for it had no infrastructure designed to cater to the needs of a then child. In due course HM was placed at DLC School in consequence of an order of the Guernsey court.
17. Lieutenant Bailiff Cherry McMillen, on 22nd December 2006, decided not only that HM should continue to reside at DLC, but that her mother should be appointed sole Guardian and make all the major decisions concerning HM's medical needs, health, care, welfare, education and religion (with a proviso that the medical aspects must be in accordance with the advice of HM's medical advisors and other professionals charged with her care), and that the school should liaise solely with the mother in all matters relating to those issues. PM was restrained from making any contact with DLC or any member of the DLC (school) until further order save as therein provided for.
18. On the same day she confirmed as still being operative a previous order of the Court of Appeal of Guernsey dated 29th September 2006 to the effect that no proceedings should be commenced by either the mother or the father in the courts of any jurisdiction other than Guernsey save with the prior consent of the Court of Appeal. These proceedings brought by PM are of course in contravention of that order, and I shall set out the position of Guernsey in relation to the contempt of this provision, and as to the approach the Island takes to this court's exercise of its jurisdiction.
19. Further provisions made it clear that nothing in the order was to prevent the enjoyment of contact between HM and the father which could take place "at such times and in such conditions as directed by the centre/school [DLC]. For the avoidance of doubt, it is anticipated that the centre/school will provide a schedule of all anticipated visits between HM and her parents in each calendar year". The order went on to define a way in which the father could negotiate with the school as to contact arrangements. Furthermore, it provided that there was nothing to prevent the father from receiving or giving information to the school immediately before/after any such visits. Telephone contact was permitted on a Tuesday between HM and her father. There were further extensive provisions setting out a scheme which, in effect, was designed to create a structure protective of the school from perceived intrusion by the father. I for one have not in over 30 years in this Division seen an order which sets out in such fine detail the way in which a parent shall comport themselves in relation to an educational establishment. It speaks volumes for the poor relationship which existed and still exists between the father and DLC. I shall return to this subject in due course.
20. I need not set out in further detail the nature and extent of the litigation. I have been invited to read in particular the judgment of Cherry McMillen (Lieutenant Bailiff) of 2nd September 2005, as well as miscellaneous documents from those proceedings, including two judgments of Lieutenant Bailiff Karsten Q.C., and two of the Court of Appeal of Guernsey which had also in the course of those years been seized of the

matter. I regard it as unnecessary to repeat or even summarise all of those judgments which are, in the event that others need to consider them, available within the bundle.

21. All that it is necessary to say about each and every stage of that litigation is that it illustrates many themes of disagreement as to the appropriate care for HM. In effect, those themes are the same as the ones now before me. The untold misery, intellectual and emotional burden, and expense of this unending stream (sometimes parallel streams – see below) of litigation can only be imagined. When the mother was asked by Miss Richards in the witness box about the effect of this litigation on her she crumpled in misery and wept quietly.

Chester:

22. The father has also brought proceedings in the Chester County Court pursuant to the provisions of the Children Act 1989. At the time of making his original application in October 2006 he was anxious to obtain a prohibited steps order (section 8 of the Act) preventing the carrying out of an operation on HM which he had been informed by the mother was about to be undertaken. It is interesting to note that he chose to litigate this issue rather than enter into constructive discussions/correspondence with the mother as to the necessity for the operation. She had written to him beforehand informing him that the subject was under discussion but he chose not to engage. See below for further commentary on his attitudes in general. On 24th October 2006 HHI Halbert declined jurisdiction on the basis that the Court of Guernsey was the Forum Conveniens for proceedings in relation to HM, and he stayed the father's application for a prohibited steps order. A few days later PM issued the originating summons in Wardship, refusing to obey the Guernsey prohibition on extra-island litigation.
23. He has, in addition, pursued an action against DLC under the Data Protection Act 1998. Within those proceedings he seeks disclosure from DLC of information relating to him. I need refer no further to the precise issues within that litigation.

Jurisdiction: Discussion:

24. HM is, in my view, undoubtedly domiciled in Guernsey, but is more probably than not habitually resident in Cheshire. She has been there since 2003, being cared for and educated. The reality seems to me to be on any reasonable approach to the test of habitual residence that she qualifies for an English one.
25. On that basis, even having taken full and proper account of the Guernsey order prohibiting litigation elsewhere, and giving all due and proper respect to the principle of comity, I consider that I have jurisdiction to continue to hear this case, as, I note, have my predecessor brethren when they have considered the matter. I say so following consideration in particular of the case of Re S (Hospital Patient: Foreign Curator) [1995] 3 WLR 596, in which Hale J (as she then was) observed in the context of a case concerning a Norwegian citizen living in England that "this court undoubtedly has jurisdiction to decide upon the legality of any proposed action in relation to the care of S; that jurisdiction is based upon presence here; it is not

displaced by the appointment of Mrs Bjorn as his guardian in Norway. Even if in English law he is domiciled there."

26. The question of comity has exercised in particular Sumner J., he on 26th July 2007 having stayed these proceedings, although he gave any party the right to apply to lift the stay. In the course of the oral evidence before me there appeared to be a dispute as between the father and all others as to why the stay had been imposed, but having seen documentation, and in particular a letter from the father's then advocate, I am satisfied that the reason for staying the litigation was as set out above (namely the principle of comity), and not for any other reason. However, for reasons which appear hereafter, the stay was lifted in June 2008.
27. In a position statement filed for this hearing, Mr. Bennett acknowledges that Guernsey has agreed to 'bend the knee' to this jurisdiction in its attempt to rule upon the best interests of HM. However, this consent is not an unconditional consent to abide by any order I make. I shall advert at stages to the nature and extent of their conditions. Furthermore their pragmatic litigation posture does not bind the Royal Court of Guernsey whose orders remain in place until varied or discharged.

H.M.:

28. She is the second of two children born to these parents, her elder sister J.M. having been born on 4th February 1987. I have read and heard much about her, and seen some photographs of her provided by her father.

Her Disabilities/Medical Condition:

29. She was for many years thought to have an autistic spectrum disorder. More recent appraisal of her, in particular by Dr. Land, (the consultant psychiatrist specialising in learning disabilities who has reported for the court), suggests that whilst she may have autistic traits it is not thought likely that she is properly described as being within the autistic spectrum.
30. The Head Teacher of DLC (Mr. D) says this of her:
- "She is not typically autistic in that she clearly knows the purpose of communication and has a wish to communicate, but she has the obsessionality, fixations and anxiety which are normal aspects of the disorder. She is physically able".
31. She furthermore has a communication disorder, and at times displays challenging behaviours. She has very limited verbal communication, although she has developed her own vocabulary of sounds and signs by which she communicates. She uses Makaton and pictures to help in her communication. I am also told that she has developed her own vocabulary of idiosyncratic signs which are not necessarily consistent with formal Makaton, and thus there is room for misunderstanding of her even by those who are familiar with her. Her father asserts he has no problems in

communicating with her, and all who have observed them together appear to support his view.

32. She suffers from epileptic seizures, currently medicated as set out at C229 of volume 1 in the bundle. The comparatively recent administration of the drug called Oxcarbazine has led to a significant improvement in the control of her epilepsy, and it is thought by many who have reported in this case, and who have regular dealings with her, that her comparative freedom from seizures has allowed her to develop in many ways. In the course of these proceedings Sumner J. earlier decided that it would not be in her interests at the moment to have a Vagal Nerve Stimulation implant to help control those seizures. It is that operation to which I earlier referred in the context of the father's attempt to litigate in the Chester County Court. This new medication was prescribed once that operation was ruled out. It is too early for the doctor to say whether or not this drug is likely to work long-term.

Mental Health:

33. Dr. Land was asked about the issue of HM and her mental health, and any vulnerability from which she might exceptionally suffer. He points in his written report to the problems of diagnosing specific disorders where severe learning disabilities are in play, although he is clear that people with such disabilities have a much higher rate of psychiatric illness than is found generally across the population.
34. HM currently suffers from no obvious signs of mental illness, although she is in a high risk group for future development of one. Constant pressure from a parent with too high an expectation of her capabilities and the consequential stress is territory in which such a condition can more readily appear (see above).

What is She Like?

35. Although the formal statements filed by the parents not surprisingly gave information about HM, she did not really come to life for me until I read the report of Dr. Land (see above) and Ms. Walshe (instructed to report to the court as an independent social worker).
36. In Ms. Walshe's report at E352 one finds a pen picture in which each of the parents has described HM. The mother, for example, describes her as "an absolute character ... she has very strong opinions ... she can be an absolute delight or an absolute horror!" Her mother thought she liked structure and routine, but had a modest capacity to accept change and disruption, which changes often nevertheless trigger upsetting and challenging behaviour. When in such phases HM is loud, will shriek, shout, and bite her arm.
37. In oral evidence the mother really brought her to life, describing her sense of humour, her considerable range of interests, that she was very rewarding and affectionate and was much liked at school. She had clear ways of making her wishes known to those familiar with her, and was much-loved.

38. The father thought her to be fun-loving and interesting with a real enjoyment of "socialising and involvement in community and family life". He described her engaging in eye contact, and instigating communication.
39. In addition, Ms. Walshe records her sister JM's view of her as "engaging ... people love her." JM also recognised her sister's capacity to be a handful to deal with.
40. Many others have of course commented upon her, both from their professional perspective and from their social one. I shall refer again to a particular tranche of material presented by the father in the form of signed letters from friends. The overall picture is of an occasionally difficult but highly rewarding young lady. Mr. D spoke of her at school, and how she really enjoys the opportunity to socialise with her peers. She has one particular friend there as the mother and the father recognised, and she gets on pretty well with all of the others. She likes being there when they have their hair done (although she appears not to like having her own touched), having her toe nails painted, dancing, and occasionally singing.
41. The expert evidence overwhelmingly suggests that this much-loved young woman is extremely lucky in that she has access to three rich and vastly different worlds through her residential school, her mother and her mother's wider family including many relatives in Guernsey, and through the father's life which currently centres significantly around his friendships at the Menorah synagogue.

Is She Jewish?

42. I have not had to determine this issue, for happily, in the event that I decide that HM shall remain at DLC or even if she were to live elsewhere, subject to logistics the mother makes no claim to have contact on Jewish festivals, thus leaving it open to the father to see his daughter on such occasions.
43. Yet the issue itself is illuminating. The mother is not Jewish, and the father is. The mother adopts a classical rabbinical posture in saying that Jewishness passes only through the mother, and accordingly HM is not Jewish. The father referred me to a letter from the Rabbi of his synagogue indicating his view that since HM had been brought up in an household with a Jewish father, where Jewish rituals were followed and Jewish festivals honoured, and where HM had been attending with her father the Menorah synagogue for some considerable time, he regarded HM as Jewish.
44. Even if I had been invited to determine this issue I could not have done so on the basis of this evidence, but as earlier mentioned conflict on almost every issue simmers away beneath the surface.

Experts:

45. I have had the advantage in this case of a number of reports prepared by a variety of different experts. As a result of a hearing in the summer of this year the Official Solicitor was given leave to instruct expert/s, and in the event he chose to instruct

two: Dr. Nicholas Land, (Consultant Psychiatrist) and Ms. Walshe (a Social Work expert).

46. The father considered, and the court on 24th July 2008 subsequently approved his idea, that I needed the advantage of reports from an educational psychologist, an occupational therapist, and a speech and language therapist (also to be instructed by the Official Solicitor). I have received all that information. I shall refer from time-to-time in the balance of this judgment to those experts and their opinions, whilst reminding myself that experts do not decide cases, but are there to offer assistance to judges.

Speech Therapy:

47. First I turn to the report of Ms. Chesters, the speech and language therapist above referred to. Part of her concluding summary reads as follows:

i) Although it would appear she has made some progress since attending the DLC, the approaches do not seem to have been cohesive or even fully understood by all those in contact with her.

ii) HM requires a consistent and more specific communication approach that will facilitate consistent and effective communication regardless of whomsoever she is with, where she is or what she wishes to communicate about.

iii) HM requires ongoing speech and language therapy, comprising direct therapy sessions with her as well as an integrated training package for all those in HM's life, especially family and the intermediate staff who will be working with her.

iv) In spite of her significant speech, language, communication difficulties and coexisting problems, she has the capacity to acquire new skills and further develop her independent living skills given the optimal input and a unified and consistent approach." (sic).

48. It is of some concern to Ms. Chesters that there appears to be an absence of base-line reporting in the case of HM from which one might measure subsequent development.

49. The matters identified above reflect long-standing concerns by the father as to the nature and quality of the services offered by DLC to HM. For example, he spoke of mistaken identification of signs/symbols by members of staff, causing them (either through carelessness or ignorance) to mis-understand HM and/or confuse her as to signage.

Psychological Evidence:

50. In a careful and detailed report prepared at the direction of the court by Mr. Hughes (Chartered Educational Psychologist) it is worth noting some particular aspects of his summary.
51. HM's general functioning is in the age range of a two to three year old. It is Mr. Hughes' view that her speech and communication skills are below this level although he notes that certain of her physical skills are more developed. Her social awareness is in some instances almost age-appropriate in terms of her interests.
52. He notes (without criticism) that her educational progress since attending DLC has been limited, but not unexpectedly.
53. He would advise that "the principle focus of her learning is on the developing of her communication skills", a view shared by all others.
54. He notes in particular that HM "needs to move from provision aimed at children to provision aimed at adults". See below for the opinion of Dr. Land to similar effect.
55. It is his view that the "college" environment is likely to be best-equipped to deliver the kind of educational and social development programmes which he considers advisable (as do all others).
56. He nevertheless (in reference to DLC) suggests that "a less conventional approach" certainly in relation to activities and the location of them might be more effective. To that extent I was interested in the evidence of Mr. D, supported as it was by the evidence of the mother, to the effect that social arrangements are made off-campus, so that HM and her peers regularly go out into the community for entertainment and educative visits enriching and supplementing life on campus.
57. I shall further consider the evidence of Dr. Land and Ms. Walshe when considering options.

DLC: The Proposal:

58. Let me look first at the proposal of the Official Solicitor on behalf of HM. It is supported by the mother (although see below for further commentary on the full extent of her proposals) and Guernsey.

DLC (School):

59. HM has been at DLC (school) since November 2003. Her fees are paid by Guernsey on an out-of-jurisdiction placement. They will continue, if that is my decision, for a period at least to fund HM on transition to DLC (college).
60. HM has been living in a small residential house with other young people. She has her own room (although the report of the occupational therapist instructed by the court

suggests that there are deficiencies in the arrangements within it bearing in mind HM's disabilities). I note in passing that the father points to those deficiencies, and makes it clear that these obvious short-falls in standards do not exist in the provision he has made for his daughter at his own home.

61. The accommodation provided by the school is on the same campus as the buildings set aside for education and other activities. Nevertheless, as noted elsewhere, these young people are not restricted to a life on campus, but go out on carefully organised trips into the community.
62. HM is described by Mr. D as being in the top 25% of pupils in terms of her general ability, although there are others more able than her within that catchment. She is described as deeply rewarding to look after.

DLC (College):

63. The College is described in considerable detail by Ms. Walshe at E353/7. I do not propose to replicate that detail. I have also been shown a copy of the prospectus.
64. There is residential accommodation in small housing units (all save one being on campus), and access to the leisure facilities of the college, as well as of the local community. The school and college are essentially on the same campus, with obvious advantages for transition if that were to be my decision.
65. The syllabus is designed to lead towards a greater degree of autonomy on the part of each of these young people, the programme extending over a three year period. Had there been no dispute between the parties, HM would have commenced her college education in the autumn of this year. If I approve her transition to the college she will already be behind her peer group. Further, for reasons not investigated in the evidence, it is only proposed by Guernsey that she stay at the college for two years, and accordingly she will not complete the full syllabus. I assume the reasoning behind this is that Guernsey hopes to have created suitable provision for HM on the Island during the next two years.

DLC/ The Father: Management of the Relationship:

66. In considering the viability of DLC (college) I have been acutely conscious throughout these proceedings of the lengthy history of dispute as between DLC (School) and the father. The continuing litigation over the Data Protection Act issues above more than illustrates the long-standing nature of the problems between the two. After what the head teacher of DLC (school) and the father described as a reasonably productive meeting to discuss the care of HM the father followed up the occasion with a "demand" that DLC should reveal all of its papers in relation to himself. The request caused endless disruption to the school, involving as it did a sift of the vast quantity of information held by the school, the instruction of lawyers, and consequential expense. The father's perception of his request was that it was made on legal advice, was entirely lawful (which it was) and, I infer, that since the relationship

between himself and the school was so prickly, it was necessary for him to see the genesis of it in the written documentation, and in particular that which had been provided to the school by Guernsey even before the father had met with school staff. This instance illustrates for Dr. Land, and I agree with him, a characteristic of the father, namely that instead of building on something positive he becomes combative.

67. The father is occasionally immoderate in the adjectives he uses to describe the organisation and individuals within it (for example "evil and abusive"). He told Dr. Land that "If she stays at the DLC it will be a criminal act". He has spoken of it pejoratively as "warehousing" and as a "baby-sitting facility". I shall refer to his attitude on this subject again later.
68. There is a clear need for there to be a structure built in to any placement which removes DLC from the front-line of discussion as to the arrangements of every aspect of HM's life, should she remain there.
69. In his latest statement of 15th August 2008, Mr. D set out what he regarded as the essential elements of such a framework, speaking here as a representative of the college even though it has a different Head. Those elements I set out in full, although I shall note in square brackets after each of them the changes to them more or less agreed by him in Mr. D's oral evidence. I do so not only to set out the nature of the "protection" sought by DLC from what it sees as the unwarranted, aggressive and highly intimidating interventions of the father, but also because each aspect of this list illustrates a past problem, and makes further elaboration by way of extended examples of past events unnecessary.
- a) "PM is not permitted to make any direct contact (by any method) with the Centre or any of its employees; [With the additional words "save for greetings/farewells on the collection of HM from DLC or the returning of HM to DLC at the start/conclusion of any contact visits, or polite exchanges on accidental meetings in the community]."
 - b) PM is permitted to provide his views and opinions in writing to the Centre through either Guernsey Social Services or the Official Solicitor or an advocate appointed for HM, but only when invited to do so. The Centre to be under no obligation to respond to such correspondence; [For Guernsey's social services there should be substituted "the care co-ordinator" – see below.]
 - c) The Court will determine all contact between HM and her parents/family members/their friends, save for exceptional or emergency circumstances when such contact will be determined by the Centre; [Before the existing text the words "in the event of disagreement between the mother and father" shall be inserted].
 - d) Assuming that contact between PM and HM will be supported by female carers - PM shall not attend at the Centre's premises, save for contact with HM in exceptional/emergency circumstances as determined by the Centre (such arrangements to be determined by the

Centre). (Contact between PM and HM on any other occasion will be facilitated by agency carers collecting and returning HM); [This provision shall be struck out in its entirety].

- e) The Centre will facilitate HM making telephone calls to PM. PM is not permitted to telephone the Centre and is not permitted to raise any issues with staff during these telephone calls; [The following words shall be added "Where the permitted Tuesday telephone call from HM to PM does not take place, the staff of DLC will facilitate/encourage HM to call PM on another day].
- f) PM shall not take any steps to prejudice HM's placement, including that he will not harass employees of the Centre by any means; [Before deleting this condition, Mr. D wished to consult with others at DLC].
- g) PM shall not tape any conversations with the Centre's employees or HM; [No alteration].
- h) PM will not take any proceedings against the Centre, on his own behalf or on behalf of HM, without permission of this Court; [Mr. D was undecided as to the ambit of this. Ms. Richards indicated that in her closing submissions she would outline what the Official Solicitor submits are the necessary and appropriate inhibitions, if any, and the court's powers to impose them - see below].
- i) Subject to appropriate information being provided to this Court, PM's Data Protection Act claim against the Centre (Case Number GMC 00609) be struck out; [This condition is struck out].
- j) PM shall not discuss HM's placement or make any comment regarding the Centre with any section of the media or in public; [The thrust of the substitution is that "PM shall not make any defamatory comments about the centre nor its staff to any section of the media].
- k) The Centre shall liaise only with KH and/or any guardian or court deputy appointed in relation to all matters concerning HM's medical condition, health, care, welfare, education and religion; [For the words "court deputy appointed" substitute "care co-ordinator" - see below.]
- l) Recognition by all parties that the only role the Centre plays in HM's life is as provider of College Services and that the Centre is not an interested party in the decisions taken by family and agencies about parental access, custody, advocacy, visiting rights or any other aspect of HM's life outside of the provision of care and accommodation at the Centre; [This condition should in fact be a recital to any order I make].
- m) There will be no additional demands placed upon the Centre by family or other agencies, other than the provision of a 38 week College placement, and, if purchased under a separate contract, respite

care during the holiday period; [This provision likewise, shall be a recital to any order I make].

- a) The commissioning authority agrees to pay all direct and indirect costs associated with the placement, including the time taken by the Head of College, the CEO or any other employee of the Centre to respond to demands over and above what would be considered as normal for a College or respite placement; [This is not an appropriate condition, not relating to PM, but is instead to be a matter of negotiation between Guernsey and DLC, and thus can be deleted].
- o) The commissioning authority agrees to pay any future costs arising out of any legal action in the future by PM against the Centre, its Directors, officers and staff; [This provision likewise is a matter for contractual discussion between Guernsey and DLC and should be deleted].
- p) The placement would be reviewed quarterly by the Centre and terminated immediately if the conditions are not being met." [The word "immediately" to be deleted and substituted with the words "following a period of reasonable notice"].

70. On 26th July 2007 PM gave undertakings to the court (see the order of Sumner J. of that date). The undertakings were that he should direct any correspondence to DLC through their solicitors, that he should not attend DLC other than for the purpose of collecting and/or returning HM on occasions of contact or "for purposes ancillary to contact or by written invitation", that he shall not take any steps "to prejudice HM's placement at DLC," and that he shall not tape any conversations with members of DLC or HM.
71. It is the father's position that he should be released from his undertakings, and that there should be no conditions of any kind. His reason for so submitting is that if HM should remain at DLC, there should be a fresh start as between DLC and the father in a climate of mutual respect and tolerance, and therefore it is wholly inappropriate for such undertakings/conditions to be in place. He also made it clear that in his view it is essential that there be equality of opportunity as between the mother and the father for family life in all its aspects, including coming and going on the campus (which is effectively HM's home) and the current raft of proposed conditions/inhibitions relate only to himself. I indicated in the course of exchanges that I would regard the father's comments on the subject of undertakings to Sumner J. as an implicit application to discharge those undertakings without necessity of issuing a formal summons to that effect.
72. Whilst I entirely understand the intellectual point he makes, his proposals seem to me to leave out of account the history of so many fraught years, and the belief on the part of DLC (rightly or wrongly) that they need these protections against the father's behaviour before they can consider offering HM a place, and in the absence of them there would be no place.
73. I have no doubt at all that the conditions (subject to modest alteration-see below) set out in the draft orders/declarations provided by Miss Richards with her closing

submissions, are both necessary and appropriate in this case. The modest alteration I would make to the conditions set out by Miss Richards relates to her proposed order numbered 11 where she refers to the father not making any "inflammatory or highly derogatory comments" about the DLC. My clear note of the evidence coincides with the father's recollection that the appropriate wording was "PM shall not make defamatory comments about the DLC". I prefer this latter wording.

74. The father in his oral evidence was particularly exercised by the verb "harass" in order number 9. Insofar as harassment imports intimidation I consider it a necessary condition and approve it.
75. Paragraph 13 of her proposed order reads: "No further proceedings relating to HM's best interests shall be brought in the courts of England and Wales save with the permission of the High Court or the Court of Protection". As she points out in her foot-note in relation to this order, any future proceedings relating to HM's best interests would fall within the umbrella of the Mental Capacity Act 2005. Applications made by PM or KH would need the leave of the court in any event. I approve this proposal.
76. In deciding that these conditions are required I have taken into account (albeit the father continues to dispute these matters) the findings of the Guernsey courts (which I do not go behind) as to his way of going about the world, the comments of Dr. Land as to PM's manner of dealing with others (see below) and my own experience of observing him in the courtroom as a litigant not only in his own cause but also in HM's, in a manner which I have commented upon elsewhere.
77. The inherent jurisdiction is an innately flexible one, but not without limit. The raft of proposed conditions in my judgment falls easily within the proper exercise of that jurisdiction to provide in HM's paramount interests the necessary protection to secure her placement at DLC (College).
78. On 26th July 2007 the mother also gave an undertaking to the court relating to the provision of medical treatment to HM. Although she has not specifically requested that I discharge that undertaking, I do so on the basis that the proposed orders provide all necessary safeguards and protections, and the undertaking is now otiose, and, as is pointed out in her closing submissions by Miss Richards, not consistent with the current state of the law. Under the Mental Capacity Act 2005 the treatment of mentally incapacitated adults is now approached by health professionals charged with the care of such an individual on the basis of the framework provided by the 2005 Act. Whilst health professionals may consider whether or not the father and/or the mother "consent" to any treatment, such consents are not determinative.
79. Finally, in relation to Miss Richards' draft order, I note in paragraph 20 a suggestion that this court should review matters in six to nine month's time. I profoundly disagree. In the course of the documentation, the oral evidence and the closing submissions, a great deal of time and endeavour has been expended in setting up structures for the proper resolution of these issues outwith the forensic arena. I decline to institutionalise a further hearing which is more likely than not, in my judgment, to distract from, and/or subvert, the establishment and proper working of the structures discussed below.

80. Save for the above matters, I here approve the declarations and orders suggested by Miss Richards in her draft, although my discussion of the advantages and disadvantages of DLC (College) and my conclusions based on them appear below.

Care Co-ordinator/Multidisciplinary Meetings.

81. Doctor Land, in his report of 8th October 2008, addresses the issue of the father's manner of dealing with professionals, and suggests a possible way of structuring future discussions to avoid past battles whilst allowing the father a proper part in their consideration.
82. The Official Solicitor, in his report of 28th October 2008 summarises Dr. Land's views and recommendations in paragraphs 46 and 47 of his report at C271/2 of volume 1. I can do no better than to quote the relevant paragraphs which succinctly identify the problems and the proposed resolution of them.

46) "Dr Land proposes [E312] that HM's case should be professionally care coordinated in a similar way as would occur if she was being case managed by an English local authority. In his view she should have an experienced, professional care coordinator. This individual would be the conduit for communication between the DLC (College) and HM's parents and vice versa. Regular multi-disciplinary, multi-agency care coordination meetings should be held at which all relevant parties should be represented. Given the complexity of HM's problems, the care coordinator might well decide to manage them within the structure provided by the Care Programme Approach¹. These meetings would serve to review HM's progress, monitor transitional planning and resolve any difficulties which may have arisen with respect to contact. The meeting would include HM's advocate and, for those parts which they deemed relevant to themselves, the DLC College. Where concerns are raised by either parent (or any other party) they should be brought to the care coordinator for discussion at the next meeting (or for the care coordinator's action if they are urgent)."

47) "Dr Land goes on to say "It would be my view that PM should be clearly represented at these meetings and that he should be able to receive the same health and educational information as KH. However it would be setting up the system (and PM) up to fail if he was to attend these meetings from their commencement. His enduring anger with the other parties; his deep sense of injustice; his expectation of problems; his difficulty in resolving one issue without resolving all issues, all mitigate against success." Dr Land recommends that PM should be appropriately represented at such meetings by a

professional advocate who should be an experienced social worker and in his view CY could be an appropriate person to fulfil this role. He recommends that DT, as a Guernsey social worker who is based for a significant part of the time in the United Kingdom, should act as care co-ordinator."

[1. I (the Official Solicitor) understand that the CPA focuses on 4 key elements to ensure delivery of appropriate care: (1) a thorough and systematic assessment of health and social care needs; (2) a detailed written care plan of needs, done with the person's involvement, and with the involvement and agreement of all those involved in their care; (3) the appointment of a care coordinator/ key worker who is responsible for monitoring of services delivered under the care plan; and (4) regular reviews, so any changes needed can be made.]

83. A number of witnesses, Dr. Land in particular, have referred to the father's powerful psychological impact. Over the years, many have found him extremely difficult to negotiate with. Yet others, for example Mr T (the independent social worker who (on a sub-contracting basis) has been making arrangements for HM and her care on behalf of Guernsey, and Mr. A (the manager of adult disability services for the Island of Guernsey), recognise the father's capacity to dominate a meeting, and have found discussing issues with him to be at times extremely challenging (both as to content of the meeting and as to the manner of his conducting a meeting), yet have nevertheless been able to conduct negotiations face-to-face.
84. Mr. CY (also an independent social worker, and a friend of the father's) who has the respect of all those who have had dealings with him in this case, has been consulted as to whether or not he would take a role as father's advocate. He has declined to attend without the father for understandable reasons. As the father indicated to me, although he did not use this precise terminology, the proposal is flawed for the very obvious reason that at a multi-disciplinary meeting a number of subjects may arise for consideration and how is CY to know the views of PM on each and every one of them? Is he to take decisions without consultation with PM? What are the logistics of such an arrangement? Whilst I well-understand the basis for suggesting this way forward in my view it would simply not work. What may well work, subject to funding issues (for PM made the point that whilst Guernsey are offering travel expenses and disbursements for CY they are not offering to pay his fees, and why should CY do this for free on frequent and regular occasions?) is if CY would agree to accompanying PM to such meetings. Since all who have dealt with him find him perceptive and open to discussion it is, in my view, highly desirable that CY should attend (at least until a less combative negotiating style is adopted by the father).
85. I have just used the word "combative" for whether he realises it or not that is the impression he gives. I agree with the description of Dr. Land that he is a very powerful psychological personality. I have had the opportunity of watching him over three days. He is, if I may say so without patronage, highly intelligent, highly organised, and furthermore relentlessly obsessive. He has a great command of dates, subjects, reports and myriad details. Unhappily, this combination, (as Dr. Land has been observed to note above), distracts, and what is needed is focus on a limited number of issues at each such meeting. A good illustration of the trait identified by Dr. Land of this father requiring all matters be resolved at once (or at least on the

table for discussion at once) is the list of subjects which he wished this court to consider at this hearing. They ranged far and wide from the great to the less great in significance. He has a wholly unreasonable expectation of what can and cannot be achieved at any one time.

86. The Official Solicitor has recommended (see above) that Mr. T would be a suitable co-ordinator of such meetings. He was asked about this proposed rôle in oral evidence, and understandably wished to discuss the matter further with Guernsey, for the rôle proposed has as yet no clear job description (as well as no clear offers of remuneration and terms and conditions). Furthermore, Mr. T now spends a proportion of his year in Spain, and it is more likely than not that a new co-ordinator would have to be selected in the medium term given Mr. T's plans for his own future.

Advocate:

87. These proposals also import the notion of an advocate for HM. At one stage some consideration was given to an IMCA, although on an analysis of the relevant statutory provisions concerning the duties of any IMCA this no longer seems appropriate.
88. What is appropriate is a specifically recruited advocate for HM from the ranks of experienced independent Guardians ad Litem (for example from NAGALRO), or from the National Youth Advisory Service. Guernsey would propose to meet the fees for such an advocate. The job would be a medium to long-term one, for such an advocate would have to devote considerable time, skill and care to establishing a relationship with HM so as properly to reflect HM's views, her needs, etc. I approve the proposed appointment subject to proper recruitment.

Other Options:

As is by now abundantly clear, I approve the proposal that HM should move to DLC (College). However, given the nature and extent of the problems which this case throws up for consideration, in my judgment I would be defaulting in my duty if I did not in this already overly long document set out my views on the other options/variants.

The Mother's Proposals:

90. In her position statement of 4th July 2008, and the latest one of 20th October 2008 the mother sets out her suggestions for the future care of HM. She develops her theme in her discussions with Dr. Land recorded in his report at E220/21.
91. First, she supports the transition of HM from DLC (School) to the College.
92. She considers that the current contact arrangements as between HM and the father, and HM and herself, should remain in place. I note at this point that she sees HM regularly and frequently, but on visits only, save for family holidays in Guernsey

when HM stays with her. The usual pattern is for the mother to visit and/or take HM out on a Sunday afternoon for a number of hours, returning her to DLC at about 7:00pm. In addition, she can telephone as and when she wishes, unlike the father's restricted weekly telephone contact referred to above.

93. It is her medium-term wish that HM should make her home in Guernsey in a small supported-living setting. In a document prepared on behalf of Guernsey it is pre-figured that there may, in due course, be such a facility although the funding is not yet in place, and for my part I consider that realistically in viewing the foreseeable future I should not assume that such a facility will be available.
94. In the interim, she speaks of a "bespoke provision" in Guernsey which would involve making available small rented accommodation, support from the Guernsey learning disability staff, and a full care package. There would need to be input by a neurologist, but that would have to be an off-island service for there is none on the island itself. In the course of his wide-ranging enquiries, Dr. Land consulted with Ms. Lisa Walker who many years before had worked with Guernsey health and social services department. As it happens she has known HM since she was about 6 or 7 years old. Ms. Walker was quite clear to Dr. Land that it would not "currently be in HM's best interests to have a residential placement in Guernsey. She has previously worked in the Guernsey learning disability service for adults and recognises that currently they would not be able to meet HM's needs". Whilst Ms. Walker felt that Guernsey should be developing a purpose built service for HM, neither she nor I (having heard Mr. A) could put a time-scale on it. She was nevertheless clear that HM should be encouraged to visit Guernsey for the purposes of social and familial contact and activities, and that in due course (I presume long-term) HM should return to the Island. It is she who gave me a picture of a typical day for HM when she is there on holiday, going to the beach, cycling, or on a boat. There would often be family meals in the evening, with much to enjoy and many familiar friendly faces to see.
95. Mr. A (service manager-see above) gave me a rather different view, describing a day-centre which HM could attend for six hours each day Monday to Friday, a college of further education which might accept her, (although I note this college is predominantly for those not disabled in the way HM is) and ancillary services. The day centre itself has one full-time speech therapist, but given that there are a significant number of attendees it is not likely that HM would receive anything like the current level of support she receives at DLC. Whilst I do not doubt that the Island endeavours to provide as full a range of services as its budget will permit, I did not, without disparaging any of the valuable work they do, get the impression that the high levels of support currently enjoyed by HM in each area of her life at levels which she needs, would currently be available to her on the Island. If that impression (acquired from Mr. T and Mr. A) is wrong then no doubt should this case ever unhappily return to court I will receive evidence about the range of those facilities with specific reference to a tailor-made programme for HM. I did not get the impression, and again I venture this without criticism, that a careful mapping of needs in relation to resources had yet been undertaken. Furthermore, I have to take account of the fact that HM is not the only young person who needs such services on the Island from a limited budget.

96. She also referred in that document to alternative residential college placements in England, being of the view at the time of writing that the DLC (college) had withdrawn its offer of a placement to HM in the light of the long-standing troubles with the father.
97. If none of those options can be achieved, she suggests both in that document and in her oral evidence that HM could return, even in the short-term, to her family home in Guernsey with support from the learning disability care team etc. The mother's current degree studies (in Manchester) do not end until June 2009, although in order to care for HM, if this were the choice of the court, she would attempt to finish it whilst living on the island. She told me in her oral evidence that her course tutors were sympathetic to her dilemma, and by a combination of correspondence and/or the provision of an on-island tutor, or in default of either of those options via the Open University, she might still finish her degree studies. She would prefer, however, if at all possible that she should stay in Manchester for the duration, probably then returning to the Island to work as a social worker after next summer.
98. She is vehement in her opposition to the father having the care of HM. In her lengthy list of purported disqualifications of him set out in her position statements, and elaborated upon in an interview with Dr. Land and her oral evidence, she refers to:
- i) The father's failure to accept the seriousness of HM's epilepsy, he having allegedly suggested at one stage that KH was suffering from Munchhausen's Syndrome by Proxy.
 - ii) His failure to understand the extent and nature of her learning disability. The father does not give HM sufficient structure, he having unreasonably high expectations of her proficiency and potential. The absence of structure makes HM very anxious and difficult to calm.
 - iii) She says that he does not understand HM's emotional development. She suggests that PM is not flexible, and only does whatever he wishes rather than taking full and proper account of HM's choices.
 - iv) She points to the probable breakdown of any attempt to support the father in looking after HM as provided by external support staff. He has difficulty maintaining relationships with professionals, and that even if he chose the professionals to be involved with HM there would ultimately be a breakdown in communication.
 - v) She anticipates HM being brought up in an atmosphere "of continual conflict and without the consistency of support and care that she needs".
 - vi) She noted that the father is now 60 and, as Dr. Land has himself observed, his physical powers will inevitably diminish over time, and much endeavour which he now takes for granted will simply not be possible for him.
 - vii) She does not believe that it is appropriate for PM to be carrying out the intimate care of their daughter. I shall return to this subject in more detail in due course, for it has been the subject of extensive commentary, and indeed differences of opinion as between the experts.

99. Thus in summary, her preferences are:
- i) HM to go to DLC (College).
 - ii) In default HM to return to Guernsey to live with her in the family home (with a reduced pattern of contact to the father, who would logistically not be able to see HM weekly as he does now), unless and until, in the medium to long-term, her proposals as set out above can be put in place.

The Father's Proposals:

100. At the heart of them lies his profound and genuine wish to care for HM in his own home. There was some faint suggestion in the papers that the father had been reluctant to describe the nature and extent of his accommodation. However, although he does not deal with it himself in his own statements, Ms. Walshe had asked him about it and he gave oral evidence. It would appear that he has a three bed-roomed bungalow (although that is currently in a state of disrepair following a flood and is uninhabitable). He has meanwhile rented a three bed-roomed property with accommodation which he would describe as entirely suitable to meeting the needs of HM and himself. When he returns to his own restored home he would suggest an extension to provide semi-independent living for HM and her carers. He speaks of, in due course, leaving it to her in trust for her sole occupation (plus her carers I imagine) on his death.
101. The mother states that he has historically failed to provide details of his situation, whether he is in employment or reliant upon State benefits, and how he would provide for HM if he were to be her full-time carer. He told me in evidence that his finances were "complicated" but that the money would be there for such work to be done. I chose not to investigate his finances, but for working purposes assume this to be so without making findings.
102. In his first witness statement of 4th July 2008 the father was directed (by earlier order) to set out his case. In fact the bulk of that document (excluding the 30 plus pages of exhibits) is devoted to assertions of what the law ought to be doing in this case to uphold the rights of HM, ostensibly supported by abbreviated summaries of research information, and requests to the court to read large quantity of documentation from past years of litigation in Guernsey.
103. By way of example he says this:
- "In short, HM should be able to aspire to living a life as a young adult where she is inherently included in social networks, community based living, educative environments and family relationships. These factors are fundamental to HM's need to live in the least restrictive environment which her disability indicates and permits".

There then follows a list of "aspirations" for HM which it is unnecessary to set out, but which do not advance the informational base for assessment of his practical

- proposals. He ends that statement with what amounts to a complaint that he has been stymied in progressing referrals without leave of the court or with the agreement of other parties.
104. His second statement of 24th July 2008 sets out documentation describing his contact, and the observations of those who have seen him with HM in the wider community. It does not deal with educational or home care provision.
105. Following a directions hearing before Parker J. on 24th October 2008, he was given until 2nd November 2008 to file a further statement. He did so, filing a 24 page statement with appendices on that date, and attending court on the 4th November 2008 with a further 18 page statement and some hundreds of pages of exhibits. In the body of that unpaginated documentation I find the latest witness statement of CY dated 1st November 2008. I have referred to the necessary part of that document already.
106. Although he had spoken in earlier statements of necessary enquiries into relevant educational provision for HM, it was not until his statement of 2nd November 2008 that his proposals were clarified. However, even if he has there nominated for her specific educational resources, it is clear that each of the relevant institutions/organisations requires the provision of extensive reports on HM as a precursor to any further necessary assessments (residential or otherwise). In other words there is currently no alternative to DLC (College) on offer.
107. In part, as with other statements/position statements/his oral evidence, the required information as to proposals is interlaced with historical criticisms of past actions on the part of Guernsey, the mother, DLC and its staff, the independent experts in this case, the Official Solicitor etc.
108. He asserts that DLC (College) has "a financial interest in the outcome of these proceedings and faces a decline in the number of long-term residential placements" (Mr. D confirming in his oral evidence that there was indeed a declining roll). I infer from that that PM is suggesting entirely commercial motives on the part of DLC in offering a place to HM. I have noted above his vituperative comments to Dr. Land on DLC, and his refusal to acknowledge the essential contribution DLC has made to HM's development.
109. The father notes that Broughton House College (a possible alternative to DLC put forward by Guernsey) does not have places until at least May 2009. Mr. T spoke of his half-day visit to this college, and how impressed he was by it. He was not at the time made aware that there would be no place until at least May, but from the father's evidence it appears any such space may be dependent upon the conclusion of building work. Although he had examined the syllabus, and met with staff and some of the pupils, it is not surprising that Mr. T had not carried out peer group analysis in order to gauge where HM might fit in. I do not criticise Mr. T for that, for it seems to me that that is stage two of a more sophisticated appraisal which that college (if approached further) would undertake in the light of all the necessary reports on HM.
110. He further notes that Guernsey have not reported on Ravenswood Village which he put forward as an option in 2003, though Guernsey refused to fund it and which he appeared to suggest might even now be appropriate, although not, I consider, with any real degree of enthusiasm, for in his closing submissions he suggested that it would be

a "catastrophe" for HM to move so far away from all she knows, including the homes of her mother and father.

111. His positive options, having ventured those criticisms, are based on the fundamental position that HM should live with him.
112. He refers to Langdon College and Bridge College as possible suitable educational provision. It is not altogether clear to me from the reference in paragraph 6 of this statement as to whether or not Langdon and Bridge are in fact residential communities rather than the providers of day care, although in his oral evidence he confirmed that both undoubtedly had day provision and are reasonably near to his home.
113. There is a passing reference to other establishments visited in the last eight years, including The National Centre for Young People with Epilepsy School and College. Beyond those passing references there is no particularisation.
114. As to Bridge College, this is a day college which he visited in the course of May 2007. He was impressed by it, and was under the impression that those attending were very similar to HM. He told me in oral evidence that he had met with many of the pupils, looked at their work and the books/tools they were using and had reached this broad conclusion on that basis.
115. Langdon College is based in Manchester. Apart from information of the most general nature as to the facilities and pass-times on offer there, and a brief summary of his visit to the college, where he met staff and students and the Board of Governors, the only further information of assistance in considering it as a resource comes from two sources. He quotes an extract from a letter sent to him by the Principal indicating that apart from the necessary application form it is "essential that we have a copy of HM's Statement of Educational Needs, an up-to-date school report, speech and language assessment and occupational and physiotherapist reports, an educational psychologist's report, and a current medical report". Partly no doubt by virtue of the inhibitions on providing such documentation without leave of the court, none of this has been provided to the college to further any anticipated application. Nor, as I understand it, has the father ever made a formal application to the court for the release of such documentation to them.
116. The second source of additional information about Langdon College comes from Mrs. W. She had attended initially in the guise of a second McKenzie Friend, but on the first morning of the hearing it was established that the father would wish to call her as a witness both as to his relationship with HM (she already having provided a testimonial) and to say something of Langdon College she being a governor. I required her statement of evidence to be in writing. She accordingly withdrew and produced a manuscript document later that day. I admitted her statement but in the light of its content, particularly her emphasis on the need for extensive further assessments including a residential assessment of HM, did not feel it necessary to hear her oral evidence. However, I accept, as I have done in relation to all the testimonials from the father's friends and acquaintances, particularly those who know him well from the Menorah Synagogue, that he is a devoted and loving father to HM.
117. Despite his frequently ventilated criticisms of DLC and its educational provision for HM, in the course of his evidence/submissions he made it clear that if there was no

alternative provision available, he would accept HM's attendance at DLC (College) on a daytime basis only, she returning to his home each night. DLC do, I note, have provision in their syllabus for day attendance. Whether or not the father's apparent concession is based upon an implicit recognition that DLC do offer more or less appropriate provision educationally, or was simply offered on the grounds of expediency, I was not entirely clear.

118. He refers to "Jewish Ethos and Culture Local Resources", which he describes as "a key element of support in maintaining a culturally appropriate service in line with Orthodox Jewish Ethos and Culture" (sic). It is not clear to me whether or not this is proposed as a support organisation supplementary to other educational provision, or an option in itself.
119. He then proposes "carer" support varying "from the casual to complete waking 24 hour nursing care". Having referred to the general nature of the suggested provisions he then states that each would require to conduct their own risk assessment before they would consider providing services for HM.
120. His fall-back position is that if no suitable educational placement can be found for the balance of the current academic year, he would tutor HM at home, and his own endeavours would be supported by an independent specialist speech and language therapist, and "such other resources and interventions as are deemed to be in HM's best interests". He points to Guernsey or some other unspecified local authority in England and Wales to pay for these services. I consider below sources of payment.
121. As to home care he refers to "Helping Hands Home Care", a family run business based in Warwickshire providing: "Reliable innovative quality home care services that strive to exceed customer's expectations and enable customers to exercise choice in their daily lives. To promote dignity and quality of life" This organisation apparently covers England and Wales providing "live-in care" and presumably other variants falling short of live-in care. He also refers to an organisation called Prestige Home Care as providers of similar services.
122. A final part of his proposed support is the introduction into his home of an Israeli au-pair, preferably a female to assist in intimate care tasks, and at least 24 years of age.
123. It was not clear to me upon reading the papers who should be the payor for all these services. Guernsey have declined to pay for anything other than DLC College, the appointment of a care co-ordinator, and an advocate. I discuss below their reasoning. No local authority has been approached as a potential provider. The costs of such care would be significant.

Services: Who Should Pay?

124. As Ms. Richards points out in a supplementary note dated 2nd November 2008, filed in response to such proposals as have been made by the father, there are a number of problems over identifying a payor.

125. Guernsey have stated that they view HM as a "Guernsey patient" even though she has lived in the U.K. on a 52 week per year placement. They have continued to fund her care provision (approximately £180,000 per annum) along with incurring £35,000 worth of legal costs plus disbursements.
126. They further point out that unlike a local authority in England and Wales which has a care order or a declaration of best interests, there is no over-riding power on their part to make decisions relating to HM's care.
127. I have earlier noted the structure of the Guernsey court's provision which appoints the mother as "curateur"/ sole guardian, thus charging her with making major decisions relating to HM's medical condition, health, care, welfare and education etc. (subject now of course in relation to medical care to the order of Sumner J. of 26th July 2007).
128. I have been provided with a transcription of exchanges between McFarlane J. and Mr. Nicol-Gent, counsel appearing for Guernsey at a hearing in June this year. At page 14 of the transcript Mr. Nicol-Gent conceded that whilst there was no community care legislation in Guernsey dealing with adults, and thus no statutory obligation upon Guernsey to pay for services for HM now that she is 18 plus, Guernsey accepted that by custom they had accepted responsibility in such cases and would fund the necessary placement.
129. It is the current stance of Guernsey, however, that in the event that HM goes to live with her father they would no longer be responsible, financially or otherwise, for her, and they would not fund additional care costs.
130. I was puzzled by their reasoning at first for it was initially their case that if HM goes to live with her father full-time, (or come to that her mother full-time) in England, then she will no longer be treated as domiciled in Guernsey and would therefore no longer be their responsibility. I had no expert evidence to help me on the way they construed the law in relation to domicile, but it seemed to me that since she has been regarded as being domiciled in Guernsey for the whole of her life, and currently is so regarded, yet has lived in England on a year-round basis for the last five years, it was not open to Guernsey to suggest that by virtue of a different address for her habitual residence in England she would lose her domicile. This preliminary position was, upon questioning by me, withdrawn by Guernsey.
131. Their final position, as developed by Mr. Bennett, was not in relation to the issue of domicile at all, but based on practices similarly operating in England and Wales under local authority legislation, namely that if a parent or parents chose a resource different from the one approved by Guernsey, they were under no obligation to pay, and would not pay.
132. Ms. Richards' commentary upon this makes the following telling points:
- i) Guernsey is a separate sovereign jurisdiction, and whilst it is an interested party in these proceedings, that status does not entitle me jurisdictionally to impose upon them orders importing financial consequences, or at all.
 - ii) If, as they have stated, they would not pay for such services should HM live with PM, the only remedy to challenge them would be by way of judicial

review in Guernsey, for they are not amenable to the English judicial review jurisdiction.

- iii) Leaving aside the father's position in relation to litigating in Guernsey which he says in effect is a closed door to him he being currently in contempt, and looking at the issue in the round, it would be extremely difficult for anyone challenging such a decision "given the absence of any statutory framework placing express duties on Guernsey to continue funding in such circumstances".
- iv) She further points out that Guernsey's approach is similar to an English local social services authority as to payment issues, and that I cannot assume that any local authority in whose area HM would be living (as part of PM's household) would immediately step in to pick up the bills. All local authorities would wish to carry out their own community care assessment pursuant to the provisions of section 47 of the National Health Service and Community Care Act 1990, and then apply its own eligibility criteria and its resources.
- v) PM is currently living in rented accommodation in Cheadle, and Ms. Richards points out that Stockport funds only services which meet the criteria of "substantial or critical" as defined by the "Fair Access to Care Services" framework as set out in a Department of Health document. In other words I could have no guarantee that even after all of their enquiries were made as to the needs of HM when living with her father that they would pay for them.
- vi) If in due course the father returns to his restored and repaired home in Gately he would be regarded as ordinarily resident there (as would HM if she lived with him) and Stockport would continue to be responsible.
- vii) Ms. Richards also points out that the father's requirement of services from: "Appropriate therapists, including but not limited to especially a speech and language therapist and an occupational therapist" does not ordinarily fall within the remit of a local social services authority. Such provision is usually made by the local NHS Trust after their own assessments. No enquiries have been made as to their view which they would be unlikely to give in any event unless and until HM lived within their catchment.
- viii) Finally, she points out that I have no power within these proceedings to order either of these local authorities or any National Health Service Trust to provide HM with specific community care or services.

I respectfully agree with that clear analysis.

- 133. It follows that an essential bulwark of the father's proposed care provision simply cannot be put in place in anything like the necessary time-scale, even if it were to prove possible in due course.
- 134. Turning to the question of his accommodation, and considering only any restored and repaired property in Stockport, the father's proposal involves substantial conversion work I have referred to elsewhere. I must take a practical view on the likelihood of

any such major structural work being carried out even if it is possible. Financially it is unlikely to be carried out within any reasonable time-scale for the proper accommodating of HM.

135. Apart from all these practical issues there is of course the series of suggested disqualifications put forward by the experts in this case as well as by the mother. I should emphasise again that at no point do I regard experts as deciding this case. Nevertheless they have been helpful in presenting to me a range of problems for consideration, and their careful analysis of the needs of HM. I appreciate that the father has no confidence in any opinion which he does not share, and in the course of his cross-examination of, for example, Ms. Walshe he made some telling points. Nevertheless the totality of the expert evidence in the case has given me as clear a picture as I think may be reasonably achieved of HM and her needs.
136. I shall return later to the necessary analysis of benefits and disadvantages in relation to some of the proposals for HM's care.

Contact:

137. As Dr. Land observes:

"It is clear both from my direct observation, from the written records and from all of my discussions that HM generally derives a great deal of pleasure from contact with her parents".

138. In the course of his assiduous preparation and presentation of his case, the father has (as referred to earlier) drawn to my attention a very substantial number of informal testimonials (appended to his statement of 24th July and 3rd November) as to his skills with HM, and as to the obvious enjoyment of HM when observed on contact, including observations of her over many months by members of the synagogue they attend, and at Shabbat meals to give but two illustrations. I accept as I have already made clear, without the necessity of having heard any of them, that the descriptions given by those testimonials present an accurate picture. All accounts of the mother's contact with HM speak equally warmly.
139. I have no doubt at all that it is unquestionably in HM's best interests to have contact with both of her parents and her sister. Unhappily, as between the mother and father, it has hitherto been necessary to resort frequently to law to adjudicate between the competing claims.
140. For some period of time prior to February this year, the father enjoyed contact with HM on the basis of collecting her from DLC on Friday afternoon and returning her on Saturday at 10am, as well as provision for staying contact over holiday periods.
141. On 18th February 2008 it was decided at a meeting of which the father was not notified, but which was attended by, amongst others, the mother and a Ms. LS who had prepared a core assessment on HM for the Guernsey Social Services, that the father's contact should be suspended. In the ensuing months no contact took place despite his anxious wish that it should be reinstated. I have declined to conduct a

post-mortem into who said what to whom at that meeting or in the months which followed, but on the basis of the material before me I find it astonishing that such a step was taken with no clear structure in place for the determination of the inevitable dispute which followed, and no-one apparently taking charge of any discussion, negotiation, or consideration of the father's position.

142. It would seem from the evidence of Mr. A that although at that meeting and for a period shortly thereafter Guernsey regarded itself as being able to determine the issue of the father's contact, Mr. A was subsequently advised by his own legal department that it was not his responsibility and he had no authority in the matter. Cheshire did nothing, and at the end of hearing all the evidence it seemed to me quite clear that nobody was taking any responsibility at all to progress the matter to resolution. I appreciate that for a brief period there was a POVA (protection of a vulnerable adult) enquiry, but certainly the evidence of Mr. A (who was kept abreast of matters whilst not regarding himself as having any authority on the subject) establishes that any concerns originally voiced had diminished to the point where he regarded there as being no risk in re-instituting contact.
143. In June 2008 the father applied for a lifting of the stay on the proceedings imposed by Sumner J., and very shortly afterwards the Official Solicitor issued his own application for a lifting of the stay so that contact issues could be determined. The pattern thereafter has, by court order, more or less been a restoration of the pre-February contact, again supplemented by periods of staying contact over holidays.
144. One of the many problems in this case has been the above-noted absence of any formal structure to determine the nature and quantum of contact to the father. As Guernsey have pointed out their view is that these decisions fall, pursuant to the Guernsey orders, squarely within the responsibility and authority of the mother, save where the English court now involved provides otherwise. She has not shown any great willingness to negotiate directly with the father for entirely understandable reasons given the history. Thus it fell by default to DLC to take a significant part in discussions, and it was they who, as I have noted elsewhere, have borne the brunt of the father's displeasure from time-to-time at what he sees as an unnecessary inhibition on his time with his daughter. DLC should never have been put in that position, and their reluctant assumption of the role of negotiator with the father has further catastrophically soured relations between them.
145. What is essential is that a proper structure is now put in place to discuss such issues, removing DLC from that unwanted role. The multi-disciplinary meetings to be attended by the father (and Mr. CY if he is willing and available) would provide one.
146. As to the expert evidence on contact, I am grateful for an encapsulation of Ms. Walshe's view on this subject set out in paragraph 55 of the Official Solicitor's statement of 28th October 2008. It reads as follows:

"Ms Walshe notes that should HM move to the DLC (College) her life there will introduce her to more adult arrangements in respect of her educational and care needs. In keeping with the shift of emphasis, it is essential that contact arrangements are balanced against her right to engage fully in any desired social aspects that a college environment is likely to offer. She notes

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that the current contact arrangements provide a reasonable basis from which to commence; however they should be modified and reviewed in the light of the observations about HM's move to a more adult pattern of life [E408 - E409, volume 1]."

147. Dr. Land is fully supportive of continuing contact for the reasons given elsewhere. It is his clear view, having observed PM with HM (despite a rocky start to the visit) and a visit with the mother that as a generality HM derives a considerable degree of pleasure and stimulation from contact with each of her parents. Whilst he would invite me to lay down a basic structure there should be provision for negotiating occasional flexibility but only through HM's care co-ordinator. I agree.
148. The difficulties of arranging contact on an ad hoc basis are overwhelming. There appears to me to be no alternative but to set up, by order, a clear schedule of permitted contacts which may only be altered in case of emergency, or where prior negotiation within the organisational framework outlined elsewhere imports some occasional flexibility.
149. It is clear from what has gone before that HM attends Synagogue with her father regularly and frequently. It is accepted that she enjoys her time at these meetings, and is always welcomed there. The father would wish, in supplement to any existing periods of contact, to be afforded access to HM on the occasion of any Jewish festivals. The mother as I earlier noted is, in principle, entirely agreeable to this, and accordingly I have invited the parties to produce an agreed schedule for contact.
150. Happily, largely as a result of the skill and adroit negotiation of Miss Irving Q.C. there were discussions between the mother and the father (in company with his McKenzie Friend) leading to such an agreed schedule between now and September 2009. I approve those arrangements and require the schedule to be appended to my order.

Personal Care:

151. At the moment it would appear that the father on contact visits (including the lengthy holiday periods) assists HM in intimate care to a very significant degree, if not on each and every occasion that she needs it. His assistance is required when she uses the lavatory, when she showers (he sometimes sharing the shower with her either wearing shorts or naked) or bathes, and in overseeing any problems associated with menstruating.
152. This young woman currently needs this help with her intimate care. It is the view of Ms. Walshe and the mother in particular that, as a matter of personal dignity and privacy, a "bespoke package of care" should be commenced sooner rather than later. Ms. Walshe elaborated on the subject in her oral evidence, noting her concern at the current arrangements summarised above, making it clear that both father and HM were vulnerable to accusation and misunderstanding in continuing the current arrangements which fail to establish clear boundaries as to what is appropriate as between a man and a woman, potentially further making HM vulnerable to exploitation by other adults. I asked her how this intervention would work, and it was

her view that a full-time carer (in addition to the father) should be available throughout any period in which HM is staying with her father, either in this country or abroad. It would be the function of that carer to be available day or night to assist in intimate care. There should be no ad hoc domiciliary care agency staff involved in this, but a dedicated team specifically commissioned and trained, and whom both HM and PM know.

153. It is worth noting by way of illustration that HM's ostensible preference as to the identity of her intimate carer, on occasions when she has a choice, always seems to be her father (even over her sister JM). It was the mother's evidence on this subject that it is no surprise that HM should choose her father in preference to others. The mother told me that she did not regard it as appropriate when JM and HM were growing up together that JM should be charged with the intimate care of her slightly younger sister. It was thus family policy that HM should turn either to her mother or to her father, and that HM is essentially habituated to choosing a parent over her sister. It is the mother's clear view that it is essential to recruit a female intimate carer. She, in accord with Ms. Walshe, thought overnight stays should cease until such a carer is so recruited. The Official Solicitor does not support this view, and in her closing written submissions the mother did not insist upon this.
154. The level of intrusion of such an individual on a full-time basis (however discreet) no doubt against the wishes of HM, and undoubtedly against the wishes of PM, cannot be under-estimated. It would essentially wholly change the dynamic of contact were such a person to be introduced into the household. Additionally, any such carer would have to ask herself what are HM's wishes from time-to-time in this matter, take those wishes into account, and then decide as to whether or not they would require a potentially very reluctant young woman to permit them to administer intimate care in preference to her father. To state these problems is comparatively easy, to resolve them more acute.
155. As Dr. Land points out in his very helpful discussion of this issue, there is across society a very wide range of views on the subject of the appropriateness or otherwise of cross-gender assistance of this kind. Historically and even currently, many would not regard this as an issue in such circumstances, but there is an increasing awareness, as the Official Solicitor points out, of the right to respect for privacy and personal dignity.
156. This problem arises for consideration irrespective of the outcome of whether or not HM goes to DLC (College) or goes to her father's home. No-one has made enquiry as to costings. As the father pointed out in his cross-examination of Ms. Walshe, to require the attendance of such a carer on, for example, the foreign holidays he and HM habitually take in the summer would involve the payors in additional hotel bills, flight costs, etc. When asked about meeting these costs, it was nevertheless the view of Guernsey that subject to negotiating a relevant budget Guernsey would pay for the provision of this service (but I emphasise only on the basis that it related to contact periods, and not if HM were to live with her father full-time).
157. It is the suggestion of Ms. Walshe, supported by the Official Solicitor, that this matter should be one for discussion by all interested parties at a meeting or meetings invoked by the care co-ordinator. I agree with that suggested course. The Official Solicitor's initial proposal is that such a carer should be introduced to HM at the DLC (College),

and provide these services to her there. In due course, if the introductions work and HM becomes amenable to these attentions by such a carer, the arrangement should be extended to the provision of care at the father's home.

158. It is the final position of the father on this matter, as indeed I understand he has indicated in previous discussions on the subject, that he would have no objection to the recruitment of such a carer, but would not wish that person to be a permanent part of family life during contact visits including holidays. What he would find acceptable is that such a carer would visit at appropriate and regular intervals whilst HM is with her father to bathe her etc.
159. I do not feel able to come to any concluded view on this subject at this stage. It seems to me that this must inevitably be an issue for further negotiation, and recruitment and introduction of such a carer to HM. Only when the experiment has been engaged in will the picture of how this carer might operate become a little clearer.

Burdens/Benefits: Best Interests:

HM: The Father's Expectations:

160. As part of his suggestion that HM is increasingly institutionalised at DLC the father has frequently criticised the way in which HM's signage is misconstrued by those at DLC. Her language book is not kept up to date. There are, because of her sometimes idiosyncratic methods of signing, misunderstandings between HM and staff, and that their whole approach is sufficiently incoherent to be severely inhibiting if not shrinking her communication. All agree that communication is an essential tool in her world. She is widely regarded as being a good communicator, and interested in conveying her views.
161. It is the father's assertion that having entered DLC with a sign vocabulary in excess of 200 she has now a diminished vocabulary of (to one listener) 12. I note that this observation was made to a speech therapist the father had engaged independently in October 2002, over 12 months before she entered DLC, thus causing an attribution of shrinkage to DLC as inaccurate. This suggests, as Dr. Land observes, the possibility either that HM's expressive abilities show a marked fluctuation "or that the regression that PM observes actually occurred prior to DLC". One has to ask the question whether or not the father was in fact accurate in asserting 200 signs in the first place in a child who was significantly younger, who had far less speech and language therapy provision prior to entering DLC than subsequently, and where her seizures were then very badly controlled, thus disrupting the acquisition of skills in this area. I can come to no clear conclusion on this point.
162. Let me consider his criticism of DLC explicitly made that there has been no (or insufficient) evidence of the provision of appropriate services to her in both speech and other areas.
163. Dr. Land has very helpfully analysed the volume of notes made available, and it is evident that there has been occupational therapy provided at DLC between 2005 and 2007.

164. Those files also show significant input throughout the whole period of HM's residence at DLC in speech and language therapy. Although the provision has over time been variable it has rarely been less than fortnightly and often more frequently than that. He finds evidence of the exploration of a range of "communication modalities" with HM. Although the work is incomplete the speech and language therapist's project of compiling a dictionary of HM's words and signs has already reached in excess of 130.
165. There are regular multidisciplinary reviews, at which are represented a range of different expertise.
166. It should of course be borne in mind that the recent improvement in medicating and managing her epilepsy has led to a significant improvement in her functioning once freed (by and large) from the terrible distraction of seizures.
167. I have referred above to the attempt to consider different forms of communication. In this context it is worth looking at the report of Helen Chesters, a specialist speech and language therapist who has considered HM and her progress. She observes:
- "Although HM's speech, language and communication skills are severely delayed in terms of her chronological age's level of functioning, she clearly demonstrates a capacity to learn and acquire new skills and an interest in numerous different stimuli. As her seizures have been controlled more effectively she would appear more receptive to communicating and to learning generally".
168. Having noted that "the receptive and expressive language and communication difficulties she currently exhibits appear to have a significant impact on her life at present" she goes on to recommend that a particular system, as I understand it not hitherto considered, should be tried. The acronym is P.E.C.S. [N.B. There was contrary evidence from Mr. Dean who told me that this system had been tried by the school, and found not to be efficacious.]
169. Dr. Land, in considering this option, is clear that he is not questioning that recommendation, apart from anything else it not being his area of expertise. But he does use it as an illustration of how it might be possible for an expert to be absolutely correct within their framework of expertise, but that it needs to be considered realistically within the context of all other provision on offer in order to determine whether it is right for this particular individual bearing in mind all the other features of HM's life.
170. There is evidence (albeit only a fragment of the overall picture) from Dr. Land who had seen a contact visit between father and daughter, that such was the high level of stimulus from a number of events fed into the short period when the two were together that he poses the question as to whether or not the high level of expectation of the father and the understandable wishes he has for his daughter and her development, do not create circumstances in which HM inevitably becomes anxious. I should note, however in this context that there was no evidence on that occasion of any anxiety, but that Dr. Land's worry is based on well-established principles underlying psychiatry concerning excessive stimulation. This theme was reflected in

the mother's evidence of her experience of high levels of stimulation and expectation leading to obvious evidence of anxiety on the part of HM on her return from such visits, and the lengthy period of stabilisation needed in consequence.

171. I have the very clear impression from a variety of sources that his expectations, not just in the area of signing, are overly optimistic when considering the reality of his daughter's capabilities.

Residence:

172. From a variety of sources I have a careful analysis of the respective advantages and disadvantages of HM living with her father in England.

173. Before I turn to specifics, it is both necessary and appropriate to set out the governing principle advanced by Dr. Land for the care of young adults such as HM. Now she is a young adult the thrust of her care should be towards achieving the best result possible to permit her some degree of independence and/or autonomy even from her parents. The colleges to which I have made reference are all, in principle, designed to achieve this result, and both Dr. Land and Ms. Walshe spoke of the necessity for it in an age which has come to understand perhaps better than formerly the need to encourage a lessening of dependence, and a greater degree of privacy.

174. Miss Richards, in her closing submissions, says this:

"It is important to emphasise that H is now an adult and that in approaching the question of H's best interests there is no presumption or assumption in favour of residence or contact with a parent, either at common law (Re D-R (Adult: Contact) [1999] 1 FLR 1161, CA) or under the MCA, or under Art. 8 ECHR. As Sedley LJ held in Re F (Adult Patient) [2000] 2 FLR 512, CA: "It needs to be remembered that the tabulated right is not to family life as such but to respect for it. The purpose, in my view, is to assure within proper limits the entitlement of individuals to the benefit of what is benign and positive in family life. It is not to allow other individuals, however closely related and well-intentioned, to create or perpetuate situations which jeopardise their welfare."

I agree.

175. In contrast to that proposition, the father suggested to me that it was increasingly a pattern for young people (disabled or otherwise) to live with their parents, sometimes during their college/further education, and frequently thereafter. He also emphasised the importance which society puts upon families for the provision of care of its members. He clearly saw it as his proper responsibility and voluntarily embraced the obligation to look after his daughter. He spoke eloquently and genuinely on the subject.

176. I have already set out in some detail many of the points which need to be made in conducting this analysis, but it may be useful if I again tabulate them in summary. Dr. Land in his report set them out in the following way, and I see no reason to alter his order. I begin with the advantages of HM living with her father. They are:

- i) There is clearly a mutual love, affection and enjoyment between father and daughter.
- ii) The father invests considerable endeavour and energy in providing a range of options for HM to stimulate her as well as for her to enjoy.
- iii) He can provide "competent care for her at least over a short-term period" (all that it has been possible to test in recent years when he has been constricted in his opportunities to look after her).
- iv) He is highly motivated to pursue what he considers to be in her best interests. A good illustration was his proper questioning of the necessity to have an operation in relation to a vagal-nerve stimulator.
- v) He is very good at communicating with HM, and facilitating her.
- vi) His expectations for her are high and positive. The corresponding disadvantages of this proposition are set out above, and see iv) below where I consider them in detail.
- vii) Through him she has access to the Jewish community who have, in the opportunities she has had to meet with them, embraced her as one of their number. Socialisation outwith the narrow group of those with similar handicaps is something to be striven for. During worship at the synagogue she has, for example, acquired an ability to moderate her own occasionally eccentric behaviour, as well as experience religious observance and warm social exchange.
- viii) The father clearly has material resources which can be put at her command (although I have chosen not to investigate them in detail).
- ix) The father accepts, realistically, that he will need some help and support in meeting her social care needs.
- x) He sees the advantage for HM of pursuing her educational goals to move her further towards a state which permits her a greater degree of autonomy in due course.

177. The disadvantages he lists are:

- i) That it would be unusual, for the policy reasons given above, to return a young child who had begun the process of moving away from family towards a degree of independence and autonomy back to a parental home. As Miss Richards points out: "It would be unusual to return a young adult with a learning disability back to live at home once they have started the pathway to greater independence". And later: "Although her learning disabilities are severe, it is important to have regard to her emotional development and the

fact that there are many respects in which she enjoys living as an ordinary young woman would". I agree.

- ii) The father does not, it seems, accept the degree of support which would be required in full-time care.
- iii) His age.
- iv) Having paid tribute to the advantage of an extensive range of activities facilitated on her behalf, the "sheer frenetic pace of their current weekends together whilst perfectly acceptable for a short period of time could easily be overwhelming if sustained on a longer-term basis". His drive for her to progress and exceed could be detrimental if he pursues this aim "a hundred percent of the time". In this context the father perfectly properly observed to me that he has to "cram a lot in" by way of activity because he sees his daughter so little.
- v) There is currently no suitably appropriately adapted physical environment (see above for my commentary on his accommodation).
- vi) There is evidence (accepted by the father) that she gains weight when with him. The father attributes this to a holiday laxity in diet, and the failure of DLC to provide him with an appropriate dietary guide. Whilst I understand the point about holiday laxity, this highly informed and purposeful father could readily seek dietary advice from other sources if he was truly worried, but I do not find him to be so. However, I do not think this factor should receive disproportionate attention.
- vii) He raises serious doubt as to whether or not PM has the ability to receive and accommodate advice which conflicts with his own perception of HM's best interests. I agree with him.
- viii) A different aspect of the immediately preceding problem is the likelihood of any carers who take a different view from him, staying or being permitted to stay in the home. His striving for perfection is more likely than not to lead to a high turnover of care staff in any support package because of what they may see as his unreasonable expectations of them, or because he discharges them.
- ix) He notes that "PM now interprets information through a highly negative schemata which has the potential to significantly impair his ability to care for HM in the medium and long-term". He gives a number of examples where the father has pessimistic expectations of others, for example in many of his dealings with professionals he expects to be unhappy at the outcome of their dealings with him, an all-too frequently self-fulfilling prophecy. He finds it difficult to make a fresh start in any relationships which have hitherto been problematic because of his "deep sense of injustice".
- x) He observes, as I have noted above, that the father is an extremely powerful individual with limited insight into the impact he has upon others. How, he asks, will PM "hear" HM when she wishes to express a view or take a course of action different from his chosen one?

- x i) I have already spoken of the issues surrounding intimate care.
- x ii) For the reasons I have set out elsewhere Guernsey would withdraw funding if that were the placement which I approve. That has potentially catastrophic results for HM, certainly in the short and medium-term, for there is no alternative currently fully and properly assessed, and no obvious payor.
178. He raises a number of other points but I choose not to detail them.
179. The weight of the evidence I have received, to a greater or lesser extent supports his analysis, and I need not tabulate in the same way the opinions of others.
180. He concludes his analysis of the benefits and disadvantages in the following way:

"In looking to weigh the advantages and disadvantages in the balance I note that some of the very real and substantial advantages of HM spending time with PM are currently being achieved through good quality contact, rather than requiring residence. Indeed in terms of the positive activity level, intensive communication work and expectation of success, it could be argued that HM derives more benefit from regular contact than she would if she lived with PM. I view HM's contact with the Jewish community as enormously beneficial, but again this is available on the basis of contact rather than requiring residence. PM is to be commended for his commitment to HM and his willingness to provide her full time care. However when I weigh up those advantages that can only be achieved by residence against the possible and probably disadvantages I conclude that on balance it is not in HM's best interest to live with PM in the medium or long term. That is not to say there are not many other possible medium or long term placement options for HM which would be worse than living with PM so it is important that any alternative placements are demonstrably better. Given that it is not my view that it is in HM's best interests to live with and be provided with care by PM I have not proceeded to set out the care services and support package which would be required by HM (and PM) in such a situation."

181. I respectfully agree with this analysis, and his 'balance sheet', and find the exercise tips firmly in favour of the proposals of the Official Solicitor for the care of HM for the same reasons.

DLC (College):

182. His report continues in similar fashion to the weigh the advantages and disadvantages of this facility,

183. It is fair to say that much of the assessment of advantage is based on what he perceives to be the advantages adhering to HM's lengthy period at DLC (School), and making a projection from them.

184. The advantages include:

- i) She has now been trained in toileting which has greatly improved her quality of life.
- ii) She is much more sociable.
- iii) There has been a significant reduction in her challenging behaviour.
- iv) Her ability to form relationships has advanced considerably.
- v) She appears to have increased confidence and self-esteem.
- vi) She has a greater degree of independence than formerly.
- vii) She has an increased drive to communicate.
- viii) Her sleep problems, hitherto much in evidence, have been largely overcome.

I appreciate that some of those features are perhaps due to a normal maturation, some are evident following a stabilisation of her epilepsy, and, as I observed in exchanges in the hearing the aetiology of improvement is difficult to tease out and attribute to this establishment when HM's world has other rich and valuable aspects to it as provided for her by her mother and her father.

185. He goes on:

- ix) DLC are well-used to managing her epilepsy should it recur.
- x) A transition from DLC (School) to DLC (College), they being based on the same campus, would permit a less fraught transition given the desirability of continuity of environment.
- xi) With her autistic traits she is particularly susceptible to change.
- xii) The whole transitional process (described to me carefully by Mr. D) of familiarisation with new buildings, new staff, and new peers would be undertaken at a slow and sensitive pace, and because of the geographical proximity it would be possible to achieve the transition by gentle increments otherwise impossible if the shift were from the school to another establishment entirely.
- xii) She would retain the same health professionals at the college.
- xiii) Some of her peers from the school would also be moving on, and that would allow her to continue and develop peer relationships which she has come to enjoy and value greatly.

xiv) DLC (School) staff are really enthusiastic about her and find her a deeply rewarding child. She thus moves from one part of the organisation to the other with an opportunity of certainly occasionally (if not more) seeing those who have enjoyed her, and will no doubt continue so to do.

xv) After an initial period of one year it may be possible to move towards "community based residential settings". My understanding of the evidence of Mr. D on this point was that they have one establishment off-campus (but not too far away) to which this suggestion applies.

xvi) The proximity of both of her parents to the DLC campus permits contact to take place without major travel and disruption for her.

xvii) As elsewhere noted she is warmly welcomed into, in particular, the father's social and religious community and clearly enjoys it. A move away from the area would thwart that.

xviii) DLC (College) would benefit from the accumulated knowledge and experience of DLC (School) in how to care for and manage HM to her best advantage.

DLC: Disadvantages:

186. Dr. Land began his list of disadvantages, as shall I, with the following observation:

"By far the biggest disadvantage of HM progressing to the DLC (College) is the appalling relationship between the DLC and PM. Given my view that it would be in HM's best interests to try and normalise PM's involvement in planning and review of her care, PM's implacable hatred of the DLC, and the DLC's strict conditions for accepting HM, would not seem to be a good start."

Having heard the evidence in this case, I regard that as a most elegant of understatements.

187. It would appear that the Guernsey authorities passed on sufficient information about their view, and the Guernsey Court's view, of PM to make DLC adopt an anticipatory protective posture. Put colloquially, in the eyes of PM, and even objectively viewed, they "pulled up the drawbridge". The father's contact with staff and access to the campus was so hedged about with conditions that he felt understandably entirely excluded from "the home" of his daughter. I have noted elsewhere Dr. Land's view, shared by others, of the father's powerful psychological personality, and of his obsessive habit of arguing every corner in immense and repetitive detail. That particular characteristic (the effect of which I do not believe he understands) led to both DLC and the father in their different ways feeling embattled.

188. Because of the lack of any directive authority in relation to issues such as contact, DLC perforce occasionally had to enter the arena. They should not have been there,

but were, I find, well-intentioned in their activity. That their efforts further enraged the father is a matter of record.

189. It is clear from the experts' reports, (and in particular that of Ms. Chesters and the occupational therapist Ms. Hardy) that they have pointed out a number of deficiencies as perceived by them in the provision of services. I have dealt with Ms. Chesters' report elsewhere, and simply observe at this point that Ms. Hardy's reveals many areas where modest alteration of facilities or upgrading would bring the provision of services for HM (and indeed the others at DLC) into line with proper Health & Safety standards for such an establishment catering to its particular constituencies. There are also manifest problems in communicating with PM, and it is a marker of the dismal level to which increasingly acrimonious exchanges between DLC and PM led them to institute a requirement that he only write to their solicitors at occasional interviews, and they would not guarantee to either read or respond to his letters!
190. Thus the disadvantages of DLC fall into two categories: the objectively verified deficiencies in the provision of services (and comparatively modest deficiencies at that), and the systemic failure of communication at any level between PM and the staff.
191. I saw reports from Mr. D and heard him give evidence. It is particularly unhappy that not only with DLC but also other organisations it was possible to hold a civilised and productive meeting only for the limited progress made to be blown out of the water almost immediately. A particular illustration of this is the meeting between Mr. D and the father which appeared to be productive, and was thought by both to be a constructive engagement discussing each others points of view, followed a little over two weeks later by the father's solicitors serving a Data Protection Act notice upon the school. Mr. D's demeanour in the witness box when recalling the tens of hours spent by the school, and then by solicitors searching and then re-searching all of the relevant documentation, betrayed even now his anger and distress at what he regarded as a wholly unnecessary and provocative request. [See above for my comments on this.]
192. Once again I find myself in agreement with this 'balance sheet', and have come to the conclusion that DLC (College) is the appropriate establishment for HM, the advantages outweighing the disadvantages.

Summary of Conclusions:

193. I have already made clear my view that DLC (College) is the only appropriate option on offer in the best interests of HM.
194. There is, happily, agreement recorded above as to the nature and quantum of contact between father and daughter in the event that I approve, as I have, her transition to DLC (College).
195. Similarly, for the reasons given above, I approve the conditions attaching to the father's dealings with DLC (College).

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196. I approve the agreed schedule of contact.
197. I approve the establishment of a multi-disciplinary conference, chaired by a care co-ordinator, to consider as a matter of urgency, not only continuing provision, but the necessary provisions following her graduation from college to the next stage of her life. The drift, all too evident so far, in purposeful planning has been marked. It should not be repeated.
198. I approve the recruitment of an advocate for HM.
199. Should this case ever return to court, I approve the suggestion in Miss Richards' draft order to the effect that any application/s made by the mother or the father should be served upon the Official Solicitor prior to the court having to consider the matter.
200. In the event that HM herself (through her Litigation Friend) makes application, I assume as a working proposition that the Official Solicitor shall be that Litigation Friend.
201. I invite the attention of the relevant parties to the continuing existence of orders in the Royal Court of Guernsey which have been, perforce, overtaken by the above. Steps should be taken to bring about a regularisation of the position between the two sets of orders. In the event that application is made to the Royal Court of Guernsey to discharge any undertaking/declaration or orders of theirs, I direct that this judgment as well as my orders/declarations should be brought to their attention. I would also hope that they should be informed that neither I nor my predecessors in the English jurisdiction have intended any discourtesy to their own consideration of these matters, even though there has now been erected a different edifice.

That is My Judgment:

BSI