IN THE COURT OF PROTECTION

No. COP11633829

[2011] EWHC 502 (COP)

Royal Courts of Justice

Wednesday, 26th January 2011

Before:

MR. JUSTICE CHARLES

B E T W E E N :

A LOCAL AUTHORITY — Applicant

- and -

PB & P — Respondents

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JUDGMENT

(As approved by the Judge)

MR. JUSTICE CHARLES:

1 I propose to give two judgments. This one will relate to general procedural issues, and the other will relate to interim issues in this case. When appropriately anonymised, this judgment can be treated as a public document. My comments are relevant to the preparation and presentation of a number of cases in the Court of Protection, and I was invited to make such general comments, because it became common ground that there were gaps in the evidence and preparatory documents which had the result that the final hearing should not proceed and further directions were needed.

2 The proceedings were issued in the Court of Protection by a local authority in September 2008. It is now January 2011. The nature of the case is not uncommon within this jurisdiction. In broad terms, it relates to a man (P) who is now in his forties and who, throughout his life, has suffered learning and other disabilities. He has also developed significant problems with his eyesight and is now registered blind. It is common ground that he lacks capacity to make decisions as to his place of residence, and the persons with whom he should have contact and the nature of that contact. It is also common ground that he is able to make his likes, dislikes, wishes and feelings known, sometimes on a contradictory basis, but particularly to those who know him well, he can make it known whether he is liking something or disliking something.

3 The family background, in broad terms, is that P was one of three siblings. Sadly, one of his sisters has died. There is also a long history of dealings between the family and social services. Again, not uncommonly, the intensity of the involvement of public authorities concerning the care of P increased up to the event that triggered these proceedings. Also, not uncommonly, there are differences of view and perception as to what occurred over the long-term history and the short-term history, and a breakdown in relationships between members of the family and one or more individuals working for the relevant public authority.

4 I mention that, because it seems to me, from my experience in cases of this type and indeed of medical treatment cases, that the central issue for the court is often an important tip of an iceberg and the background involves a long history leading to a breakdown in relationships and mutual confidence on the ground between relevant employees of a public authority (be it the local authority or a PCT) and family members. They, of course, can take widely different forms.

5 Here, that breakdown and differences in view are clearly flagged up in the first exchange of statements that took place. They are fairly stark and involve disputes of fact and perception. The trigger event leading to the removal of P from home and these proceedings was an incident involving the police which resulted in P being found at home alone by the police in circumstances which, in the view of the

relevant officers, were completely unsuitable to promoting his needs and requirements. What followed was that he was housed by the local authority in a residential care home.

6 The longer term backdrop to that, and again this is not uncommon in cases in this jurisdiction, is essentially a lifetime of care of P by his parents and, since the death of his father, in I think 1997, by his mother. It is obvious that his mother knows P very well. She has been one of his primary carers throughout his life until the trigger event leading to his removal from home. Again not uncommonly, there is no dispute concerning the love and affection that exists between mother and son. Those of us who have not had to care for a child and an adult with the disabilities that P has can nonetheless recognise the burdens that such care places upon a family, and that often those burdens have a wide range, both within the home, and in dealings with outside agencies in respect of matters such as finance, accessing assistance provided by public authorities, medical treatment, etc., etc..

7 It seems to me, that it is always important to recognise the commitment and love of a family to caring for a member of the family who lacks capacity, and the significant part that that inevitably plays in decisions that fall to be made by the court concerning what should happen in respect of P's care in circumstances that exist when the matter comes before the court.

8 In proceedings in the Court of Protection concerning adults who lack capacity, as under the old inherent jurisdiction, there is no equivalent to the threshold test in Children Act cases. However, it was common ground before me and it seems to me axiomatic that, within the welfare test, the issues relating to the long-term care and devotion given by a family to a child who has become an adult and who does not himself or herself have capacity have a significant part to play.

9 They come in under the best interests test and under the heading Article 8 Rights. They are factors to be taken into account when comparing and contrasting the regimes of care that can be provided through a care home by non-family members who do not have an emotional tie with P, and the care that can be provided at home by the relevant family members with assistance, so that their emotional tie can be fostered and promoted.

10 I make all those points by way of general background. The issues that were set down for hearing beginning on Monday were issues as to where P should reside, contact (should the decision be that he resides away from his home), and whether or not the regime of care, in particular away from home, but also, it seems to me, at home, would involve a deprivation of his liberty.

11 The penultimate directions that were given concerning the preparation for the final hearing, were the effective final directions for this hearing. They were made on 19

May 2010 (the May 2010 Order). They followed a series of directions given by a number of High Court Judges. The last directions were given on a paper application by the President on 30 July 2010 and they relate to the filing of a further report by the independent social worker. At that the time of the May 2010 Order mediation was contemplated. Indeed from the start of the proceedings this was contemplated and was in prospect. This caused some delay and another reason for the period of time that has passed from the issue of the proceedings to final hearing date was a move of P from one residential placement to another, which was expected to go well, but which in fact did not; and I should add that it was perfectly reasonable to expect that it would go well.

12 A mediation took place on 10th June last year. It was not successful. The May 2010 Order is plainly based on a draft consent order, because that is what is recited, gave directions as to the filing of evidence by the applicant, the filing of evidence by P's mother, the filing of evidence by the Official Solicitor who represents P, the filing of a court bundle with an index, by reference to time periods leading up to the date fixed for the final hearing and it then provided that:

> "All parties shall serve position statements and, if so advised, skeleton arguments by no later than midday on the day before the final hearing".

13 These directions follow a format that is commonly used in Family proceedings. They set in place an exchange of written evidence and place reliance on them being drafted in a way that identifies and covers the relevant issues, and reliance on the representatives to prepare position statements and skeletons that, together with the witness statements and reports, provide a platform that enables the court to determine the issues fairly and on a properly informed basis. It is now common ground between the representatives of the parties that those (and the earlier) directions, and the manner in which they were complied with, resulted in a situation in which this case was not ready for trial last Monday, on its substantive issues by which I mean residence and contact. The decisions on that, it seems to me, would have enabled the court to determine deprivation of liberty issues, subject to the qualification that there might have been a lack of knowledge of any regime that would have existed at P's home, should he return there to live.

14 It is that unfortunate common ground that the case was not ready for trial that founded the request that I should give, and my decision to give, this judgment on general procedural issues in an attempt to avoid a similar situation in the future in proceedings of this type in the Court of Protection. Pausing for a moment it seems to me that, whether this type of litigation is classified as adversarial or investigatory, there a number basic issues and tasks that have to be addressed in its preparation concerning the facts to be proved and the legal issues. In argument I referred to the task of counsel instructed to give an advice on evidence. Although such advice is no longer generally sought for a variety of reasons, many of which I

imagine relate to funding, the issues covered by such advices still have to be addressed. In this case, to my mind, it should be immediately clear to a litigator from the initial witness statements that the facts that each party would be inviting the court to find in respect of the central issue namely, whether a man who lacks capacity and who has been looked after by his family for over 40 years should live at or away from home, need to be appropriately identified. From that identification the disputes of fact, which of them need to be decided and what evidence is necessary can be properly addressed and each side knows the case he or she has to meet. This flows from the basic proposition that any party preparing for a trial needs to consider what facts that litigant will be inviting the court to determine, why this is the case and how that litigant will go about proving them.

15 Here, the original witness statements sworn in late 2008 and early 2009 show a background of hotly disputed issues concerning the history and so, as I have already said, a need to identify the facts that the litigants will seek to prove to support the rival contentions as to whether P will live at or away from home. This returns to the points that the local authority (with or without the support of P's litigation friend) is inviting the court to find that P should, after 40 odd years at home, no longer live with his mother and so there is the need to identify the reasons advanced for that result, which may or may not involve proving a lack of sufficiently good care in the past. But, even absent such an emotive and potentially upsetting underlying issue, a basic consideration for anyone preparing the presentation of a case in the Court of Protection is the identification of the issues of fact and law and of the evidence to be put before the court. The answers to my enquiry of the parties' representatives concerning the facts they were inviting me to find, the evidence they were relying on, the disputed facts they maintained need not be the subject of findings led very quickly to the common ground I have mentioned that these issues had not been adequately addressed, the case was not ready to be heard and further directions were necessary.

16 Additionally, in this case, the initial exchange of witness statements shows that issues of law arise concerning the role and jurisdiction of the court exercising what I shall refer to as the best interests jurisdiction under the Mental Capacity Act 2005, and thus, the Court of Protection exercising its jurisdiction, the role of public authorities (here, the local authority) exercising statutory duties owed to adults who lack capacity and the jurisdiction of the courts to review the decisions of public authorities made in the exercise of those statutory duties. These issues can be relevant in a number of cases in the Court of Protection. Their existence here is shown by the exchange of witness statements because within them there is an acceptance, and indeed an assertion on behalf of P's mother through those who represent her that, if P returns home, there is a need for a support package from public authorities to assist her in his care, including issues relating to respite care and a number of other matters.

17 So, legal questions arise concerning whether consideration of the decision of the local authority on that aspect of the case, namely the support it and other public authorities would provide if P was at home, is confined to, and so can be dealt with within the jurisdiction of the Court of Protection, or whether issues of challenge outside that jurisdiction and normally advanced in the Administrative Court arise. Even if matters are confined to the Court of Protection, issues arise as to comparing and contrasting the rival contentions as to what would best promote P's interests. If the court does not have the details of those rival options, it cannot carry out the balancing exercise it is required to do by the authorities and (dare I say it) commonsense in working out what is in P's best interests. Also, if it does not have those details the court probably cannot properly determine whether it can set aside a decision of the relevant public authority on public law grounds.

18 The evidence put before the court did not include evidence of the package of assistance that would or might be in place to support a placement of P at home. The local authority's position was that P's best interests were not served by returning home and, therefore, it had not put in evidence as to any such package. The mother was asserting that there should be such a package but had not made suggestions as to the detail of that package and how and by whom it would be provided; nor had the Official Solicitor on behalf of P. It, therefore, seemed to me, that, even if this case was confined within the four walls of the Court of Protection, the court was insufficiently informed to enable it to make a properly informed decision.

19 On enquiry, it became apparent (and unsurprisingly apparent) that the view of the local authority was that, in what it maintains is the proper exercise of its statutory duties, it would not be providing such support. That enquiry therefore confirmed the existence of the jurisdictional points relating to the interplay between the best interests jurisdiction and the public law jurisdiction.

20 Mr. Justice Munby (as he then was) referred to this jurisdictional point in *A v. A Health Authority* [2002] Fam 213 and I have done so in *Re S (Vulnerable Adult)* [2007] 2 FLR 1095 (see in particular paragraphs 11, 13 and 23 of the judgment).

21 The approach that I took there seems to me to be in line with the approach taken by, or the comments of, Baroness Hale, with whom the other Law Lords agree, in *Holmes-Moorhouse v. Richmond-upon-Thames London Borough Council* [2009] 1 WLR 413 (see in particular at paragraphs 30 and 38 to 39) where she says:

> "30 When any family court decides with whom the children of separated parents are to live, the welfare of those children must be its paramount consideration: Children Act 1989, s 1(1). This means that it must choose from the available options the future which will be best for the children, not the future which will be best for the adults. It also means that the court may be creative in devising options which the parents have

not put forward. It does not mean that the court can create options where none exist.
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38 Family court orders are meant to provide practical solutions to the practical problems faced by separating families. They are not meant to be aspirational statements of what would be for the best in some ideal world which has little prospect of realisation. Ideally there may be many cases where it would be best for the children to have a home with each of their parents. But this is not always or even usually practicable. Family courts have no power to conjure up resources where none exist. Nor can they order local authorities or other public agencies to provide particular services unless there is a specific power to do so (an example is the making of a family assistance order under section 16 of the1989 Act). The courts cannot even do this in care proceedings, whose whole aim is to place long term parental responsibility upon the state, to look after and safeguard and promote the welfare of children who are suffering or likely to suffer harm in their own homes: see Re G (A Minor) (Interim Care Order: Residential Assessment) [2005] UKHL 68, [2006] 1 AC 576. A fortiori they cannot do this in private law proceedings between the parents. No doubt all family courts have from time to time tried to persuade local authorities to act in what we consider to be the best interests of the children whose welfare is for us the paramount consideration. But we have no power to order them to do so. Nor, in my view, should we make orders which will be unworkable unless they do. It is different, of course, if we have good reason to believe that the necessary resources will be forthcoming in the foreseeable future. The court can always ask the local authority for information about this. It may even require a report from the local children's services authority under section 7 of the 1989 Act.

39 But the family court should not use a residence order as a means of putting pressure upon a local housing authority to allocate their resources in a particular way despite all the other considerations which, as Lord Hoffmann has explained, they have to take into account. It is quite clear that this was what the family court was trying to do in this case: after a series of postponed reviews, on 4 April 2006, the court not only recorded that the shared residence order had been made "in full consideration of section 1 of the Children Act 1989", but also "it's [sic] concern that, due to no fault of either party, the shared residence order has not been implemented by reason of the inability of the respondent to obtain accommodation suitable for him to share with the said children". We do not know whether this was communicated to the reviewing officer whose decision letter was written on 3 May 2006 but it is a fair assumption that the order was designed to help the father's case.

22 What those paragraphs, and the paragraphs I have referred to in *Re S*, indicate is that, in exercising a welfare or best interests jurisdiction (to my mind, whether under the Children Act, under the inherent jurisdiction, or under the Mental Capacity Act), the court is choosing between available options. In *Re S*, I posed the question, whether the fact that the court is dealing with somebody who lacks capacity means that the methods by which that person can widen the range of available options provided by public authorities in the exercise of their duties should be different to those available to somebody who does not lack capacity. Put another way, in a case such as this in determining the range of available options are the well known public law tests the relevant tests and principles to be applied, or

can there be some other test, whether it be best interests or some form of hybrid test.

23 Under both regimes, it is clear that Article 8, no doubt Article 6, and in certain cases Article 5 will have a part to play. Cases in the Family Division demonstrate that Human Rights points (and so points under those Articles) can often be appropriately and properly dealt with within the four walls of the welfare or best interests jurisdiction.

24 It is more difficult, however, as Family cases also show, if the point at issue relates to whether or not a certain option or package of care is available, or will be made available by a public authority in the exercise of its statutory duties. In that context, it seems to me that the point arises whether or not a litigant, whether it be a member of P's family or P, can obtain relief from the Court of Protection that effectively adds to the available options from which the best interests choice falls to be made (and thus by the application of public law and Human Rights tests and principles in those private law proceedings), or whether they can only effectively obtain such relief by seeking judicial review. Also in the exercise of the jurisdiction of the Court of Protection questions arise as to what orders it can make, or is precluded from making, as a public authority by reference to Human Rights points, and as to whether the court should embark on a process of negotiation with another public authority, or a fact finding exercise, that is relevant to decisions of that authority concerning the best interests of P.

25 During the course of argument before me, points were raised concerning how the court should approach issues of fact in the context of arguments relating to these competing jurisdictions, and thus, for example, how the court should approach findings of fact, which underlie decisions with which Article 8 is engaged and the application of that Article.

26 There is a body of law in the Administrative Court and its predecessor relating to precedent fact cases and (as I was told and accept) a body of law is building up relating to the approach the court itself should take as a public authority to fact finding and decision making concerning Article 8 issues which arise in public law and other cases. I need not delve further into that area at the moment.

27 But, what is clear in the context of this case is that, before arrival at the court door for the final hearing, these points had not been identified and/or, if identified, the relevant preparation to enable them to be argued and decided had not been carried out. That is confirmed, for example, by the agreed directions now before me that (a) the local authority will, within a timeframe, make its decision as to what packages of support it would or would not be prepared to provide to the mother, should P, her son, return home, and (b) those who represent P's mother, and indeed those who represent P, will consider whether or not, in their view, that decision is

susceptible to a public law challenge, and/or a Human Rights challenge and where and how they wish to make any such challenge.

28 These jurisdictional points will clearly arise in respect of a number of cases in the Court of Protection, in others they will not exist and in some their existence may be open to argument. However, it seems to me that, in most cases in the Court of Protection (I hesitate to say all), that the public authorities involved, in which I include the relevant local and health authority, the Official Solicitor and the court, need to be alert to and address these jurisdictional points at an early stage.

29 One of the reasons they need to be alert to the points is to seek to ensure that Court of Protection proceedings are not utilised for an inappropriate purpose. Looked at only from the perspective of the individuals involved, proceedings of this type concern emotional issues and the parties should not suffer distress from proceedings that are inappropriate and/or which cannot achieve the result they want. Money also, of course, comes into play and the court should not spend time (often a number of days) considering what it thinks is in the best interests of P, only to be met by the relevant public authorities saying at the end of the day: "We are not obliged to and are not going to act in accordance with a best interests declaration or order under s. 16 Mental Capacity Act 2005 if it involves the provision of services that we have decided not to provide".

30 As I mentioned in *Re S* (and I remain of the view that) it is not always going to be easy to identify when the jurisdictional issues should be brought into play and addressed and/or when a co-operative process between the court and the public authority, or a fact finding process, should not be embarked on or should be ended. But it seems to me that there is a need to carefully consider, as soon as is practicable, the extent to which and the basis upon which the court is to be involved in the process of determining the range of options that can and will be made available by a public authority, and from which the choice is to be made as to what will be in P's best interests. All the relevant duties involve the consideration of P's best interests either as their essential test or as an important ingredient within the relevant test.

31 What one can learn from this case, with the benefit of hindsight, is that these jurisdictional issues and, therefore, the legal arguments relating to them need to be flagged up and addressed well before the case comes on for final hearing.

32 The other point, which can be so learnt from this case, concerns the identification of the issues, and thus of the facts to be established and the evidence to be given. In this case and similar cases, there are a number of ways in which the best interests issues can be put to the court. Some of them may well involve proceeding on the basis that history and historical disputes of fact can be left as that and as matters of disagreement. In other cases, that would not be so.

33 To my mind, it is essential that, before a case concerning what is in P's best interests comes on for final determination, the parties have identified the factual bases upon which they advance their respective cases. The factual bases may include overarching or general issues of fact; for example, whether the care given to P was satisfactory or unsatisfactory when he was at home. To reach such a finding, the court has to consider, and the parties have to advance and prove building-block facts or micro-facts, and however you wish to describe them these facts need to be identified so that each side knows the cases advanced by the others.

34 In the context of overarching or general issues, such as whether the care at home was satisfactory, or whether the parents have unreasonably not co-operated with the provision of care by a public authority, the party wishing to assert that it was not, or that they did not, would probably have to assert a number of examples of unsatisfactory care or behaviour. This identification would focus their attention on the evidence that was necessary to prove them. The person making the contrary assertion would also point to examples of relevant care and co-operation and their product, and the same exercise would be gone through. Both would also, in that exercise, have to consider with care what parts or aspects of the history that are in dispute need not be determined by the court, and also to consider what, if any, common ground can be put to the court concerning the relevant history.

35 In cases heard in the Family Division, I have given judgments to the effect that it seems to me that such an identification of issues should be an essential feature of the proper preparation of a case involving disputes of fact. The reason I have given those judgments is that such an approach is often not taken in the Family courts with the result that the issues are not well identified and defined. To my mind, this situation and result should be avoided in the Court of Protection.

36 The question arises as to how and when those issues (i.e. the factual and evidential issues and the issues of law relating to jurisdiction and the tests to be applied) are to be identified within the procedures of, and the giving of directions by, the Court of Protection. The court has ample powers under its rules to ensure that these issues are properly identified (see, for example, rules 3, 4, 5 and 25). In my view, the court should use them for this purpose.

37 General directions, such as those that had been given in this case, have their place in achieving this aim, but it seems to me that there is a need for the lawyers conducting cases in the Court of Protection to consider carefully how they should comply with them to seek to ensure that a case is well prepared and ready for trial. In particular, they should in my view ensure that they do not arrive at court for a final hearing without having identified clearly the facts which they are inviting the court to find, why they are doing so and the evidence they will be relying on to do

so. Indeed, the recognition that this is necessary will promote proper and efficient preparation of the case at its earlier stages.

38 It seems to me that a litigator cannot present a case properly and appropriately without having identified these points. To my mind, it is contrary to the interests of the parties and the public interest that cases of this type should be conducted as, in effect, a voyage of discovery by the court and the parties, by reference to generalised and descriptive witness statements, which make and raise in various ways a range of allegations, some of which are extremely serious.

39 The approach that I advocate is, of course, one which seeks to define what can be stark disputes. Timing of such definition is important not least because in this type of litigation, which is concerned with human relationships, an agreed solution is likely to be beneficial in the short, medium and long term. In some cases, it may be easier to reach agreement if the disputes of fact have not been defined and the "battle lines" of the litigation thereby set, because to do so would be likely to increase confrontation on the ground and harm future working relationships concerning the care of P. But, the definition of issues can also (as was pointed out to me, and I agree) be of assistance in reaching a negotiated solution, particularly if it shows that a case for removing P from home, or keeping P away from home, is based on difficulties that now exist and is not based on past care. Also, it is possible that the definition of the issues relating to the past that need to be decided by the court, and those that do not, could assist rather than hinder an agreed solution being reached.

40 So the timing of the necessary definition raises fact sensitive and personality sensitive issues, and it seems to me that a general or prescribed rule or method as to how and when it should be done, in the preparation and presentation of cases in the Court of Protection, should not be introduced. But, the general point which I seek to make is essentially that it is difficult to identify a case within this jurisdiction in which it is not appropriate for the parties to have identified clearly the legal and factual issues therein at an appropriate stage before the final hearing, so that the relevant evidence and other material can be properly gathered, prepared and presented to the court. I should mention that I am not dealing with medical treatment cases or property cases but it seems to me that equivalent points arise in those cases.

41 The case management issue is how and when that identification should be done. A practice that has grown up in the Court of Protection of district judges requiring position statements when they give permission seems to me to be a sensible and productive one. That practice was helpfully drawn to my attention by the Official Solicitor.

42 Thereafter, it seems to me that cases have to be looked at and managed having regard to the circumstances, many of which will be dynamic, that exist in the individual case. But (and, to my mind, it is an important "but), at each stage of the case, the legal representatives of the parties should consider the legal and factual issues that arise or are likely to arise, and how they would wish to present them if attempts at settling the case fail.

43 Further, it seems to me that care should be taken to try and avoid a case coming to final hearing without there having been a hearing at which the parties were represented to identify the issues and the relevant fact finding process. Such a hearing focuses the minds of both representatives and the court, enables an exchange of views to take place and, to my mind, is helpful in the necessary identification process.

44 It, therefore, seems to me that in most cases the court should give directions to the effect that each party must identify the relevant issues of law that that party says arise in the case. So, in this case, pursuant to such a direction each party should have identified (a) the issues concerning the jurisdiction of the Court of Protection and the Administrative Court, and (b) the legal principles to be applied concerning the range of options relating to the care of P that the court could consider in determining what placement and support packages would promote his best interests. In other cases the legal principles relating to capacity and the choice of orders might be relevant. In all cases of this type in the Court of Protection the best interests test is engaged, but its identification as a relevant legal issue is nonetheless likely to be helpful and appropriate because it will trigger the need to identify the factors and choices to be taken into account in applying it, and it will promote the application of the approach set out in s. 4 of the Mental Capacity Act 2005.

45 Next, it seems to me that in most cases there needs to be a direction that each party is to identify the facts and, by reference thereto, the factors that party is inviting the court to take into account and, therefore, is seeking to prove, and is also to identify such of the facts that that party knows are in dispute and which that party asserts need not be determined by the court. Additionally, each party should be directed to provide to the court, by reference to the relevant factors, that party's reasoning as to why the solution that party favours, as opposed to the other available options, is the one that best promotes the welfare of P.

46 None of that is rocket science, but it can (as this case has demonstrated) become lost in the preparation of a case, where the procedural route chosen is the exchange of affidavits or witness statements followed by a direction in general terms for position statements and skeletons. Such an exchange of written statements does not easily promote that sort of definition; rather, they are a helpful starting point from which it can be carried out. Such position statements and skeletons can often

be too late to ensure that the issues of fact and law are properly and fairly identified and covered in the evidence. So, it seems to me, that at an appropriate stage in most cases of this type (i.e. welfare cases in the Court of Protection) a direction along the following lines (which reflects the directions that were agreed and which I made in respect of the future conduct of this case) should be given, namely that:

> *Each party shall serve a document on the other setting out:*
>
> *(1) (a)the facts that he/she/it is asking the court to find, (b) the disputed facts that he/she/it asserts the court need not determine, and (c) the findings that he/she/it invites the court to make by reference to the facts identified in (a);*
> *(2) with sufficient particularity the investigations he/she/it has made of alternatives for the care of P and as a result thereof the alternatives for the care of P that he/she/it asserts should be considered by the court and in respect of each of them how and by whom the relevant support and services are to be provided;*
> *(3) by reference to (1) and (2) the factors, that he/she/it asserts the court should take into account in reaching its conclusions;*
> *(4) the relief sought by that party and by reference to the relevant factors the reasons why he/she/it asserts that those factors, or the balance between them, support the granting of that relief; and*
> *(5) the relevant issues of law.*

47 I was invited to also say something about the approach that the Court of Protection should be taking to encouraging, or to ensuring that there has been, mediation but I decline to do so because it was not an issue that was relevant to the further directions that were necessary in this case and this had the result that it was only mentioned in passing.
