



Neutral Citation Number: [2010] EWHC 2665 (COP)

Case No: COP 11829637

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday, 22nd September 2010

Before:

MRS. JUSTICE MACUR

Between:

LBL
- and -
(1) RYJ
(2) VJ

Applicant

Respondents

MR. JONATHAN COWAN (instructed by **Legal Services, LBL**) for the **Applicant**
MR. MARK MULLINS (instructed by **Messrs. Campbell-Taylor**) for the **2nd Respondent**
MR. ANDREW BAGCHI (instructed by **Messrs. Mackintosh Duncan**) for the **Official Solicitor**

Approved Judgment

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MRS. JUSTICE MACUR:

1. These proceedings concern RYJ who was 18 on 28th April last. There is no issue that she lacks the capacity to litigate and appears therefore by her litigation friend, the Official Solicitor (“the OS”).
2. Applications have been made by the local authority, LBL to the Court of Protection seeking declaration that she lacks capacity to make day-to-day decisions concerning her daily life and to appoint an appropriate officer of the local authority to be made Health and Welfare and Finance Deputy. In the alternative, if RYJ is determined to have capacity, LBL seeks to invoke the inherent jurisdiction of the court, initially seeking those orders commonly following decisions as to “best interests” of an incapacitated person and amounting to empowering the local authority to direct where she should reside, be educated and with whom she had contact and appointing the local authority to receive benefits payable to her.
3. Her mother, VJ, is the second respondent.
4. Orders have been made previously as to the anonymisation of all parties’ names in any transcripts made and orders produced by the court.
5. LBL’s position has changed in the course of the hearing in that it has now conceded that they are unable to disprove the presumption of capacity to the relevant standard. Apparently they now seek to preserve RYJ’s position by way of recitals and preambles to an order ensuring that her decisions are facilitated and articulated with appropriate support. No argument has been advanced by LBL asserting my jurisdiction to dismiss the mother as “appointee” for the purpose of receipt and management of benefits and appoint the local authority in her place in the face of the written arguments made by the OS and on behalf of VJ denying the same. I accept the latter arguments. The appointment of an “appointee” in this regard is in the discretion of the Secretary of State for Works and Pensions. (See below)
6. VJ denies RYJ’s capacity to make decisions as to care, residence and education but, it appears to me, she acknowledges that RYJ has capacity in decisions as to contact.
7. The O S takes issue on RYJ’s behalf with the assertion that she lacks capacity in other than financial matters. He argues against the use of the inherent jurisdiction to make orders which subvert the intention of the Mental Capacity Act 2005 to preserve the autonomy of the individual subject to lack of capacity.
8. RYJ is diagnosed with epilepsy with complex partial generalised tonic-clonic seizures and drop attacks due to brain injury at birth. She has significant learning disabilities and is subject to a Statement of Special Educational Needs which expires on her 19th birthday. She has significant difficulties with expressive and receptive language and social communication. She attends the Residential Specialised Educational Facility provided by St. Mary’s Wrestwood Children’s Trust in Bexhill-on-Sea which also provides for her accommodation and care for 38 weeks of the year. She has been there since 2nd June 2009 and is extremely happy there.
9. Her mother argues that she is not receiving the necessary educational provision required by the Statement of Special Educational Needs and has made application to

the Special Educational Needs and Disability Tribunal to effect her transfer to another establishment.

10. In the remaining 14 weeks of the year RYJ has been accommodated either by her maternal Aunt J, who lives with her partner and children and with whom RYJ has a close relationship or accommodation arranged by LBL when family tensions led to the withdrawal of Aunt J's offer to provide accommodation during the long summer school holiday in 2010.
11. RYJ has expressed a consistent wish to spend the majority of holiday periods with her aunt and extended family. LBL supports her being able to do so. VJ considers that RYJ's affections are alienated by a less than neutral approach by LBL and teaching/support staff at the school to the question of residence/contact venue when not in school.
12. A brief history may give the context of the applications and go some way to explaining the parties' positions held at various stages in the proceedings.
13. RYJ is the only child of the mother who originates from Zambia. VJ is well educated, obviously intelligent and articulate. RYJ had medical problems from birth but a formal diagnosis of epilepsy and investigation of the extent of brain damage was delayed until at least 2001. In January 2002 VJ suffered a mental breakdown. RYJ was enrolled at the National Centre for Young People with Epilepsy (NCYPE) in Lingfield, Surrey as a boarder from 2003. VJ withdrew RYJ from school in July 2008 concerned as to RYJ's physical welfare, the possibility that she had been victim of sexual abuse and her under achievement in basic literacy skills. RYJ was then home educated for a year. It is clear that the mother organised numerous extracurricular activities throughout.
14. RYJ has been accommodated from time to time by the Local Authority since 2003. Difficulties became apparent in the relationship between mother and daughter. RYJ was obviously resistant to weekend home leave and by the age of 15 is said by VJ to have become angry and physically aggressive towards her. The police have been called to numerous incidents of domestic violence. The mother has had recourse to a 'panic room' and button. In addition VJ's pastor made known her concerns for the wellbeing of RYJ as a result of the difficult relationship between mother and daughter. That relationship would, in my view, undoubtedly have suffered in consequence of their being in close and continuous proximity in the school year 2008/09.
15. It is clear that VJ has never considered herself or RYJ sufficiently well supported by the LBL. LBL has found the mother difficult to work with in that there have been differences in the identification of 'problems' and necessary response. The position has become the more entrenched following commencement of court proceedings.
16. VJ is necessarily sensitive of perceived criticism of her maternal role to date. She is no doubt hurt by RYJ's express preference to reside with her aunt when not at school and she is extremely protective of her only child.

17. LBL's position as to RYJ's capacity in matters concerning welfare has fluctuated. It would be cynical to suggest that this fluctuation is associated with decisions articulated by RVJ which do not accord with LBL's views as to her best interests.
18. The history of court proceedings is set out in the judgment of Moylan J dated 30th July 2010. I do not repeat them here. I merely update them to record the relevant substance of his order on that date and subsequently on 27th August 2010. By his order on 30th July Moylan J declared in the interim that RYJ lacked capacity to litigate and make decisions regarding care, contact, residence, property and financial affairs and it was in her best interests to be accommodated in the summer holidays in accommodation provided by LBL and for the local authority to determine arrangements for care and contact taking into account RYJ's wishes and feelings. The mother was prohibited from attending RYJ's vacation placement save for the purpose of supervised contact and a hearing listed for a review of contact between mother and daughter on 27th August.
19. By his order of 27th August 2010 Moylan J gave directions for this hearing which has been listed before me, directed to consider RYJ's capacity, the question of inherent jurisdiction, issues arising from RYJ's lack of capacity to manage property and her financial affairs, interim contact and interim placement. He also ordered:

“A further hearing shall be listed on a date to be arranged by the Clerk to the Local Authority in consultation with other parties, with a time estimate of three days, to consider the issues of domestic violence by the mother against R which the Local Authority seek to prove, if pursued, and best interest decisions.”

Quite clearly, this ‘listing’ will be dependent upon my judgment and order of today.

20. The question of RYJ's mental capacity regarding decisions as to her welfare is to be answered by reference to the statutory framework provided by the Mental Capacity Act 2005. The central provisions of the Act are intended to define people who lack decision-making capacity and set out a clear single test for assessing whether a person lacks capacity to make a particular decision at a particular time. The Act has an accompanying Code of Practice providing statutory guidance for its application.
21. Section 1 sets out the five guiding principles designed to emphasise the underlying ethos of the Act. The relevant principles at this stage are to be found in subsections (2) to (4). Section 1 provides:
 - (2) “A person must be assumed to have capacity unless it is established that he lacks capacity.
 - (3) A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
 - (4) A person is not to be treated as unable to make a decision merely because he makes an unwise decision.”

22. Section 2 sets out the definition of the person who lacks capacity in terms:

“2 (1) For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.

...

(3) A lack of capacity cannot be established merely by reference to —

(a) a person's age or appearance, or

(b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about his capacity.”

23. Section 3 sets out the test for assessing whether a person is unable to make a decision and therefore lacks capacity in terms:

“3 (1) For the purposes of section 2, a person is unable to make a decision for himself if he is unable—

(a) to understand the information relevant to the decision,

(b) to retain that information,

(c) to use or weigh that information as part of the process of making the decision, or

(d) to communicate his decision (whether by talking, using sign language or any other means).

(2) A person is not to be regarded as unable to understand the information relevant to a decision if he is able to understand an explanation of it given to him in a way that is appropriate to his circumstances (using simple language, visual aids or any other means).

(3) The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him from being regarded as able to make the decision.

(4) The information relevant to a decision includes information about the reasonably foreseeable consequences of—

(a) deciding one way or another, or

(b) failing to make the decision.”

24. I read section 3 to convey, amongst other detail, that it is envisaged that it may be necessary to use a variety of means to communicate relevant information, that it is not always necessary for a person to comprehend all peripheral details and that it is recognized that different individuals may give different weight to different factors.
25. Section 2 obviously provides for a two-stage test of capacity: the first, a diagnostic threshold; the second a functional test. In this case the first test is undoubtedly met. The second is in dispute. Significantly, as I indicate below, I read the phrase “to a matter if at the material time he is unable to make a decision for himself in relation to the matter” in section 2 to mean that capacity is to be assessed in relation to the particular type of decision at the time the decision needs to be made and not the person’s ability to make decisions generally or in abstract. This, it appears to me, is an important distinction lost in the case of VJ and, to some extent, LBL.
26. In regard to the second stage test I have read those parts of the bundles identified as being relevant by Counsel for LBL, VJ and RYJ and received oral evidence from Dr. Rickards, Mr Sinclair, Ms Stevenson and VJ.
27. Dr. Rickards is a Consultant in Neuropsychiatry specialising in the behaviour, emotion and thinking in people with brain problems. He is widely published and a Director of the British Neuropsychiatry Association. He is eminently qualified and experienced to be treated as an expert witness in the proceedings. He visited RYJ at St. Mary’s School on 1st July 2010 in the company of Stuart Sinclair, social worker. At that time he also interviewed JB, lead nurse, and V O, speech and language therapist. The latter, in particular, he felt to have developed a particularly close knowledge of RYJ since her entry into the school.
28. Mr. Sinclair was instructed initially to give opinion on ‘best interest’ decisions to be made in RYJ’s case. However, after his visit to RYJ with a colleague, Miss Miles, and Dr. Rickards on 1 July 2010 and subsequently, he formed the view that RYJ had capacity to make decisions with regard to decisions he was being asked to address and therefore sought the approval of the OS, lead solicitor, for him to prepare a short report to this effect rather than a more lengthy report on her short-term best interests.
29. I regard that Mr. Sinclair is entitled to be recognised as an expert witness in this case. He has been so ‘recognized’ in these cases as such for over eight years. He has worked as a social worker since 1978 (as ‘forensic social work manager’ between 1988 and 1998 in a secure unit) and has a good knowledge of the provisions of the Mental Capacity Act. He has practical experience of working with personality disordered patients and clients and is well informed on national resources and developments. He has organised several national conferences on The Management of Personality Disorder as well as teaching and publishing of several articles in this subject. He is regularly instructed to work on behalf of the Official Solicitor and practises as an independent social worker. He has acted in cases concerning children where ‘adolescent issues’ are the subject of investigation.
30. Ms. Stevenson became the allocated social worker for RYJ when she became 18 in April of this year. She has relevant experience of assisting vulnerable young adults

and appropriate qualification as but, I determine, less expertise and experience in the field of assessing capacity than either Dr Rickards or Mr Sinclair.

31. VJ's evidence on the issue of RYJ's capacity draws upon the opinions of an educational psychologist and consultant neurologist to support her argument of non capacity.
32. The following matters became apparent from the evidence and were relevant to my consideration of whether RYJ has been proved to lack capacity.
33. I consider that there has been inadequate regard paid by LBL and VJ to RYJ's potential tendency to teenage ennui, manipulation and fickleness which are traits not confined to those lacking capacity. For example, I was struck by the fact that Ms. Stevenson approached RYJ's 'inconsistency' as to contact with VJ in a particular and somewhat blinkered way. It is clear that RYJ's answer "maybe" in response to a question whether she wished to see VJ was interpreted to mean that, at worst – in terms of capacity- she was unable to reach a decision on the matter or else, at best, frightened that her decision would not be given effect, not that she was at that stage undecided. I accept the evidence of Mr Sinclair that it is necessary for those who deal with RYJ not to underestimate her ability to attempt to manipulate a situation as with many other teenagers in similar stage of maturity and chronology age. At the time of this response RYJ was 'away' from her family living in somewhat isolated conditions.
34. From reported responses of RYJ to the teaching/pastoral staff at St Mary's, the OS representative, Dr Rickards, Mr Sinclair and Ms Stevenson I discern what I categorize to be her empathic responses to diffuse the 'sensitivity' to those affected by her decisions.
35. The other matter of note comes from Dr. Rickards' comment that at first glance R appears to be more impaired than subsequent interview by him revealed. He noted that the risk of under-estimating R could be exacerbated since she can become distracted and talk off point and will not always grasp the question at first asking.
36. In the context of this comment it is understandable that LBL have instigated these proceedings when RYJ approached the age of majority. In this regard it is notable that the Local Authority's views as to her capacity have been 'inconsistent'. LBL first took the view that RYJ had capacity and only in recent months have questioned the same due to what has been said to RYJ's inconsistency over a short period of time during the summer vacation.
37. VJ argues that the capacity of RYJ is called into question not least by virtue of reports that she has commissioned and received prepared by an educational psychologist, Ms Durling, and consultant neurologist, Dr Rees assessing the level of functioning of RYJ.
38. In a report prepared by Josephine Durling in 2009 is found the opinion that:

"R has an extremely low IQ, unlikely to be capable of leading a fully independent adult life and in this respect will need help, support and care for the foreseeable future. Her limitations

make her vulnerable. She is not capable of holding down employment and looking after herself in the same way that it is expected from her peers. Fewer than 0.1% of the population have cognitive abilities as low as this. She is in need of an educational environment to support, stimulate and provide for her learning needs as long as possible. She does not deal with change effectively.

She is able to understand the here and now but finds it extremely difficult to comprehend events that are going to happen in the future. She is likely to experience stress when placed in situations where she is asked to choose between options. Her thinking and reasoning skills are exceptionally low and therefore asking R for her opinion should be an option that is only used in the light of the knowledge that she has global learning weaknesses. She is likely to give the opinion that she believes the person asking wants her to give.

It is appropriate that she receives 24 hour a day residential care together with special schooling for a young person who suffers severe global learning difficulties. If she were to be removed from the school which she then attended it would only be appropriate if another similar school were found that could offer the same levels of support, care and education.

I cannot see the merit in changing her then placement given all the above in light of the fact that R cannot understand or deal effectively with change. I believe it would be negligent to remove this young girl from her current placement since to do so would mean that she would not be receiving a continuous and sustained level of care that is currently available to her.”

39. She recommended that:

“RYJ’s teachers, therapists, mentor and educational psychologist should be encouraged to maintain regular communication to ensure that they use consistent approach throughout R’s day, to use concise, verbal directions by explaining tasks with as few words as possible and clarified with visual cues and demonstrations; to assist her verbal communication by reinforcing her ability to correctly label concrete objects, feelings and abstract concepts; and to improve her short-term memory and vocabulary abilities by [various games].”

She thought RYJ’s language development could be assisted and enhanced in various ways: that those dealing with her should be encouraged to use concrete language and materials geared to RYJ’s level of language processing and, in order to cope with the difficulty in processing language, the question should be formed directly as a teaching technique. Visual cues

should be used with verbal material to assist acquisition of verbal concepts and computer-aided learning of letters, numbers and vocabulary words, practical new skills and that certainly activities to improve language development and verbal categorisation ability should be chosen

40. With this and all other advice given it was clear that those who were to deal with RYJ should acknowledge the manner in which her ability to participate in her educational life could be facilitated. It will apply, by extension, to the manner of facilitating and articulating her decision making.
41. I note that this particular report of Ms Durling was prepared on 17th February 2008 at a time when RYJ was attending the school identified for her by her mother and which she had attended since 2003. The advice of Ms. Durling was ignored by the mother when she removed RYJ from that placement in September 2008. This particular assessment is outdated and, it is clear from subsequent events, somewhat undermined by the ease with which RYJ has settled so well into St. Mary's, which she regards to be her "college", regime.
42. The report of Dr. Rees, consultant neurologist, dated 19th February 2009, records that:

"She had childlike effect, knew the day but not the year and did not seem to have a concept of what a month might be. She was able to co-operate with the neurological examination".
43. These reports from 2008 and 2009 were not prepared for the purpose of assessing her capacity although the mother argues that their contents impact upon the reasoning and opinion of Dr. Rickards and Mr. Sinclair. Dr Rickards and Mr. Sinclair who have read them and taken them into account in reaching their overall conclusion are not swayed from their consistently expressed opinion that RYJ has capacity, given the right 'environment', to reach decisions regarding her welfare at the time when it is necessary for her to make them.
44. Dr. Rickards does query the ability of R to make strategic decisions including those concerning her long-term care and placement and in this allies himself with the comment of Ms Durling that "She is able to understand the here and now but finds it extremely difficult to comprehend events that are going to happen in the future."
45. That there will need to be long-term planning for RYJ's care and placement is obvious but will not be capable of final resolution or need to be implemented before the expiry of 2 years if she remains at St. Mary's. Dr. Rickards opinion is that having all due regard to RYJ's present difficulties relating to the consideration of the abstract that, given time and the right environment, she will be able to make decisions concerning the long-term care and placement. He considers that in such matters it was not unusual, given her chronological age, to anticipate that support would be needed to make such decisions and, as he commented, it is the rare and exceptional case when there can be said to be total knowledge as to future events.

46. VJ argues that RYJ's responses and choices are influenced by the way information is presented or questions are phrased, that she is suggestible and can be manipulated by others and cannot understand the consequences of her choices. In her oral evidence it was clear that VJ questions the weight given by RYJ to short-term enjoyment without regard to overall consequence. In this fashion she concludes that RYJ will choose to reside with Aunt J rather than VJ because of presence of her cousins. VJ considers that RYJ's responses are not viewed with the relevant degree of scepticism bearing in mind her assessed low level thinking and reasoning skills. In this respect she relies upon the views expressed by Ms. Stevenson in her final statement which refer to the inconsistency of RYJ's decisions including contact – interestingly, an area in which VJ appears to accept that RYJ does have capacity
47. Ms. Stevenson in her statement dated 6th September 2010 referred to the visits that she made to RYJ during August when she asked where she would like to live and what contact she would like to have with her mother. She said she found it difficult to get a clear and consistent answer from RYJ and that RYJ's advocate, Philippa Barber, who had visited twice over the summer, also reported that she had found it difficult to get a clear answer from R. Ms Stevenson concluded there from that RYJ was confused about what decisions she is allowed to make, what people are expecting of her and also had difficulty in understanding that during the summer months St. Mary's school and residential unit were closed and RYJ could not live there during that time.
48. She said that:
- “On speaking to the social worker in St. Mary's School, Ms. Ensor, that she [Ms. Ensor] had formed that impression as well.”
- She noted that:
- “The school said that R had always found it difficult to make abstract decisions about weekends when she is at school and could become very confused.”
49. Immediately thereafter Ms Stevenson refers to guidance in Chapter 3 of the Code of Practice relating to the assistance to be proffered in facilitating the decision making process of an individual in accordance with their particular limitations. It seems to me that in RYJ's case in August 2010 on occasions it was more honoured in the breach than in its observance. Quite clearly the fact of inconsistency is not necessarily a sign of confusion. Equally, confusion is not necessarily an indication of incapacity.
50. In this case RYJ had made known her particular views which, even if adjudged objectively to vary according to date; time and interviewer are not diagnostic of lack of capacity. Ms Stevenson did not appear to consider that RYJ's change of mind may reflect the circumstances/wishes/desires of the moment; a reluctance to engage or genuine indecision. Whatismore, it seems that those particular views were effectively challenged by continual repetitive questioning to 'confirm' the same. In those circumstances it is unsurprising that any person without impairment may begin to doubt that which they said initially.

51. In the circumstances I am not satisfied on the balance of probabilities that this inconsistency was anything other than a wish to bring to an end the repeated questioning which she was being subject to. Nor am I satisfied that it is anything other than the facility employed by R to effectively move on during the day without interruption to her plans.
52. Mr. Sinclair's impression of RYJ is not inconsistent with this view. He, in his report to the court, is very conscious of RYJ's ability to process decision-making mixed with a cocktail of conventional adolescent rebellion.
53. Ms. Stevenson subsequently, in oral evidence, adopted the views of Mr. Sinclair with whose evidence she said she was in total accord. Bearing in mind the number of "strangers" introduced to RYJ in recent months there is absolutely no evidence before me to support Ms Durling's view that she does "experience stress when placed in situations where she is asked to choose between options" when questioned in an appropriate environment or any indication of "suggestibility" beyond the norm of those continuously questioned on the same topic and their answer apparently not accepted.
54. In Dr. Rickards' view, placement at St. Mary's has resulted in RYJ's apparent happiness and during interview she showed ability to take in, process and communicate choices. This opinion formed at interview with RYJ was confirmed by those who had been most closely involved in her care. So far as her opinions were made clear, she showed reasonable justification on the subject of where she should live and whom she should have contact with. In his view she therefore demonstrated, in accordance with section 3 of the Act, the capacity to make decisions at the material time concerning her residence at the school and her residence during holidays and contact with her maternal aunt.
55. There is no issue between Ms Durling and the expert witnesses, Dr Rickards and Mr Sinclair as to the methods to be used to facilitate her decision making. These are within the compass of the Act.
56. Dr Rees's comment is without context. There is no indication that he employed the methods advocated by Ms Durling to ensure RYJ's understanding.
57. Dr Rickards, when pressed in cross-examination by Counsel on behalf of VJ to reflect that RYJ would not be able to comprehend the relevant nuances of the Statement of Special Educational Needs, drew the distinction between the ability of RYJ to make a general decision as to education per se and the decision that RYJ, as a person with capacity, would be called upon to make as to whether or not she should change schools or educational establishments. He makes the point that her present situation means that she is not being required to choose an education; rather, to choose whether she wants to move from her present establishment in which she receives an adequate education to another with a different emphasis. I have no doubt that RYJ would be unable to grapple with the more complex issues identified by the Statement of Educational Needs: for example, in the comparison of the merits of one to one teaching in another establishment and one to five teaching in her present establishment. However, Dr Rickards and Mr. Sinclair agree that RYJ is obviously able to prioritise her happiness at her present state of affairs and, therefore, the emotional security which is provided to her by St. Mary's and thereby give credence to her decision to remain.

58. In Dr Rickard's view it is unnecessary for his determination of RYJ's capacity that she should understand all the details within the Statement of Special Educational Needs. It is unnecessary that she should be able to give weight to every consideration that would otherwise be utilised in formulating a decision objectively in her 'best interests'. I agree his interpretation of the test in section 3 which is to the effect that the person under review must comprehend and weigh the salient details relevant to the decision to be made. To hold otherwise would place greater demands upon RYJ than others of her chronological age/commensurate maturity and unchallenged capacity.
59. Mr. Sinclair's evidence was unequivocally consistent, as it has been throughout, that RYJ has capacity to make welfare decisions at the appropriate time in terms of the decision required of her regarding residence, care and contact. His only caveat was that he was not a social worker specialising in education and, as such, was unable to comment upon the substance of those reports dealing with the Special Educational Needs of RYJ. In this regard I return to the evidence of Dr. Rickards that the context of her decision must be taken and not the generality.
60. I therefore conclude that the presumption of capacity is not displaced in RYJ's case in relation to care, contact, residential education, residence.
61. I turn to consider LBL's application to invoke the inherent jurisdiction. As I have indicated, by the conclusion of the proceedings LBL seemed to suggest that their concerns could be met by appropriate recitals. But it is necessary that I deal, at least in brief, with the application that they within the inherent jurisdiction of the court.
62. I do not doubt the availability of the inherent jurisdiction to supplement the protection afforded by the Mental Capacity Act 2005 for those who, whilst 'capacitous' for the purposes of the Act, are 'incapacitated' by external forces –whatever they may be–outside their control from reaching a decision. (See SA (A Vulnerable Adult) [2005] EWHC 2942 @ para 79; A Local Authority and Mrs A 2010 EWHC 1549 @ para 79)_ However, I reject what appears to have been the initial contention of this local authority that the inherent jurisdiction of the court may be used in the case of a capacitous adult to impose a decision upon him/her whether as to welfare or finance. I adopt the arguments made on behalf of RYJ and VJ that the relevant case law establishes the ability of the court, via its inherent jurisdiction, to facilitate the process of unencumbered decision-making by those who they have determined have capacity free of external pressure or physical restraint in making those decisions.
63. RYJ's vulnerability is assessed by Mr. Sinclair as that which is associated with her age and limited intellectual functioning. I am not satisfied that it has been established before me that she is unable to recognise and withstand external pressure to appropriate degree nor that she is or is likely to be subject to physical constraint or behaviour that will impact upon her free will and ability and capacity to reach decisions concerning residence, care and contact. All the evidence in the papers before me suggests that even during her minority she was able to withstand the external desires of others by her physical resistance to the same; that she has been able to withstand decisions enforced upon her and that she has been able to verbalise her wishes. The difficulty, as I apprehend it to be, arising from the approach of others to the expression of those wishes.

64. If I were to have found that her vulnerability was exceptional/greater by reason of her limited intellectual functioning and age, these factors would need to have been considered in reaching my decision concerning capacity. If she is unable to withstand external pressure of 'normal/everyday' degree, whether emotional or physical, it seems to me that it would necessarily inform the answer to the question posed at section 3(1)(c) of the Act.
65. In that I have not found that she is so exceptionally vulnerable for the purpose of my consideration under the Mental Capacity Act 2005, it seems to me that there is little that LBL can rely upon in hoping to invoke the inherent jurisdiction of the court. What is necessary in this case, quite clearly, is that the established network already available to RYJ is consolidated with co-operation of LBL, VJ and other family members.
66. The Code of Practice sets out the clear instruction as to the methods to be used to facilitate an individual's ability and facility to make a decision after due process of all information, understanding its relevance and weighing it in the balance. The environment created by the good offices of those responsible for RYJ's care at St. Mary's has been noted by Dr. Rickards and Mr. Sinclair. The mother's suspicion of their lack of neutrality cannot be allowed to undermine the services which they are providing and the practical emotional care which enables me to determine that RYJ has capacity.
67. Mr. Sinclair advises that those who deal with RYJ should avoid duplication of approach suggesting that those individuals with whom she has an especially close relationship at St. Mary's should, during the school term time, act effectively as her advocates enabling her to reach decisions and communicate the same. During school holiday-time the independent advocate, Ms. Barber, will be 'substituted' into that role. Those decisions as to residence, care and contact should be facilitated by the Social Services and acknowledged and accepted by LBL and VJ as the decisions of a young adult with capacity. There is no reason that I can see that those involved in Social Services and also VJ may not be at liberty to clarify the situation with either the school or the independent advocate. I would regard it as unhelpful and undermining to RYJ if they should take it upon themselves to question her directly.
68. Mr. Sinclair made clear his opinion that much of this dispute concerns difficult family dynamics calling for family therapy. I would go further and suggest much of the dispute may also be located around the relationship VJ, the Local Authority and the school which VJ regards with distrust. It appears to me that RYJ's situation would be improved by an enhanced relationship between all relevant parties to these proceedings.
69. RYJ lacks capacity at this time to deal with financial affairs. In this case VJ has applied and been made appointee and therefore is recipient of the benefits payable to RYJ. There is no property or capital otherwise available to RYJ nor is there likely to be in the foreseeable future. The nature of the appointment is administrative. There is no jurisdiction for the court to dismiss VJ as appointee and to replace her with either the relevant officer of the LBL or other family member.
70. No party has pursued the suggestion made in the skeleton argument filed on behalf of VJ that VJ and her maternal aunt be appointed joint deputies. VJ in evidence rather

“scuppered” that by her response that this should be a matter of discussion between aunt J and herself and nobody else.

71. LBL, if so advised, may make application to be substituted as appointee pursuant to the Social Security (Claims and Payments) Regulations 1987. The question I have pondered is whether the appointment of VJ to receive such benefits will lead her to attempt to subvert the findings of the court as to RYJ's capacity in relation to residence, care and contact by unreasonably refusing RYJ access to funds. The evidence before me is that RYJ is competent to handle small amounts of money up to £20; that she should be encouraged in developing her skills in this regard and, in the opinion of Mr. Sinclair, it is likely that she will become capacitous in regard to her financial affairs in due time.
72. During the summer VJ was requested to make available money for RYJ's daily use whilst in local authority-provided accommodation. VJ provided the majority of the sum requested in cash and, it appears, used the remainder in shopping trips on which she accompanied RYJ. I am not satisfied that at this stage VJ's management of RYJ's benefits is not such as to call into question her status as appointee. In those circumstances it seems inappropriate for me to make any statement to influence the decision of those who must determine any application by LBL to be appointed to receive benefits on RYJ's behalf. Only in circumstances where control of the benefits is used to manipulate decisions of RYJ would I consider otherwise.
73. There is one outstanding matter which I deal with which concerns the VJ's application to the Special Educational Needs and Disability Tribunal concerning RYJ's future educational provision. The consensus of Dr. Rickards, Mr. Sinclair and Ms. Stevenson (on behalf of LBL) is that RYJ's placement at St. Mary's is unequivocally benefiting her and is RYJ's clear and consistent choice of educational facility. I question the ability of the Tribunal to make an order which deprives RYJ of that choice given my determination that she has capacity to determine whether or not she should remain in that establishment.
74. Looked at from the perspective of her 'best interests' it seems clear that the removal of RYJ against her will from that establishment would be entirely detrimental to her welfare, emotional and physical. If the Tribunal maintains its jurisdiction to determine RYJ's placement regardless of her majority and capacity, then it seems to me appropriate that a copy of my approved judgment, transcribed at public expense, should be made available for its consideration.
75. Therefore, so far as this hearing is concerned, I determine that at this time R has capacity to make decisions about her care, contact and residence including the provision of education within the residential setting of St. Mary's, Bexhill-on-Sea. I determine that the inherent jurisdiction is not invoked in the circumstances of this case and is not available to displace RYJ's autonomy in decisions relating to care, contact and residence including education. The appointment of VJ to receive her benefits is reasonable and I do not seek by any means in this judgment to support her dismissal and substitution by another. I merely reflect that any attempt to constrain RYJ's decisions reached appropriately should be regarded as good reason to replace VJ as appointee.

76. In those circumstances I need only reflect that RYJ's placement at St. Mary's and her wishes as to contact with her aunt and VJ appear to be in accordance with what I would in, other circumstances, consider to be in her best interests and are unlikely to expose her to undue influence or the overbearing of her will.
77. Since I determine there is no jurisdiction for this court to make 'best interest' decisions as to care, contact and residence I query the context in which LBL, will embark upon a fact-finding hearing in relation to allegations of physical assault by the VJ upon RYJ.
78. I make declarations/order accordingly.

(Discussion followed re orders and recitals)