



**IN THE SUPREME COURT
OF THE FALKLAND ISLANDS**

Case Number: SC/CIV/09/24

11th June 2025

Before:

HHJ MALCOLM SIMMONS

BETWEEN

THE DIRECTOR OF HEALTH AND SOCIAL SERVICES

Applicant

V



Respondent

DECLARATORY JUDGMENT AND ORDER

Ms. Hannah Newman-Newing appeared for the Applicant by video link

Ms. Alison Inglis, Guardian ad Litem

1. This matter was last before me on 16th December 2024 when I issued a declaratory Judgment that restrictions placed upon the liberty of the Respondent, [REDACTED], amounting to a deprivation of his liberty were lawful. This matter comes back before me for review.
2. I have received from the Guardian ad Litem, Alison Inglis, a very detailed report dated 15th May 2025 and an addendum thereto dated 6th June 2025, for which I thank her. I have also read and taken into account an updated Care and Support plan that comprises a variety of care and risk assessments; a Mental Capacity Assessment dated 29th April 2024, a letter from Dr. Fraser Gibbs dated 3rd February 2025, a Deprivation of Liberty Report dated 1st May 2025, an Activity Plan dated 6th May 2025 and an affidavit sworn by Samantha Lowe on 30th May 2025.
3. In addition, I have read the reports that were previously before the Court including the Speech and Language Therapist's report dated 4 January 2024; the Consultant Old Age Psychiatrist's report dated 10 September 2024; the Mental Capacity Assessment prepared by Samantha Lowe dated 23 October 2024, the Deprivation of Liberty report by Ms Lowe dated 25 October 2024; and Ms Lowe's affidavit sworn 13 November 2024 and email note prepared by Ms. Inglis following her visit with [REDACTED] on 13th December 2024.
4. [REDACTED] was born on [REDACTED]. He is now [REDACTED] years of age and in the advanced stages of dementia with significant cognitive impairment. He is clearly very frail.
5. In 2019, [REDACTED] experienced a sudden deterioration in his cognitive functioning, subsequently experiencing an episode of what is termed 'Acute Confusional State', requiring hospital admission. At that time, he received a diagnosis of suspected Unspecified Dementia. He experienced further episodes of ACS, from which he has not fully recovered
6. During the covid pandemic, [REDACTED] returned to live at home with the support of the Community Support Team and family members. However, he experienced frequent falls and occasionally became disorientated in the community, on several occasions being found to be 'walking with purpose' in the community, often at night time and inappropriately dressed.
7. In February 2022, [REDACTED] was admitted to [REDACTED], Stanley. Since 29th January 2025 he has been residing at [REDACTED], Stanley. He occupies a large bedroom with en-suite wet room. He has a television and various sensory toys. A range of activities are offered for residents.
8. [REDACTED] remains entirely dependent on the support of care workers to anticipate and meet all his care and support needs. He is no longer able to eat independently and requires the support of a carer to eat and drink. He is incontinent and requires full support to monitor and

manage his continence needs throughout the day. Due to his physical frailty, he is no longer able to walk and he receives the assistance of two carers to transfer using a hoist. He requires the use of a tilt-in-space chair which offers leg rest and back angle recline. When seated, he is required to wear a lap belt to obviate the risk of him attempting to stand unaided and potentially falling. He is unable to reposition himself in bed and requires the support of two carers to change his position in bed every four hours. He also requires the use of a lap belt when using a wheelchair when mobilising in and outside of the home.

9. He receives checks every thirty minutes to monitor his safety and wellbeing. Were these measures not in place, he would be at significant risk of injury, including fractures if the lap belt and accompanying supervision were not used.
10. I did note that [REDACTED] has breakfast and dinner in his room. While he does spend time in the activity room, it does appear much of his time is spent in his room. I agree that it would be beneficial for him to spend time outdoors, although I understand he cannot do this alone and the perennial challenges over staff recruitment and retention may present difficulties in implementing such activities.
11. I note from Ms. Lowes affidavit that [REDACTED] door will remain open to minimize any feeling of being 'shut in'. Further, his Activity Care Plan has been updated to include his being permitted to spend more time outdoors.
12. I agree with Mrs. Inglis that the family should be informed as soon as reasonably practicable if [REDACTED] becomes unwell and that they should also be given an opportunity to be present when [REDACTED] is examined by a visiting consultant, particularly given his inability to effectively communicate.
13. I also note other areas of concern to which Mrs Inglis refers, including care plan documentation, implementation of the care plan, communication, activity and social interaction, physical care and security. I also note the concerns of [REDACTED] daughter, [REDACTED], to which Ms. Lowe refers in her affidavit. As noted above, these concerns have been addressed.
14. Of course, I realise that [REDACTED] is a new facility and teething problems are almost inevitable. I also recognize that demands on public finances present additional challenges.
15. In his letter, Dr. Gibbs describes [REDACTED] dementia as having progressed "very significantly", that he is now completely bed-bound and his dementia is moving into the very late stages. It is worth noting that Dr. Gibbs did suggest reducing some medication that, as I understand it from Ms. Lowes recent affidavit, has resulted in [REDACTED] appearing more

alert.

16. [REDACTED] is not able to clearly communicate his wishes and views verbally, non-verbally or using text or objects of reference. He is not able to use eye contact to indicate preferences. He does not have mental capacity to consent to his care and support arrangements and any deprivations of liberty. I remain satisfied that [REDACTED] has an impairment of mental functioning such that he is unable to make decisions about his own welfare or effectively participate in these proceedings.
17. A care plan, to which reference is made in the affidavit of Samantha Lowe is currently in place that includes supervision and control and restrictions on [REDACTED] autonomy that amount to a deprivation of liberty. Given his impairment of mental functioning and his general frailty, I am satisfied that those restrictions are reasonable, proportionate and necessary for his welfare and that less onerous provisions might put his health and well-being in jeopardy.
18. The arrangements made by the Falkland Islands Government through the Director of Health and Social Services for [REDACTED] treatment and care are, insofar as they amount to a deprivation of his liberty, lawful.



HHJ Malcolm Simmons
Acting Judge of the Supreme Court