



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

Case number: SC/CIV/03/23

15th June 2023

Before:

HHJ MALCOLM SIMMONS

BETWEEN

The Director of Health and Social Services

Applicant

v



Respondent

DECLARATORY JUDGMENT

AND ORDER

Ms. Alice Sowman appeared for the Applicant

Mr. Mark Neves, Guardian ad Litem, appeared for the Respondent

1. This matter was before me on 4th May 2023 when I issued a Declaratory Judgment that the Respondent lacks capacity to decide where he should live and what care and treatment he requires; that he should reside and be cared for at [REDACTED], Stanley and that the arrangements made by the Falkland Islands Government through the Director of Health and Social Services for his treatment and care were, insofar as they amount to a deprivation of liberty, lawful.
2. I have read the Best Interests Decision dated 28th April 2023, filed on 9th May 2023, the further affidavit of Samantha Lowe sworn on 12th May 2023 and the Applicant's Case Summary filed on 13th June 2023 that includes updated information about the Respondent's welfare. I have also received the report of the court-appointed Guardian ad Litem. It is a thorough report that has given me a very clear insight into the Respondent's capacity and whether and to what extent the restrictions placed upon his liberty are proportionate and necessary for his continued well-being.
3. I have heard submissions of Ms. Alice Sowman and the Guardian ad Litem, Mr. Neves which I have carefully considered and taken into account in my findings.
4. On occasion, the Respondent has been confined to his bedroom. This has been for his own safety and welfare and also for that of other residents of [REDACTED]. There is a finite number of staff available and on duty at [REDACTED] and one-to-one care of residents is not possible. While I recognise that confinement may become necessary, it should be exceptional and a written record kept of the reason and duration of all periods of confinement and include the nature and frequency of supervision during any periods of confinement.
5. I am satisfied the current restrictions placed on the Respondent's liberty are necessary, reasonable and proportionate and, so far as possible, take account of his ascertainable wishes, feelings, beliefs and values. The restrictions on the Respondent's liberty continue to be lawful and shall remain in place for the time-being, subject to a further review in six months.
6. If there is any material change in the Respondent's care needs before the next review, the parties have liberty to come back before this Court.
7. In consequence whereof, I make the following Order:

- a. On or before 13th November 2023, the Guardian ad Litem shall prepare and file in Court a report in respect of the Respondent;
- b. On or before 17th November 2023 the Applicant shall file in court any further report and case summary;
- c. Care reports are to be filed by the Applicant every 8 weeks;
- d. This case is listed for review at 10am on 20th November 2023;
- e. Liberty to apply;
- f. No Order for costs.

HHJ Malcolm Simmons