Neutral Citation Number: [2022] EWHC 477 (Ch)

Case No: PT 2020 000367

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 04/03/2022

Before :

CHIEF MASTER SHUMAN

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Between :

HOSSEIN CHAHARSOUGH SHIRAZI
(by his Litigation Friend LEILA GOLESORKHI-SHIRAZI) **Claimant**

- and -

(1) SUSA HOLDINGS ESTABLISHMENT
(an Anstalt organised under the laws of the Principality of Liechtenstein)
(2) SUSA HOLDINGS LIMITED **Defendants**

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MR A. LEARMONTH QC (instructed by Seddons Law LLP) for the Defendants/Applicants.
MR R. DEW (instructed by Charles Russell Speechlys LLP) for the Claimant/Respondent.

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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.

.....

CHIEF MASTER SHUMAN

CHIEF MASTER SHUMAN :

1. This is an application by the defendants made by written notice dated 13 October 2020 to remove the claimant's litigation friend, Mrs Shirazi. I have informed the parties that I will dismiss the application and that written reasons will follow; so that it does not impact on their trial preparation.

2. The defendants rely on 6 witness statements: two made by John Melville-Smith, solicitor, dated 13 October 2020 and 18 January 2021; three made by Babak Shirazi dated 9 December 2020, 28 January 2021 and 24 June 2021; and one made by Asal Shirazi dated 9 December 2020. The claimant relies on 8 witness statements: two made by Mrs Shirazi dated 29 October 2020 and 17 December 2020; 4 made by Cyrille Piguet, partner and attorney-at-law at Bonnard Lawson, dated 29 October 2020, 17 December 2020, 26 May 2021 and 24 June 2021; one made by Graeme Kleiner, solicitor and partner at Charles Russell Speechlys LLP (CRS) in London dated 29 October 2020; and one made by Robert Avis, barrister employed by CRS in its Geneva office.

3. The defendants also made applications dated 18 January 2021 and 15 September 2021. The 18 January 2021 application sought, amongst other directions, that Mrs Shirazi attend court to be cross-examined, which was dismissed. This will be the fourth substantive judgment that I have given, the others were given on 12 March 2021, 1 June 2021 and 22 October 2021. That gives a flavour of the way in which these proceedings are taking up the court's resources and being litigated. There are now four sets of court proceedings: the claim in this jurisdiction; proceedings brought in Switzerland by Babak Shirazi to remove Mrs Shirazi as the claimant's curator; criminal proceedings in Switzerland against Babak Shirazi, instigated by a criminal complaint made by Mrs Shirazi on behalf of her and the claimant; and proceedings in Liechtenstein brought by Mrs Shirazi on behalf of the claimant seeking to recover founder's rights of Abal, an entity which owns an extensive portfolio of English real property founded by the claimant but now in the control of Babak.

THE PARTIES AND CLAIM

4. The claimant is aged 90 years. He is married to Mrs Shirazi, who is aged 84 years. They have three children, Babak, Asal and Borzou. I shall refer to the children by their first names. The claimant, Mrs Shirazi and Borzou, aged 48 years, live in Nyon, Switzerland.

5. On 2 July 2019 Mrs Shirazi was appointed as curator for the claimant by Marion Zuber, the Justice of the Peace of the district of Nyon; the claimant having lost capacity. Mrs Shirazi has an express power to recover the claimant's assets within and outside Switzerland. The appointment was supported by medical evidence dated 8 April 2019 and 14 June 2019. Babak, who is aged 62 years, continues to oppose the appointment of Mrs Shirazi through the Swiss courts.

6. The claim was issued on 13 May 2020 and amended on 1 September 2020. Mrs Shirazi signed a certificate of suitability of litigation friend dated 11 May 2020, filed by her solicitors CRS.

7. The first defendant is an Anstalt established in Liechtenstein, incorporated on 17 March 2015. Babak is the founder of the first defendant and holds the "founder's rights". The second defendant is a limited company whose sole director and shareholder is Babak.

8. The claim concerns the conveyance by the claimant to the first defendant on or around 12 June 2015 of leasehold interests in: Flat 59, Montrose Court, Princes Gate, London SW7 2QG; Flat C, Montrose Court, Princes Gate, London SW7 2QH; car parking spaces 20 and 20A, Montrose Court; and car parking space 24, Montrose Court (together, the properties). The price was said to be £1,410,000. The first defendant admits that the price has not been paid and asserts it was not intended to be, but remains a debt owed to the claimant. On 24 June 2015 the first defendant was registered as the leasehold owner of the properties.

9. The claim seeks to set aside the conveyance on the grounds that the claimant lacked capacity to enter into the transaction, it was an unconscionable bargain, it was procured by the undue influence of Babak, and/or it was a sham.

10. The defendants defend the claim saying this was part of a tax avoidance strategy agreed in early 2015 between the claimant, Borzou and Babak to mitigate inheritance tax. It is pleaded that the claimant had capacity, although it is acknowledged that he had a diagnosis of Lewy Body dementia in October 2012. In addition the defence relies on a plea of laches.

THE FACTS

11. The claimant and Mrs Shirazi married in 1958 in Iran, having both been born in Iran. They were aged, respectively, 26 years and around 21 years at the time. The claimant had a very successful career as an engineer and businessman in Iran.

12. In 1979 the claimant, Mrs Shirazi and their three children fled Iran during the Islamic Revolution and moved to London, losing their assets in Iran.

13. Between 1979 and 2003 the claimant and Mrs Shirazi lived in London. The claimant built a substantial real property portfolio. Their first family home in London was flat 59 Montrose Court, Princes Gate, London SW7 2QG, which they occupied until the mid-1980's. The majority of the claimant's property portfolio came to be held by a Liechtenstein Anstalt named Abal Establishment (Abal), which the claimant founded in the 1970's.

14. There are proceedings in Liechtenstein over the founder's rights in Abal. Babak says that he was made a director of Abal by the claimant in the 1980s and that the founders rights were transferred to him. Mrs Shirazi, on behalf of the claimant, says that there was no such transfer and/or the claimant lacked capacity. I have seen reference to the property portfolio having a value of tens of millions of pounds.

15. Babak, who is habitually resident in London, has since 1995 assisted the claimant with managing his property portfolio in the United Kingdom. The defendants say that in or about 1995 the claimant gave Babak control of property in the United Kingdom, other than the properties, through Abal. In his appeal from the decision upholding Mrs Shirazi

as the claimant's curator he is described as domiciled in Villars-sur-Glâne, living between London and Switzerland[1].

16. In 2003, on the claimant's case, the claimant and Mrs Shirazi moved to the district of Nyon to take advantage of a Swiss fixed tax agreement. They have remained living in Switzerland ever since. The defendants' case is that they moved there in 2011.

17. In 2009 the claimant's health was starting to deteriorate. The pleaded case on behalf of the claimant is that he lost capacity to administer his own affairs from in or around 2010. This is denied by the defendants and will have to be tested at trial.

18. On 1 July 2011 a declaration was made by the claimant that he had provided Borzou with funds of £5,000,000 during the past 12 years towards his business activities, and that the funds should eventually be repaid in stages when Borzou could afford to do so. In the judgment of the Swiss Court of Trustees it is recorded that Borzou denied that he had ever received a loan from his parents. Instead he said that the document was prepared by the claimant, during Borzou's divorce, because his wife had wanted the claimant and Mrs Shirazi to pay her money. He alleged that Babak controlled the claimant and Mrs Shirazi's assets and that they lived in a modest flat adapted for their physical needs.

19. On 4 November 2011 Borzou was convicted of an offence under section 72(3)(b) of the Value Added Tax Act 1994. He was sentenced to 12 months in prison, suspended for 18 months. HMRC were also paid the sum of £1,600,000, which was transferred by the claimant and Mrs Shirazi.

20. In October 2012 the claimant was diagnosed as suffering from Lewy Body dementia.

21. In or around March 2015 Babak instructed Seddons, the solicitors acting for the defendants in this claim, to acquire the properties from the claimant. An email was sent to Seddons on 6 March 2015 purporting to be from the claimant confirming that he was aware that Babak wished to purchase the properties, £1.4 million was a fair valuation of the properties, that he did not require legal representation and that Babak and Borzou were authorised "to deal with the formalities of this transaction on the [claimant's behalf]".

22. The defendants says that between 2012 and 2015 the claimant, Babak and Borzou received legal advice and accountancy advice in relation to the claimant's potential liability for inheritance tax. It is an issue in the claim whether a transfer of the properties to an Ansalt was tax advantageous for the claimant.

23. Between 6 March 2015 and 12 June 2015 Seddons prepared transfer deeds in respect of the transfer of the properties from the claimant to the first defendant, which were in form TR1, and were dated 12 June 2015 on completion. The claimant did not have a solicitor acting for him in this transaction. The price was not paid by the first defendant.

[1] Family context, point 5.

24. On 15 February 2017 Borzou sent an email to Babak regarding a possible loan from the claimant of £750,000, to cover a shortfall in completion monies for the purchase of a property, and which would be repaid within 12 months.

25. On 4 March 2019 Mrs Shirazi made a declaration on behalf of her and the claimant recording that they had gifted Borzou approximately £5.5 million between 2011 and 2015.

26. On 2 July 2019 Mrs Shirazi was appointed as the claimant's curator. The evidence relied upon by the Justice of the Peace included two medical certificates from the claimant's treating physician since 2012, Dr Rassam-Hasso. The first dated 8 April 2019 recorded that the claimant has a slowly progressing moderate dementia, where the claimant had moments of lucidity. During one of those episodes he expressed his wish to entrust his interests, in particular, the management of his wealth to Mrs Shirazi. The second dated 14 June 2019 certified that the claimant's "overall discernment capability was currently altered in a context of progressive dementia." Dr Rassam-Hasso also provided a certificate that Mrs Shirazi was mentally healthy and able to make her own decisions but had a number of physical conditions that made travel difficult, and she was dependent on Borzou for daily activities as well as mental and emotional support.

27. On 6 March 2020 Mrs Shirazi filed a criminal complaint against Babak on behalf of herself and the claimant. It is alleged that over the course of a number of years Babak has taken advantage of the claimant's state of health and assumed his identity to remove almost all of the claimant's assets, including those contained in bank accounts which runs to tens of millions of Swiss francs.

28. On 9 April 2020 Babak applied to have Mrs Shirazi removed as the claimant's curator in Switzerland.

29. On 13 May 2020 the claim was issued in the High Court.

30. On 5 June 2020 the Office of the Attorney General of Switzerland issued an order to open an investigation against Babak for suspected fraud, alternatively unfair management and abuse of confidence. Three bank accounts belonging to either Babak or Babak and his family have been frozen with a total amount of CHF 10,198,956.

31. On 20 July 2020 the Swiss Justice of the Peace confirmed the appointment of Mrs Shirazi. The parties appear to agree that this is an inquisitorial process and that the Justice of the Peace has a wide discretion on how to conduct the investigation.

32. On 23 July 2020 Babak appealed that decision arguing that Mrs Shirazi did not have capacity to carry out the management of the claimant's assets, which she delegates for medical and personal reasons to Borzou. He contested all of the medical evidence relied on by Mrs Shirazi before the Justice of the Peace. He went on to allege that Borzou exerts such influence that he had Mrs Shirazi appointed as curator so that he could take control over the family assets.

33. On 1 September 2020 the claim in the High Court was amended.

34. On 16 November 2020 the Court of Trustees handed down judgment. It partially allowed the appeal and remitted the question of whether the claimant's interests are

compromised or likely to be compromised by Borzou's alleged influence over Mrs Shirazi back to the Justice of the Peace for determination including specific reference to loans or donations made to Borzou. Until the new decision is handed down the court declared that the order of 2 July 2019, appointing Mrs Shirazi as curator, remains valid.

35. At paragraph 3.3.1 the Court of Trustees, having criticised Babak for failing to undermine Mrs Shirazi's capacity by evidence rather than criticising the reports before the Court, made the following apposite comments,

> "First of all, it should be noted that advanced age or older age - unlike young age -does not deprive a person of the faculty to act reasonably within the meaning of Art. 16 CC. Secondly, the fact that the respondent cannot read because of a macular degeneration, that she has a mobility impairment and that she does not understand French, also does not call into question her ability to discern."

The court went on to say,

> "on the contrary, the evidence in the case file point on the contrary to [Mrs Shirazi] capacity of discernment, at least with regard to the management of current affairs and the appointment of agents to conduct legal proceedings."

36. The case has been remitted to the Justice of the Peace who, as far as I am aware, has yet to make her determination. On 26 May 2021 she dismissed an application by Babak's Swiss lawyer to appoint a provisional representative for the claimant.

THE LAW

37. There are two mechanisms by which a person is appointed to act as a litigation friend under the Civil Procedure Rules 1998: self-certification (CPR rule 21.4 and 21.5) or court appointment (CPR rule 21.6, 21.7 and 21.8).

38. Self-certification. CPR rule 21.4 provides,

> "21.4(1) This rule does not apply if the court has appointed a person to be a litigation friend."
>
> (2) A deputy appointed by the Court of Protection under the 2005 Act with power to conduct proceedings on the protected party's behalf is entitled to be the litigation friend of the protected party in any proceedings to which his power extends.
>
> (3) If nobody has been appointed by the court or, in the case of a protected party, has been appointed as a deputy as set out in paragraph (2), **a person may act as a litigation friend if he—**
>
> **(a) can fairly and competently conduct proceedings on behalf of the child or protected party;**

> **(b) has no interest adverse to that of the child or protected party; and**
>
> **(c) where the child or protected party is a claimant, undertakes to pay any costs which the child or protected party may be ordered to pay in relation to the proceedings, subject to any right he may have to be repaid from the assets of the child or protected party.**" [my emphasis]

39. The process for becoming a litigation friend is set out in CPR rule 21.5 as follows,

> "21.5(1) If the court has not appointed a litigation friend, a person who wishes to act as a litigation friend must follow the procedure set out in this rule.
>
> (2) A deputy appointed by the Court of Protection under the 2005 Act with power to conduct proceedings on the protected party's behalf must file an official copy of the order of the Court of Protection which confers his power to act either—
>
> (a) where the deputy is to act as a litigation friend for a claimant, at the time the claim is made; or
>
> (b) where the deputy is to act as a litigation friend for a defendant, at the time when he first takes a step in the proceedings on behalf of the defendant.
>
> **(3) Any other person must file a certificate of suitability stating that he satisfies the conditions specified in rule 21.4(3) either—**
>
> **(a) where the person is to act as a litigation friend for a claimant, at the time when the claim is made**; or [my emphasis]
>
> (b) where the person is to act as a litigation friend for a defendant, at the time when he first takes a step in the proceedings on behalf of the defendant.
>
> (4) The litigation friend must—
>
> (a) serve the certificate of suitability on every person on whom, in accordance with rule 6.13 (service on a parent, guardian etc.), the claim form should be served; and
>
> (b) file a certificate of service when filing the certificate of suitability.
>
> (Rules 6.17 and 6.29 set out the details to be contained in a certificate of service.)

40. Court appointment. Part 21.6 provides that,

> "21.6(1) The court may make an order appointing a litigation friend.
>
> (2) An application for an order appointing a litigation friend may be made by—
>
> (a) a person who wishes to be the litigation friend; or
>
> (b) a party.
>
> (3) Where—
>
> (a) a person makes a claim against a child or protected party;
>
> (b) the child or protected party has no litigation friend;
>
> (c) the court has not made an order under rule 21.2(3) (order that a child can conduct proceedings without a litigation friend); and
>
> (d) either—
>
> (i) someone who is not entitled to be a litigation friend files a defence; or
>
> (ii) the claimant wishes to take some step in the proceedings,
>
> the claimant must apply to the court for an order appointing a litigation friend for the child or protected party.
>
> (4) An application for an order appointing a litigation friend must be supported by evidence.
>
> **(5) The court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed satisfies the conditions in rule 21.4(3).**" [my emphasis]

41. CPR rule 21.7 sets out the court's power to change a litigation friend or to prevent a person acting in that capacity,

> "21.7(1) The court may—
>
> (a) direct that a person may not act as a litigation friend;
>
> (b) terminate a litigation friend's appointment; or
>
> (c) appoint a new litigation friend in substitution for an existing one.
>
> (2) An application for an order under paragraph (1) must be supported by evidence.

> **(3) The court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed satisfies the conditions in rule 21.4(3).”** [my emphasis]

42. The criteria for whether a person may act as a litigation friend or is appointed by the court is the same and comprises the 3 conditions set out in CPR rule 21.4(3):

(a) Can fairly and competently conduct proceedings on behalf of the child or protected party;

(b) Has no interest adverse to that of the child or protected party; and

(c) Where the child or protected party is a claimant, undertakes to pay any costs which the child or protected party may be ordered to pay in relation to the proceedings, subject to any right they may have to be repaid from the assets of the child or protected party.

43. Mr Learmonth, counsel for the defendants, emphasised that the court has an unconstrained jurisdiction to remove a litigation friend. The fact that they satisfy the conditions in rule 21.4(3) does not mean that a failure to satisfy them is the only basis on which an existing litigation friend may be removed. He referred, in particular, to *Re A (Conjoined Twins: Medical Treatment) (No 2)* [2001] FLR 267 at paragraph 12 where Ward LJ said,

> “Neither r 4.10(9) of the Family Proceedings Rules 1991 nor the corresponding provision of the Civil Procedure Rules 1998 (r 21.7(1)) specifies any limit on the court’s power to terminate the appointment of a guardian ad litem or litigation friend. The President focused on the particular situation in which the court is asked to replace a guardian ad litem because the guardian has in the conduct of litigation taken a course of action (in which we include an omission), or is about to take a course of action, which is manifestly contrary to the best interests of the child whose interests it is the guardian’s duty to safeguard. If the guardian (or litigation friend) does act manifestly contrary to the child’s best interests, the court will remove him even though neither his good faith nor his diligence is in issue.”

44. Mr Learmonth went on to submit that the touchstone that lies behind the CPR Part 21 and the Mental Capacity Act 2005 (the MCA) is the protected person’s best interests and that governs how the court’s jurisdiction is to be exercised. He used interchangeably decisions of the Court of Protection with decisions in the civil jurisdiction applying the principles of CPR Part 21.

45. The MCA is a statutory framework within which actions are taken or decisions made in the best interests of a person who lacks capacity. Section 4 sets out a best interests checklist outlining what needs to be considered before acting or making a decision for that person. The focus in Court of Protection cases and indeed the subject matter of the litigation is the person’s best interests. To that extent Court of Protection decisions may make very useful statements and provide guidance on how a court may approach an issue under CPR rule 21.4, but they are not fully on all fours with it. To align the MCA to Part 21, as Mr Learmonth is effectively suggesting, is to miss the focus of Part 21

within civil litigation. As Mr Dew, counsel for the claimant, observed the focus is on the outcome of the proceedings and obtaining the best possible outcome for the protected person.

46. In *Davila v Davila* [2016] 4 WLUK 347 there was a long-standing family dispute involving two brothers, Alvaro and Ricardo, and their mother, Marina. Ricardo completed a certificate of suitability, consenting to act as the litigation friend of Marina, for a claim issued in the High Court. The claim concerned the transfer of £2.6 million from an account held by Marina on the written instructions of Alvaro. There was some difficulty in serving Alvaro, an order permitting service by an alternative method was made and then default judgment entered for c. £.4.1 million (the sum transferred and interest). Marina died. Alvaro sought to challenge the procedural steps taken and to set aside the default judgment. He also sought to retrospectively revoke the appointment of Ricardo as litigation friend and to contend that the proceedings were a nullity. Laurence Rabinowitz QC sitting as a deputy High Court Judge refused to set aside judgment and rejected the challenge against Ricardo appointment as litigation friend.

47. At paragraph 137 the Judge made some observations that are pertinent to the issues before me,

> "(1). As noted above, CPR 21.4(3)(b) stipulates that in order for a person to act as a litigation friend that person must have "no interest adverse to that of the …protected party". The relevant inquiry here is directed towards the conduct and outcome of the litigation for which the individual is to be appointed as litigation friend, and it will in most cases not be relevant to search, outside the bounds of the particular litigation, for some factor that might suggest some potential conflict between the interests of the party and the interests of the litigation friend unless it can reasonably be said that this potential conflict may also affect the manner in which the litigation friend is likely to approach the conduct of the litigation itself."
>
> "(10). Again, as it seems to me, the purpose of the requirement that the litigation friend be able "fairly and competently" to conduct proceedings on behalf of the protected party is likely to be to ensure that the litigation friend has the skill, ability and experience to be able properly to conduct litigation of the sort in question. At the same time, what the requirement is in my view unlikely to have envisaged, at least in general and save perhaps in exceptional cases, is that the court should be required to conduct a general inquiry extending far beyond issues of skill, ability and experience, and instead venturing into a consideration of unproven allegations of a series of potential transgressions said to have been committed over a period of years by the litigation friend in transactions not directly related to the matters giving rise to the litigation itself."
>
> "(11). … By contrast, what I would suggest is unlikely in general to assist the court in a case such as the present, are simply

> allegations, contested on all sides, about matters arising in the context of other transactions, which are said to establish unsuitability."

48. Quite properly the court was discouraging parties from conducting a general and wide-ranging enquiry to establish that a litigation friend was unsuitable.

49. In *Raqeeb v Barts Health NHS Trust* [2019] EWHC 2976 MacDonald J said in respect of rule 21.4(3)(a),

> "23. Within the foregoing context, two matters emerge with respect to the duty of the litigation friend to fairly and competently conduct proceedings. The first is the central role of legal advice in the discharge of the duties of the litigation friend has been emphasised by the courts. As noted above, in In Re Whitall Brightman J emphasised the need for the guardian ad litem to act "under proper legal advice". In OH v Craven Norris J also emphasised the central role played by the legal advice received by the litigation friend in the discharge of his or her duties.
>
> 24. The second is that whilst the litigation friend is required to act on legal advice, he or she must be able to exercise some independent judgment on the legal advice she receives (Nottinghamshire CC v Bottomley [2010] EWCA Civ 756). In doing this, the litigation friend must approach the litigation with objectivity.
>
> 25. Within this context, there is longstanding authority that a litigation friend who does not act on proper advice may (not must) be removed (see Re Birchall (1880) 16 ChD 41 at 42 per Sir George Jessel MR) The corollary of this latter position is articulated in the White Book at 21.7.1 which makes clear that:
>
> "If a solicitor is acting for child or protected party, it is thought that they would be under an obligation to inform the court of any concern that the litigation friend was not acting properly."
>
> Thus, to adopt the words of Brightman J in a further passage in In Re Whittall, the litigation friend is not "a mere cypher"."

50. In *Hinduja v Hinduja* [2020] EWHC 1533 (Ch); [2020] 4 WLR 93 Falk J qualified some of the objectivity referred to by MacDonald J in *Raqeeb* at paragraphs 58 to 61 she said,

> 58. … At para 28 he referred to examples in the authorities of adverse interest that may disqualify a person from acting as a litigation friend, one being a relative with a financial interest in the outcome of the case.

> 59. With respect, I would suggest that some caution is required in relation to MacDonald J's comments about objectivity. It should also not be assumed that a relative with a financial interest is necessarily debarred from acting as a litigation friend.
>
> 60. The comments made about objectivity were obviously made in the context of the facts of that case. The key tests to apply are those set out in the rules. In conducting litigation fairly and competently on behalf of a protected party, it is obvious that a litigation friend must acquaint him or herself with the nature of the case and, under proper legal advice, make decisions in the protected party's best interests. Being "objective" in this context cannot mean independent or impartial vis-à-vis both parties to normal adversarial civil litigation. The litigation friend is acting on behalf of the protected party. Any objectivity required must relate to the litigation friend's ability to act in the protected party's best interests, and in doing so listen to and assess legal advice, and properly weigh up relevant factors in making decisions on the protected party's behalf.
>
> 61. The requirement not to have an adverse interest is closely linked to the requirement that the litigation friend can fairly and competently conduct the proceedings. Any adverse interest would obviously risk compromising the litigation friend's ability to act fairly in the protected party's best interests, or at least risk giving the appearance of doing so. …"

51. Drawing these strands together the approach of the court to an application such as this is to consider whether the litigation friend satisfies the criteria in CPR rule 21.4(3). The question of whether the litigation friend can fairly and competently conduct proceedings on behalf of a protected party (criteria 21.4(3)(a)) necessarily involves consideration of whether they are acting in the best interests of the protected party. Whilst I accept Mr Learmonth's submission that simply satisfying the criteria will not mean that a litigation friend would never be removed, it is difficult to think of a practical example where that might arise, unless perhaps the overriding objective would support appointing a proposed litigation friend over a current one.

THE APPLICATION

52. The task of the court is not, as the thrust of Mr Learmonth's submissions suggest, to look at the litigation friend as a counsel of perfection and then consider whether Mrs Shirazi meets that standard. That is a flawed approach. The court is looking first at whether Mrs Shirazi meets the test to act as litigation friend. It is not engaged in a forensic analysis of her mental and physical capabilities per se. This application is not a trial making findings of fact to support the defendants' contention that Borzou's influence over Mrs Shirazi is such that it adversely impacts on her ability to act as litigation friend for the claimant. Although the defendants did apply to have Mrs Shirazi cross-examined during this application, which was refused.

53. Mr Learmonth cautions me not to accept at face value statements made by Mrs Shirazi and her lawyers because they are self-serving. He suggested that Mr Piguet had been misleading in his witness statement by reference to the judgment of the Court of Trustees which recites that in a letter dated 12 June 2020 Mrs Shirazi had withdrawn her agreement to the appointment of another curator because of solicitor correspondence in England wherein Babak had assumed that proceedings would be suspended or end quickly. In Mr Piguet's first witness statement at paragraph 26 he says that it became clear that Babak's challenge to Mrs Shirazi's curatorship in Switzerland was a tactical attempt to interfere with proceedings in Liechtenstein and England and not motivated by a desire to protect the interests of the claimant and Mrs Shirazi. To be fair to counsel this was raised in his reply, but I do not accept that Mr Piguet is misleading the court.

54. Mr Learmonth also rightly recognises that the court is entitled to be sceptical when one party to litigation attempts to remove the other side's litigation friend. That is particularly so when, as here, the application involves a critique of how CRS take instructions from Mrs Shirazi and allegations in solicitor correspondence and repeated in this application that Mrs Shirazi is not the true source of the instructions. I infer that it is being implied that CRS are acting in breach of the SRA Code of Conduct for Solicitors, although the defendants dispute this saying they are simply pointing out that Borzou has given instructions to CRS on Mrs Shirazi's behalf. Certainly the evidence does not suggest that CRS are acting in breach of the Code, indeed Mr Avis' direct evidence is that he and CRS are acutely aware of their obligations.

55. Here, Babak who gives instructions on behalf of the defendants, is the founder of the first defendant and holds the founder's rights and is the sole director and shareholder of the second defendant. His position is that this litigation should not have been brought and that the removal of Mrs Shirazi as litigation friend will bring it to an end. He stands to gain if the claim is not pursued because the first defendant is the registered leasehold owner of the properties, which the particulars of claim asserts were at prices "significantly below the true market value"[2]. He also suggests that if Mrs Shirazi were removed this litigation would be compromised as he has already offered to return the properties, although that offer is very much on Babak's terms.

56. These types of applications should be exceptional, they are pregnant with potential abuse. Otherwise a new layer of litigation will be created at significant cost; which risks derailing the proceedings, where a final determination on the actual merits of the claim is shunted off further down the line. Again this was a point fairly accepted by Mr Learmonth but who then went on to submit that this is that type of case where there is a bitter dysfunctional family dispute where Mrs Shirazi is cognitively, physically and mentally reliant on Borzou. Indeed I fully accept that there are cases where an application to remove should be made. Moreover the court is under a positive duty to scrutinise matters where there is a question over whether the litigation friend can fairly and competently conduct proceedings on behalf of the protected person or that they are free from conflict. As Briggs LJ said in *Zarbafi v Zarbafi* [2014] EWCA Civ 1267,

> "49. … Where a necessary party is a protected party (or, for that matter, a child) it is for the court to ensure that the regime laid

[2] Particulars of Claim, paragraph 35.

> down by Part 21 has been properly complied with, so that the interests of the protected party are properly secured. It is not enough to leave that to other parties to the litigation, in circumstances where, a litigation friend having become obviously conflicted but not having voluntarily ceased to act, the proceedings then continue in a manner capable of having serious adverse consequences for the protected party."
>
> "51. While rule 21.7(2) requires that a party who applies for an order to terminate a litigation friend's appointment or replace her must make an application supported by evidence, nothing in the rules prohibits, or should be understood even to discourage, the court doing so of its own motion, in particular where satisfied that an existing litigation friend has become disabled by conflict, or that a certificate of no conflict is, or always was, manifestly unsound.
>
> 52. The reason for this is not difficult to ascertain. The regime for the securing of proper representation for protected parties is designed for the benefit of those parties, rather than other parties. …"

What I am emphasising is that these types of applications should be rare.

57. Is Mrs Shirazi's status as curator relevant? There is no special status afforded to guardians or curators appointed by courts in different jurisdictions under CPR Part 21. Even a deputy appointed by the Court of Protection will only be able to act as litigation friend, without a court order, if the scope of their appointment includes conducting the proceedings on behalf of the protected party.

58. Although Mrs Shirazi is not a deputy, her position as court appointed curator, is analogous and confers authority on her to act in Switzerland. The order dated 2 July 2019[3] also provides Mrs Shirazi with bespoke authorisations to litigate to recover the claimant's assets in Switzerland, Liechtenstein and in any other foreign state. It is submitted on behalf of the defendants that "there is (in effect) no subsisting Swiss judgment in Mrs [Shirazi's] favour at present."[4] That is wrong. Whilst the Court of Trustees remitted the application back to the Justice of the Peace to consider whether Mrs Shirazi is acting under the influence of Borzou, the court specifically stated that the 2 July 2019 order continues in force.

59. Regardless of the position in Switzerland, Mrs Shirazi still has to satisfy the requirements of CPR rule 21.4(3). To that end a certificate of suitability dated 11 May 2020 was filed by CRS. The certificate records the following information,

> "I consent to act as litigation friend for MR HOSSEIN CHAHARSOUGH SHIRAZI

[3] Authorisations I-III.
[4] Defendants' skeleton argument paragraph 15.3.

> I believe that the above named person is a
>
> [✓] protected party
>
> I am able to conduct proceedings on behalf of the above named person competently and fairly and I have no interests adverse to those of the above named person."

On the question of the claimant's lack of capacity, Mrs Shirazi relies on the 2 July 2019 order, which was made on the grounds that the claimant had lost mental capacity; the order, together with an English translation, is attached to the form. Then under Mrs Shirazi's names, which are typed in capitals, the following additional wording is added,

> "I certify that the information given in this form is correct. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth."

Mrs Shirazi has then signed the form below this certificate and also signed by her full typed name. CRS are recorded as the solicitors to whom documents in this case are to be sent.

60. Mr Dew accepts that if she is removed as curator in Switzerland then her appointment as litigation friend in these proceedings will end. Mrs Shirazi takes the view that the correct place to determine whether she remains curator is Switzerland. Babak does not accept the corollary, challenging her status in Switzerland as a curator and in England as a litigation friend.

61. Although it was criticised by the defendants, Mr Piguet's observation that if Mrs Shirazi is removed as litigation friend in England but remains the curator in Switzerland will lead to extra complexity is a fair one. A litigation friend would have to render invoices to Mrs Shirazi who would have to approve and pay them on behalf of the claimant, or they would have to call on their indemnity. That is not an insurmountable hurdle, and certainly not one that would prevent Mrs Shirazi from being removed as litigation friend.

62. Both counsel have sought to argue that their respective clients have either a meritorious claim or a meritorious defence. Both sides have sought to identify factual discrepancies within the case of the other. Mr Dew says that the claim must be viewed in the context of litigation in other jurisdictions, which he suggests belies the defendants' position that the transfers were part of simple inheritance tax planning but rather were part of a wider pattern of the claimant's assets being allegedly unlawfully transferred into the control of Babak. Mr Learmonth emphasised that the parties had obtained tax advice, that the nature of the claimant's dementia was such that he fluctuated in cognition and could still take decisions even in 2019, and that these were transfers at value, where the purchase price remains a loan owed to the claimant. I am not dealing with a summary judgment application, and I do not consider it helpful to go into forensic detail about the respective merits of each parties' case. What is relevant is whether Mrs Shirazi can fairly and competently conduct proceedings on behalf of the claimant.

63. The defendants argue that Mrs Shirazi is not physically and mentally capable of acting as the claimant's litigation friend. Mr Melville-Smith in his first witness statement at paragraphs 16 to 18 summarised the issues recounted to him by Babak as follows. Mrs Shirazi is 84, suffers from macular degeneration, she suffers from muscle wastage, poor breathing, low haemoglobin, a meningioma in her skull and a benign tumour in the artery in her neck. In addition it is said that her language is Farsi, her level of English is basic, and she cannot read or understand complex legal or business documents. Mrs Shirazi has no legal or business experience, she was a housewife and mother. The claimant never sought to involve her in any matters of a business nature, and she has no experience of and a very limited ability to understand such matters. This evidence is supplemented by Babak and Asal. The latter describes Mrs Shirazi as suffering from serious mental illness in the past. When I questioned Mr Learmonth during his submissions on the defendants case he confirmed that his position is that Mrs Shirazi is mentally impaired and ill-suited to deal with the demands of litigation.

64. It would be fair to describe Mrs Shirazi's reaction in her first witness statement as one of outrage. She sets out in some detail in both her statements her response. In summary it is true she has macular degeneration, for which she receives treatment, and the reasonable adjustment is that documents are printed in large type for her to read, which she can read in English or Farsi. She does not know what the reference to muscle wastage or poor breathing is. As to low haemoglobin she believes that is a reference to thalassemia, which is very common in people from the Middle East. She has a lower amount of red blood cells and sometimes is given injections for this. A body scan found a small water globule in her head, which has been treated, and is presumed to be the reference to meningioma. She has a benign lump in her neck which does not affect her. Mrs Shirazi describes that in the early 1980's she took some anti-anxiety medication when her mother had suddenly died, she had undergone surgery for ovarian cysts and had secretly returned to Tehran to try and retrieve some property. She describes that as a stressful time and that the medication was for a short period. Mrs Shirazi says that she is in good health. Although I do note that in Pierre Olivier Lang MD PhD certificate for the Swiss court dated 12 June 2020 he refers to Mrs Shirazi being known for severe depressive syndrome and that she was at that time under antidepressant treatment.

65. Dr Lang, having carried out a 90-minute examination, records that Mrs Shirazi presents a mild neurocognitive disorder, including a memory disorder. She feels depressed because of the current family situation but this pathology of depression has no influence on her ability to discern. He certified that she had the ability to discern for the purposes of managing the financial and administrative affairs of the couple and the on-going legal procedures concerning Babak. Dr Higelin also certified on 22 June 2020 that having seen Mrs Shirazi on two occasions and performed a cognitive assessment that "no elements were detected that are likely to alter the patient's ability to manage her affairs, or her capacity for discernment."

66. Babak has adduced no independent evidence that Mrs Shirazi lacks the capacity to be a litigation friend. On the evidence before me I am not satisfied that Mrs Shirazi is 'mentally impaired' and lacks that capacity.

67. Mrs Shirazi also refutes that her level of English is basic. She started learning English in Iran when she was 17, lived in England from 1979 to 2003, had children educated in English, travelled to the United States on many occasions and now lives in Nyon where

she communicates in English because she does not speak French. Mrs Shirazi also observes that outside of court hearings Babak has not seen her since December 2019, only saw her and the claimant twice in 2018 and she has not been close to him for a long time. Although Babak says he saw her on 12 occasions in 2018. As to Asal, she has not seen her for 10 to 12 years and it is clear that there is a family rift, Asal believes their last contact was 2013.

68. The defendants also point to inaccuracies in Mrs Shirazi's account of events, both in her witness statements and in proceedings in other jurisdictions. By way of an illustration, Mrs Shirazi says that the family owned two flats in Trump Tower in New York and met Donald Trump. Babak says this is delusional. Mrs Shirazi has produced an invitation addressed to the claimant from Pamela Harrison Ambassador of the United States of America and Donald Trump as President of the Trump Organisation for a reception in the Ambassador's Residence in Paris to introduce the Trump International Hotel and Tower in New York. I am not satisfied that any of the alleged factual inconsistencies take matters any further forward and indeed I cannot determine them for the purposes of this application. I do note that simply because Babak asserts that something said by Mrs Shirazi is wrong does not definitively prove it to be wrong.

69. Mrs Shirazi also has the benefit of experienced lawyers acting for her in England and in Switzerland. Mr Piguet who is a partner at Bonnard Lawson in Lausanne holds a doctorate in law and is a specialist in litigation, estate planning and the law of succession. He speaks, reads and writes fluently in French and in English. His firm has been instructed by Mrs Shirazi and he has conduct of the proceedings in Switzerland. He had provided four witness statements and confirms that Mrs Shirazi provides him with instructions in English, "I have no doubts about her ability to understand the nature of these proceedings and the other proceedings taking place in Switzerland and Liechtenstein."[5] He also refers to a conciliation hearing on 23 October 2020 and says,

> "Mrs Shirazi stood before Babak and his lawyer for almost two hours. She even got angry during the audience. … I was present at this hearing and Babak's words and behaviour were clearly understood by Mrs Shirazi, who appeared to me to follow the proceedings carefully. In my opinion, based on her conduct at the hearing, her capacity for discernment appeared to be totally unquestionable."[6]

70. CRS have conduct of the English claim on behalf of the claimant and are instructed by Mrs Shirazi. Graeme Kleiner is the partner with conduct of the claim in London. He also supervises Robert Avis, a barrister employed in the Geneva office of Charles Russell Speechlys SA, which is a member of the CRS group. Mr Avis was based in the London office until 1 August 2020 when he moved to the Geneva office. He settled the draft particulars of claim. He has provided a witness statement, which without waiving privilege, sets out how instructions are taken. At paragraph 7 he sets out eight points, in particular:

> "(c) Decisions are made by Mrs Shirazi. Again without waiving any privilege, my firm communicates with Mrs Shirazi via

[5] Mr Piguet's first witness statement, paragraph 33(v).
[6] Ibid, paragraph 42.

> video-conference platform and telephone. In addition, I have personally visited Mrs Shirazi at her home in Nyon… I have spoken to Mrs Shirazi alone during those meetings.
>
> (d) Important and/or critical decisions in this claim are all taken by Mrs Shirazi and steps are taken to confirm that she agrees with decisions taken by her lawyers, by, for example, video-conference and telephone calls with Mrs Shirazi.

He disputes the assertion by Mr Melville-Smith (who has not met Mrs Shirazi) that she cannot speak or read English beyond a very basic level. He goes on,

> "(f) Mrs Shirazi is not a native speaker of English, but she is able to communicate in good English about this matter. She does indeed suffer from macular degeneration, but I have seen her read fluently in English from documents prepared in large type and to listen to and understand documents read to her. Again without waiving privilege, she was able to give me instructions in English as to the content of the witness statements that she has made in these proceedings.
>
> …
>
> (h) It is clear to me that Mrs Shirazi does understand this matter and is capable of instructing my firm (and indeed other Swiss lawyers) in relation to this matter and that she is in fact doing so".

71. Mr Avis addresses head on the allegations in this case that Borzou controls Mrs Shirazi, and therefore this litigation. He accepts, as does Mrs Shirazi, that Borzou will email CRS from time to time on behalf of Mrs Shirazi. At paragraph 8 of his statement he says,

> "I wish to add that I and my firm are well aware of our responsibilities and that these include acting for our client on instructions given by her or authorised on her behalf. We are sensitive to that issue here because of the allegations that are being and have been made in these proceedings and so are careful to ensure that those responsibilities are fulfilled. I am satisfied that we are litigating on behalf of Mrs Shirazi (herself on behalf of her husband) and not on behalf of Borzou…"

72. Whilst Mr Learmonth cautions me about accepting the evidence of Mrs Shirazi and her lawyers, similarly I should be cautious to accept the evidence of Babak, his lawyers and Asal. In contrast Babak has had little contact with Mrs Shirazi, outside of litigation, on Mrs Shirazi's evidence twice in 2018, on Babak's evidence twelve times in 2018 but both agree the last time was in December 2019. Mr Melville-Smith has never met her.

73. Mr Dew submits that the Swiss Courts have authorised Mr Shirazi to represent the claimant including for the purposes of this litigation and that in the absence of any reason to go behind the decisions I should respect those decisions. I do not have any comparative analysis of the legal system in Switzerland and England before me or any expert evidence. I am not bound by the decisions of the Justice of the Peace and the Court of Trustees, but I think it is artificial to completely ignore them. However I must evaluate the evidence before me by reference to the criteria in CPR rule 21.4(3). I cannot and should not abdicate that responsibility because of the decisions of the Swiss Courts. What I can say is that that evidence corroborates the evidence that is before me from Mrs Shirazi and her lawyers. Three doctors have provided medical certificates in the Swiss proceedings confirming her capacity. A notary, Mr Nicolas Rabbioso, has met Mrs Shirazi three times for her to sign notarial deeds before him. He has certified that he has no doubts about Mrs Shirazi's capacity for discernment. Mrs Shirazi was heard by the Attorney General of Switzerland, and nothing was reported to the protection authority.

74. Lawyers acting for Mrs Shirazi have all confirmed that they are satisfied that she has capacity to act.

75. Contrary to Mr Learmonth's submissions the claim is not a particularly sophisticated one. Mrs Shirazi has the benefit of experienced lawyers, in England and in Switzerland, who can, in the words of MacDonald J in *Raqeeb* provide her with 'proper legal advice'. It is also clear from Mrs Shirazi's witness statements that she is capable of exercising independent judgment on the legal advice that she receives and that she is not merely a cypher. In her evidence she has set out her abilities, why she brings these proceedings and the nature of her relationship with Borzou. She has gone on to explain the manner in which she communicates with her lawyers. In a very pithy way Mrs Shirazi summarises matters at paragraph 44 of her first statement as,

> "Mr Melville-Smith says a lot of things about Borzou. This is not about Borzou. It is about the assets that belonged to my husband in London that Babak has taken and the income that we have lost."

76. When I questioned Mr Learmonth on whether his submissions sought to import a level of sophistication into the meaning of competence in CPR rule 21.4(3)(a), he readily agreed. In writing he submitted that, "Irrespective of her intellectual ability, Mrs Shirazi has led a domestic life with no experience of financial affairs, still less of tax planning considerations for foreign domicilairies. Her ability to make informed decisions about her husband's interests in a matter like this, even with the benefit of professional advice, is inevitably limited by this lack of experience."[7] That seems to be a rather patronising submission to make in respect of Mrs Shirazi. I do not accept that simply because she was a housewife and mother that renders her impotent to fairly and competently conduct proceedings on behalf of the claimant. The evaluative exercise that the court is asked to consider in this application is highly fact sensitive. The cogent evidence of her lawyers and that of Mrs Shirazi herself supports the inexorable conclusion that Mrs Shirazi is able to conduct fairly and competently this litigation on behalf of the claimant.

[7] Defendants' skeleton argument, paragraph 30.7.

77. I have also considered the allegation that Mrs Shirazi is thwarting settlement by refusing to mediate without good reason. Mrs Shirazi's position, which does not seem to me to be entirely unreasonable, is that it makes no sense to mediate whilst her status as litigation friend and therefore ability to bring the claim remains in issue. Notwithstanding that and given Babak's offer to transfer the properties CRS have made an open proposal that they are transferred back to the claimant but that an independent deputy is appointed to manage them and there be no order as to costs. I am told that Babak's response is to require that he retains a putative tax advantage from the transfer. I do not accept the defendants' submission on this point.

78. The defendants also allege that Mrs Shirazi has an interest adverse to the claimant because she is the equivalent of a beneficiary in the first defendant. This point was not pressed, not least as Babak could easily remove her status and as Mr Learmonth accepts, Mrs Shirazi is pursuing this claim with full vigour.

79. The position of Borzou and his undoubted influence over the lives of Mrs Shirazi and the claimant has given me pause for thought. At best the evidence in respect of Borzou is somewhat mixed. I was taken at some length through documents and financial statements to demonstrate the extent of Borzou's borrowings from his parents. I do not consider it an answer when Mr Dew submits that Borzou is criticised from borrowing money from his parents whereas Babak is criticised for taking money from his parents. Although I do accept that Mrs Shirazi's allegation is that Babak has diverted most of his parents significant wealth to himself and done so without their knowledge. Ultimately I have to evaluate the evidence to see if it calls into question Mrs Shirazi's ability to act as litigation friend. It is the interests of the claimant that I am concerned to secure.

80. Mr Learmonth in particular referred me to a loan agreement dated 20 June 2007 executed by the claimant and Mrs Shirazi in favour of Borzou in the sum of £2.95 million. In July 2011 the claimant made a notarised declaration that he had loaned £5 million to Borzou over the past 12 years. In October 2011 the claimant and Mrs Shirazi transferred the sum of £1.5 million to Borzou's criminal defence solicitors to be paid to HMRC. On 10 July 2013 the claimant and Mrs Shirazi confirmed that Borzou had no money or income and was financially dependent on them. In 2017 Borzou suggested to Babak that the claimant lend him the sum of £750,000. On 4 March 2019 Mrs Shirazi declared that she and the claimant had gifted Borzou £5.5 million between 2011 and 2015 and that they had loaned money to his company, Treasuryinvest SA. On 8 June 2020 Borzou told the Swiss Justice of the Peace that he had never been given a loan and there was no transfer of "5 million to him", and that he was not financially dependent on his parents.

81. I am conscious that Borzou is not directly involved in this litigation, that Mr Dew and CRS act for the claimant and take instructions from Mrs Shirazi. At the most charitable it could be said that Borzou has been opaque before the Swiss Court in respect of his position with his parents and borrowings. He lives with the claimant and Mrs Shirazi and given their ages and in particular the claimant's needs he is in a position to influence them. The question though is whether that leads to a position where the claimant's interests are not protected.

82. Mrs Shirazi is very forthright in her witness statements about Borzou's role and his influence on her:

> "Borzou has helped me but he does not tell me what to do. I make my own decisions independently after I have taken advice from my lawyers."[8]

83. In her second witness statement at paragraph 37 she says,

> "I have said that this claim is not about Borzou. That is true. I know he was involved in the transfers. I have spoken to him about it and I am not happy about that. But he does not control the Susa properties. Babak does."

84. More importantly Mrs Shirazi has solicitors and lawyers acting in this jurisdiction and Switzerland, they have provided witness statements in support of Mrs Shirazi being retained as litigation friend for the claimant. Mr Avis, in particular, has given cogent evidence demonstrating that CRS are alive to the issue of Borzou's influence and the need to take instructions from Mrs Shirazi.

85. I am satisfied on the evidence before me that Mrs Shirazi meets the criteria under rule 21.4(3) and that no other factors that have been advanced that would warrant her position as litigation friend being terminated.

86. Out of completeness I will refer to an argument of collateral attack raised by Mr Dew. I was referred to the *Secretary of State for Trade and Industry v Bairstow* [2004] CH 1, paragraph 38, and *Tinkler v Ferguson* [2021] EWCA Civ 18, paragraphs 28-29, and 35 for a summary of the relevant principles. Mr Dew submits that the dispute about whether Mrs Shirazi should act as curator for the claimant concerns the same issues, the same facts and calls for a determination of the litigation friend's ability to conduct litigation in this jurisdiction or her discernment in Switzerland. Doubts over Mrs Shirazi's capacity have been raised by Babak in Switzerland and roundly rejected. Whether Borzou is inappropriately influencing Mrs Shirazi, so that it adversely impacts on her role as curator of the claimant, is currently under judicial scrutiny in Switzerland.

87. As Nicklin J observed in *Tinkler v Ferguson* at paragraphs 31 to 32,

> "31. The circumstances in which abuse of process can arise are very varied and are not limited to fixed categories: Hunter at 536. Examples can be found in: vexatious proceedings amounting to harassment; attempts to re-litigate issues that were raised in previous proceedings; attempts to litigate issues that should have been raised in previous proceedings (Henderson v Henderson (1843) 3 Hare 100); collateral attacks upon earlier decisions (attacks made in new proceedings rather than by way of appeal in the earlier proceedings); pointless and wasteful litigation (Jameel).

[8] Mrs Shirazi's first witness statement, paragraph 34.

> 32. Nor is there any hard and fast rule to determine whether abuse is found or not; the process is not dogmatic, formulaic or mechanical, but requires the court to weigh the overall balance of justice: Johnson at 31, 32 and 34. Indeed, the overriding objective of the procedural rules is to enable the court to deal with cases justly, including when it exercises the power under CPR 3.4. Where there is abuse, the court has a duty, not a discretion, to prevent it: Hunter at 536."

88. As I have already alluded to, whilst the factual issues raised in each jurisdiction are the same, the task of the court is not the same, absent any comparative analysis or expert evidence. The Swiss proceedings are inquisitorial. Here the nature of the application is more inquisitorial in nature in that the court has a supervisory jurisdiction in respect of the protected party but the manner in which that is investigated is still within the bounds of the Civil Procedure Rules. The court has to be satisfied that the litigation friend meets the criteria set out in CPR rule 21.4(3). The decision of this court does not bind the Swiss court and vice versa.

89. I struggle to see how this application constitutes a collateral attack on the previous judgment of the Swiss court when the legal tests are not the same and there has been no decision on Borzou's alleged influence over Mrs Shirazi. However it does not matter as having evaluated the lengthy evidence before me I am satisfied that Mrs Shirazi should not be removed as litigation friend for the claimant, that his interests are protected, and the defendants' application is dismissed.

90. This is a bitter family dispute, and this claim needs to be concluded, whether by compromise or determination at trial.