

**Neutral Citation No: [2021] NIFam 28**

**Ref: KEE11503**

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

**ICOS No: 19/64518/04 & 05**

**Delivered: 28/04/2021**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

---

**FAMILY DIVISION**

---

**IN THE MATTER OF AB (A CHILD) (SECURE ACCOMMODATION)**

---

**Mr Montgomery (instructed by Directorate of Legal Services) for the Trust  
Ms Ramsey QC with Ms McMillan (instructed by Kristina Murray Solicitors) for the  
mother**

**Ms McGrane (instructed by Emma Lyons Solicitor) for the father  
Ms Connolly QC with Ms C McKeown (instructed by Donnelly & Wall Solicitors) for the  
subject child  
(Fiona Holmes Solicitors) for the Guardian ad Litem (Tony Macklin)**

---

**KEEGAN J**

**Nothing must be published which would identify the child or his family.**

**Introduction**

[1] This case concerns an application for secure accommodation by a relevant health trust in relation to AB who is now aged 17. I will not recite the long history to AB's case suffice to say he has had a clear problem with drugs and mental health. This is the second time secure accommodation has been sought. During the first substantive application I allowed AB to try living with his grandmother - that did not work. Also, there was discharge to a residential unit tried and that worked for a longer period until drugs intervened and AB ended up back in secure accommodation on 5 March 2021.

[2] The application for a further period of secure accommodation is contested as AB wants back to the residential unit. I should say that the mother also contests the making of a secure accommodation order and the guardian has raised concerns about it. This is obviously the backdrop which I record in a very difficult case given the projected outcomes for AB.

## Background

[3] This case first came to me on an emergency basis due to young persons who had assaulted AB also being in the secure accommodation placement. This was rectified immediately on my direction and frankly should never have happened. Also, in secure accommodation AB was not being allowed to have direct contact with his mother, again, that was rectified on my direction and given the fragile mental health of this young person, in my view, this was an important matter that needed attention.

[4] Some legal issues arise which involve the interplay between Article 44 of the Children (Northern Ireland) Order 1995 ("the Children Order") which sets out the rules in relation to secure accommodation and the European Convention on Human Rights principally Articles 5 and 8 which are engaged. Essentially the questions seemed to be these:

- (i) Is this secure application lawful in Convention terms in that it must be for educational supervision; and
- (ii) Is this secure application proportionate given that another option is available, namely Slemish Unit?

[5] Counsel have assisted greatly with detailed skeleton arguments dealing with both the domestic law and the European law. Question (i) was discussed in a Court of Appeal case which I have read again of *K (A Child) (Secure Accommodation Order: Right to Liberty)* [2001] Fam 277. This was an application for a declaration of incompatibility and the Court of Appeal effectively having looked at the case said that:

"Secure accommodation was compatible with the Convention if it was educational supervision and that was within the gateway of Article 5(1)(d)."

[6] The Court of Appeal defined educational supervision and said it went beyond the end of compulsory education firstly, and also, that it should be viewed in a wide sense. It is interesting to look at this case because the court considered the European case of *Bouamar v Belgium* [1987] 11 EHRR and noted that orders such as this were not isolated orders for detention but were made in the context of a long history of efforts to ensure the best possible upbringing for an applicant and that the local authority considered that the applicant needed to be placed in secure accommodation. That is why in *Re K* and *Bouamar* the intervention was compatible. All of that is prefaced by the fact that Article 5 is obviously a significant right within the panoply of the Convention and has to be rigorously examined in these types of cases.

### Question (i)

[7] In relation to the first question I do not consider that there is a valid argument that this secure accommodation application is unlawful by virtue of the fact that it does not provide educational supervision. Applying *Re K* and looking at educational supervision in the widest sense it seems to me that there is no issue here. The more taxing question is regarding the interplay between Article 44 of the Children Order and Convention rights and how this court should consider proportionality. This is discussed in *Re B (A Child) Association of Lawyers for Children Intervening* [2019] EWCA Civ 2025. The facts are different from this case, not least, because here the application is to move from an approved secure placement to an unsecured open unit and also because the young person is part way through a programme towards discharge in a number of weeks.

### Question (ii)

[8] Nonetheless, this case states at paragraph 88 that an evaluation of proportionality must be carried out by the local authority before applying for an order under section 25 which is our Article 44 and by the court before granting such an order. This is on the basis that this is a relevant criteria under the legislation.

[9] All counsel before me agree with this analysis and so I have not heard a contrary argument on the point despite some hesitation expressed in previous decisions about the method of applying the proportionality test, most notably by an experienced family judge, Jackson LJ in *Re M*. In that case Jackson LJ suggested that the inbuilt proportionality check was found in the criteria itself and that the question would only be relevant in a very small number of cases because in most cases where one or more of the conditions is satisfied the child's needs are likely to be such that only a placement in an appropriate secure unit will provide the requisite care and therapeutic environment. In these circumstances the likely benefit of the place to the child will usually be sufficiently great to lead the court to conclude that the infringement of rights is proportionate.

[10] The caveat follows and is expressed as follows:

“But so long as there continues to be a significant shortage of approved secure children's homes to accommodate young people requiring secure accommodation, there is a greater likelihood that applications under Section 25 will be refused on grounds of proportionality.”

[11] The situation is not as stark here and this case is not about lack of an available placement in secure accommodation. This case is really about whether the plan is proportionate and that comes down to consideration of the exit plan which all counsel agreed I could look at. I say this as Article 44(b) is clearly met in this case as AB is likely to injure himself, perhaps quite significantly, in any other form of

accommodation due to his chronic addiction to drugs and associated mental health problems. Also he needs a psychiatric assessment. I am told that that is now underway but that needs to be clarified. The Trust is undertaking a programme with him which is set out in the reports that I have read, in particular, the Trust addendum of 16 April 2021 and the previous reports.

[12] I do not have a concluded view in relation to how the proportionality check is applied but clearly it has to be applied. My current thought is that that is part and parcel of consideration of the criteria rather than some separate standalone test. The reason for that is a placement in secure accommodation is a last resort and it seems to me it needs to be of the shortest possible time to be Convention compliant. The Trust must undertake that exercise as a public authority. This also accords with Article 37 of the UN Convention on the Rights of the Child.

[13] The Trust through Mr Montgomery's submissions, say that they have done this and that the plan is Convention compliant and in fact that it is working towards an exit plan. I also must look at this, and in looking at this, I have read the Lakewood Report of 21 April and the Trust's addendum of 16 April and that sets out the Slemish plan which moves towards admission on 19 May. I consider this is appropriate in principle. The plan seems to me does however need to be adapted in a number of ways. Firstly, built into it there needs to be the psychiatric updated CAMHS assessment. Secondly, there needs to be proper provision for drug detoxification/assistance when in Slemish. Whether that be through Community Addictions that needs to be spelt out. Thirdly, I consider that the trajectory is slightly too long and given that there cannot be the type of move-in during Covid that was always contemplated by the parties, I consider that the right order to make is an order from today for two weeks to allow transition into Slemish and to allow those two parts of the plan to be tidied up.

## **Conclusion**

[14] This is a difficult case because I can predict that, unfortunately, there are risks that AB may go back towards drugs which I am sure his mother and everybody does not want him to do because of the consequences. In my view the Trust has acted entirely appropriately in trying to correct this but the problem is that this may be a long term issue and whether or not further secure accommodation in the future is going to be the right thing remains to be seen. But it certainly is now.

[15] Having reviewed this case again I must also record that AB being placed within close proximity of attackers was extremely flawed and the issue of limited access to his mother was also wrong. Notwithstanding Covid issues I found a way to promote some contact outdoors which was vital for AB's mental health. I repeat that there should be flexibility and creativity applied to arrangements.

[16] The Order that I make today takes us to 12 May. AB should be informed of that. I also think he needs to be told that the court does not want him to go back into

a spiral of drug abuse because there are warning signs here that he could seriously hurt himself or end up in the criminal justice system. Also, he needs to engage with all the services on offer. These are the only services on offer at the moment, nobody is suggesting to me a referral outside the jurisdiction or anything else so there is not really much else the court can do.