

**THE HIGH COURT**

**WARDS OF COURT**

**WOC 9158**

**IN THE MATTER OF T.P., A WARD OF COURT**

**Ex-Tempore ruling of Mr. Justice Mark Heslin delivered on the 15<sup>TH</sup> day of March 2024**

**Introduction**

1. I propose to give a ruling now in relation to this application which concerns a young man in his 30s. According to the evidence before the court, he is someone with a general learning disability, autism spectrum disorder, and he is a vulnerable individual with complex needs and challenging behaviours arising from his presentation. He was admitted to wardship on 8 November 2017. The General Solicitor is committee in respect of his person and estate.

2. By way of background, on the 22 January of this year, the President ordered that the respondent continue to reside and be detained at a certain placement with the Brothers of Charity Service. The respondent transferred to this new placement in November of last year, on foot of an order made by this Court on 22 November 2023. The manager of the placement was authorised to provide necessary treatment and care to the respondent in his best welfare interests and a 'Part 10' review took place earlier today on the wardship side.

**Effect of the 2015 Act's Reliance on s.3 of the 2001 Mental Health Act**

3. It is appropriate to say that this is another one of a significant number of cases where the particular facts do not allow for a continuation of detention pursuant to s. 108 of the 2015 Assisted Decision-Making (Capacity) Act and, therefore, further reviews of such detention under s. 108 are ruled out. This is, in 'net' terms, because of the exclusive focus in Part 10 of the 2015 Act on the definition of "*mental disorder*" as found in s. 3 of the 2001 Mental Health Act. Therefore, the outcome of today's Part 10 review on the wardship side was that no order could be made. It is against this backdrop that the HSE now bring an application under the court's inherent jurisdiction.

**Evidence of T.P.'s Consultant Psychiatrist (Dr. M)**

4. In an affidavit sworn on 7 March of this year, Dr. M., consultant psychiatrist, makes, *inter alia*, the following averments with regard to the context in which this Inherent Jurisdiction application is made (and I now quote from para. 7):-

*“[T.P.] will in my opinion need detention and treatment orders long into the future including after his discharge from wardship pursuant to the 2015 Act which I say and believe and am informed by the HSE’s solicitors are subject to a strict statutory timeframe. That being the case, I say and believe and am advised that it will be necessary to establish a legal framework in order to provide for [T.P.’s] care and welfare at the very least when his wardship comes to an end. It is therefore the view of the HSE that it is appropriate that [T.P.’s] regime of care and welfare at the placement be regulated under the court’s inherent jurisdiction in order to ensure that this transition takes place in a managed graduated manner rather than in circumstances of urgency as might occur in the case where a discharge comes on quickly.”*

5. Dr. M. is the consultant psychiatrist with responsibility for the care of the respondent. She has performed that role since June 2019 (as well as between May 2010 and May 2011) and, therefore, she is very familiar with the respondent. Whilst Dr. M. offered the view that the respondent does not suffer from a mental disorder within the meaning of s. 3 of the 2001 Act, her 14 January 2024 report states, *inter alia*, the following in relation to the respondent’s diagnoses, his presentation and his needs (and I quote):-

*“Diagnosis: mild learning disability, autism spectrum disorder (ASD), behaviours that challenge including verbal aggression, self-injurious behaviours, physical aggression towards others and damage to property.”*

Later she states (and I quote):-

*“[T.P.] frequently presents as agitated and suspicious. At times of stress he engages in behaviours that challenge including verbal aggression, self-injurious behaviour, physical aggression towards staff and/or damage to property. Any events that heighten his preoccupation with childhood events and historical abuse inevitably lead to significant distress and more frequent higher intensity incidents of verbal and physical aggression. These incidents comprise a safety risk to [T.P.] and those around him. [T.P.’s] learning disability and ASD are lifelong conditions. It is because of his learning disability and ASD that he does not have the ability to understand the information relevant to decisions regarding his personal, social, health and financial needs. He does not have the capacity to make decisions in relation to his health, accommodation and welfare needs. He is not capable of living independently and will need lifelong specialised support.”*

6. In relation to the respondent’s current circumstances and the necessity for orders which, in substance, are the very same orders being sought in today’s inherent jurisdiction application, Dr. M.’s evidence is as follows:-

*“[T.P.’s] presentation requires significant restriction to keep him safe and ensure a reasonable quality of life. Two to one staffing levels provide a very high level of support and supervision in relation to his physical, mental, medical and social welfare and reduce the risks associated with his unpredictable and challenging*

*behaviours. Frontline staff are supported by multidisciplinary team supports including psychiatry, behaviour support and social work. He has developed relationships with his support staff and is engaging more in social interactions. He is encouraged to participate in community based activities, independent living skills and functional skills in his home and cooperates well on most days with his daily schedule. [T.P.] moved to his new home on 27<sup>th</sup> November 2023. The new house is larger than the previous one. It provides [T.P.] with more personal living space and better meets his support needs. This also reduces the risks associated with his behaviours that challenge. There is consensus among his staff team that this has been a positive move.”*

7. In relation to what Dr. M. considers as necessary in relation to providing care and support to the respondent, her opinion is to say the following:-

*“I consider that [T.P.] is appropriately placed and advise that his detention should continue as currently configured. In my clinical opinion it is in [T.P.’s] best interests and in order to keep him safe that the court would make orders*

- (a) to continue to detain him,*
- (b) to allow the staff to take measures to care for him and ensure his safety up to restraint,*
- (c) to allow staff to regulate contact with his father having regard to his best interest,*
- (d) Gardaí to give assistance as is necessary to support the staff,*
- (e) Gardaí to return him if he absconds,*
- (f) if he requires to be admitted to a hospital this can occur and he would be detained there for the purposes of all necessary treatment.”*

I pause to say that this clinical view is reflected in substance in the orders sought and the suggested amendment which Mr. Leahy drew the court’s attention to earlier seems entirely appropriate i.e., with notification on 72 hours’ notice were the respondent to be admitted to hospital, as opposed to remaining in his placement, but for detention there to continue for the reasons I am going to elaborate on in this ruling.

#### **Evidence of Second Consultant Psychiatrist (Dr. H)**

8. The court also has evidence from a second consultant psychiatrist for the purposes of today’s inherent jurisdiction application. This is in circumstances where, in a previous role acting as the court’s medical visitor in the wardship context, Dr. H., consultant psychiatrist, assessed the respondent. I will presently refer to her earlier report going back to 2017 which, for reasons I will explain, seems to me to remain just as valid in terms of the substance of her evidence. It is also appropriate to note that, in the context of discharging the role of independent consultant psychiatrist for the purposes of the s. 108 review, Dr. H. prepared a report of 16 January 2024, and she was satisfied, for the reasons given, that a desktop review was appropriate. In summary, those reasons included the wealth of reporting that she considered and the extensive information available to her. Furthermore, Dr. H. took into account that even her brief presence might cause a serious aggressive incident with lasting

adverse effects, in light of what Dr. H. referred to as (and I quote): “*the nature of the Respondent’s longstanding conditions of paranoia, impulsive aggression, autism, and lack of theory of mind*”.

9. Elsewhere in her report, Dr. H. explains the approach taken in the following terms:-  
“*I did not want to be the person who arrived briefly and left again leaving [T.P.] feeling paranoid and very upset through no fault of mine and then left leaving staff to deal with the almost certain aggressive fallout of [T.P.’s] inability to deal with situations. Hence, I suggested to staff that I should not visit [T.P.] in person and am respectfully offering this report as my expert psychiatric opinion on his enduring mental disorders.*”

### **Best Interests**

10. It seems to me, that, on any objective analysis, Dr. H.’s approach was one which placed the best interests of the respondent to the fore. I am satisfied that this Court can and should rely on Dr. H.’s views as set out in her recent report which, as I say, is a second and independent view to that offered on behalf of the would-be ‘detainer’.

11. Dr. H. opines, among other things, that the respondent suffers from two serious and enduring mental disorders within the meaning of the 2001 Mental Health Act, namely, paranoia and autism. She also opines (and again I quote):-

“*These completely limit [T.P.’s] insight and judgement and his ability to mentalise and to deal with situations verbally, rather than physically.*”

### **Current Placement**

12. She also opines that failure to admit the respondent under the 2001 Mental health Act would cause immediate and serious deterioration in his mental state and prevent the administration of treatment. However, she goes on to make clear that the respondent is appropriately placed in his current accommodation, which, of course, is not an approved centre. She states explicitly (and again I quote):-

“*He should not be removed from there to an approved centre. He should remain in his current placement under a detention order of the court.*”

This, of course, is evidence which illustrates that the particular facts in this case are not anticipated by s. 108 of the 2015 Act. In other words, Dr. H.’s evidence rules out any finding by the court that s. 3(1)(b) was met, because the current placement is *not* an approved centre.

13. Whilst the s. 3(1)(b) definition is not met, Dr. H.’s evidence speaks directly to the respondent’s detention in his current placement, as opposed to an approved centre, continuing to be necessary in order that he can receive the high levels of supervision and support which he needs in the context of receiving the care he requires. Elsewhere, Dr. H. states, *inter alia*, the following:-

*“I note his well-documented recurrent physical aggression in response to feeling frustrated. I recall my own previous in-person assessment as having been extremely fraught due to [T.P.’s] sudden change in mood and behaviour which was unpredictable and very intimidating. I noted this to the staff with whom I spoke and they confirmed that he remained impulsive and unpredictable. I note that he has thumped staff regularly and thrown items such as the television remote control. Staff explained that he was currently in a relatively stable phase with less physical aggression and that separation from his father had been helpful in this regard. In my experience in some other jurisdictions [T.P.] may have been detained long ago in an institutional forensic facility due to his history of physical aggression. The tolerance and treatment shown from staff of Brothers of Charity towards [T.P.] has been exemplary in my view.”*

The report by Dr. H. also notes that, in his new residence, the respondent has space to withdraw and to have the opportunity to regulate his emotions without acting out as much as he had been doing. He was also being encouraged to engage in community activities.

#### **Dr. M’s Second Affidavit**

**14.** Dr. M. also swore an affidavit on 7 March in support of the present inherent jurisdiction application. In it, she makes averments which include to confirm: that the respondent’s ASD and learning disability are lifelong conditions; that he lacks capacity to make decisions in relation to his personal, social, health and financial needs; that he lacks capacity to make decisions regarding his health, accommodation, and welfare; that he is not, in her clinical opinion, capable of independent living; and that he is someone who will need lifelong specialised support. She also makes the following averments, at para. 9 (and I quote):-

*“It is my opinion that [T.P.] lacks capacity to make decisions regarding how he is cared for, how he is treated and where he lives. It is unclear to your deponent how much information necessary to make a decision is taken on by [T.P.] or indeed retained, but it is your deponent’s opinion that [T.P.] cannot weigh up the necessary information, believe it to be true and to communicate his decision. I base my opinion on my lengthy knowledge of [T.P.] and my ongoing engagement with the staff and multidisciplinary team who work with him and who provide much collateral information. [T.P.] rarely attends the clinic as it is often too unsafe to bring him when he is dysregulated. He receives huge input from the behaviour support specialist for strategies to be deployed by the staff team in managing his complex and often very challenging presentation and your deponent must be mindful that it is his staff team who have to try and contain him. Your deponent would be concerned that a formal capacity assessment would cause a huge escalation in [T.P.’s] behaviours and place him and his staff team at significant risk.”*

15. Later, she avers, at para. 12:-

*“[T.P.’s] presentation requires significant restriction to keep him safe and ensure a reasonable quality of life. Two to one staffing levels provide a very high level of support and supervision in relation to his physical, medical and social welfare and reduce the risks associated with his unpredictable and challenging behaviours. Frontline staff are supported by multidisciplinary team supports including psychiatry, behaviour supports and social work.”*

At para. 18, she avers:-

*“The orders made in wardship allowed the placement to regulate access to [T.P.] and I say that it is the view of [T.P.’s] care team and of the HSE that that position ought to continue.”*

16. Therefore, there is a consistency in the evidence from two consultant psychiatrists that each of the orders sought today under the court’s inherent jurisdiction, are necessary.

17. Returning to Dr. H.’s prior assessment of the respondent, Dr. M. avers, at para. 10 of her 7 March 2024 affidavit, that Dr. H. assessed the respondent on 24 April 2017. It is clear from the evidence that, at that juncture, Dr. H. also had the benefit of reporting from other clinicians, including Dr. M. herself, as well as Dr. Y. The following comprises certain extracts from Dr. H.’s 22 July 2017 report in respect of the respondent’s capacity, which Dr. M. exhibits. As to the name, nature and symptoms of the respondent’s mental illness, Dr. H., at that juncture, opined:-

*“[T.P.] has autism. This is characterised by very limited insight and judgment, gaze aversion, poor social interactions, sudden aggression, being fixated on computer related matters, and no theory of mind. The inability to understand matters from another person’s point of view is a core deficit in autism.”*

Later, she noted:-

*“Staff remained calm when [T.P.] began to shout. His mistrustfulness and sudden aggression made him a challenging person to deal with on a day-to-day basis.”*

Later still, she noted that the respondent was (and I quote):- *“being treated in a dignified and respectful manner”* and her opinion was that the respondent is of unsound mind and incapable of managing his affairs. It seems to me, given the evidence that the conditions in question are lifelong, that this evidence remains as relevant now as it was when first given and constitutes an independent view which, of course, is supported by the further and more up-to-date views to the same effect offered by Dr. H.

### **Multidisciplinary Report**

18. I have also had the benefit of a multidisciplinary report, dated 10 January 2024, furnished by the Brothers of Charity service and details are given in this reporting, including, as regards the respondent’s dysregulated behaviour. These include verbal and physical

aggression which continue to be a feature of his presentation. It is reported, among other things, that the respondent has displayed high risk behaviours including self-injurious behaviours. It is reported that there were six incidents of concern in November 2023 and nine in December 2023. It is also report that the severity of individual incidents causes significant difficulty and poses a safety risk to the respondent himself and to the team supporting him. In terms of the nature of the incidents, while it is not necessary to get into ‘granular’ detail, it is sufficient to say that they include significant physical aggression towards staff, as well as property damage, verbal aggression and injury to self.

### **Positives**

19. However, and on a more positive note, the reporting makes very clear that the move, in November last, to what is now the respondent’s current placement has been a positive one for him. As previously reported, in the context of the transfer application, the respondent describes his new residence “*a mansion*”. The facts which emerge from the multidisciplinary team reporting include the following:-

- His current placement provides him with greater personal space, both inside and out, and includes a large garden to the rear of the property, which the respondent has full access to;
- His bedroom and a large games room are upstairs, and this affords him opportunities to have his own space and time alone when needed;
- Staff support the respondent to engage in preferred activities and community-based activities, based on his preferences and these include drives, shopping, car boot sales and cinema. This has to be risk assessed based on the respondent’s behavioural risks on any given day;
- He is supported by his staff team around a range of skills - teaching including emotional regulation, problem solving activities, baking, etc;
- He has had a number of walks in the community which were positive experiences for him, and involved no negative engagement with the public; and
- Whilst December was a particularly difficult month, his presentation has been more settled in recent times.

### **Reports of Social Worker (Mr. R)**

20. The reporting by Mr. R., social worker, includes to say the following:-  
*“[T.P.] has thanked staff for listening and understanding his feelings. Staff feel it’s important to listen to [T.P.] and not offer counselling but instead facilitate an opportunity for [T.P.] to problem solve and regulate his feelings”* and that was a comment made in the context of disclosures by [T.P.], of a very serious kind, involving his father.

21. The report by Mr. R. concludes:-

*“[T.P.] has sustained his cooperation with his daily schedule and routines. [T.P.] will routinely complete his daily living skills. [T.P.] will facilitate supporting staff with*

*household chores when in a positive strain of mind. Staff will reenforce [T.P.] with rewards and praise. [T.P.] has engaged positively with the new staff and they have built reciprocal rapport with [T.P.] over the Christmas period. The team continues to be responsive and coercive to [T.P.'s] care and development."*

22. Whilst today is not a welfare review of the respondent, one is listed for April. The foregoing evidence seems to me to be necessary to refer to because it is only on foot of orders which, among other things, detain and, where necessary, restrict the respondent that he can receive the optimum quality of life which, of course, he deserves. It is, in substance, an application to continue orders which have produced those positives which is made today under the court's inherent jurisdiction.

23. I also note the contents of Mr. R.'s 18<sup>th</sup> July 2022 report which provides an evidential basis for the placement continuing to have the authority to regulate access with the respondent's father whom, as I say, has been identified by the respondent in the context of allegations of a most serious kind.

#### **Reporting from Brothers of Charity**

24. The reporting from the Brothers of Charity has also correlated increases in dysregulation on the part of the respondent with contact with his father. The multidisciplinary report of 10 January also links improvements in the respondent's presentation with the suspension of contact between the respondent and his father.

#### **Submissions from T.P.'s Committee**

25. I am grateful to Ms. McDonnell for her submission on behalf of the committee, who supports today's application. Ms. McDonnell makes clear that, although there is no affidavit before the court from the committee, the intention is that Ms. Emma Leahy, solicitor, who acts on the instructions of the committee, but also acted as the respondent's independent solicitor for the purposes of the Part 10 s. 108 review, would swear an affidavit. An undertaking has been given and is, of course, accepted in that regard. Ms. McDonnell, it is fair to say, outlined the themes which that affidavit would cover and, although I am relying on that undertaking, it does seem appropriate for the purposes of this ruling to look at those themes as already covered in the affidavit sworn on 7 March 2024 by Ms. Leahy, who attended the respondent's multidisciplinary team meeting on 22 February of this year.

26. That meeting was also attended by Ms. H., of the Brothers of Charity service; Mr. R., the social worker, Dr. M., consultant psychiatrist; Ms. F., team lead; as well as Ms. M., the behavioural specialist. In the manner averred by Ms. Leahy, all team members expressed concern about the adverse impact on, and distress to, the respondent were Ms. Leahy to meet with him. All team members agreed that the respondent is unable even to understand the court application or to engage on the matter. The collective view of the multidisciplinary team is that, even if presented with a booklet of information, they could not see any way in which the respondent would be in a position to process the information or retain the information. Furthermore, the team were of the view that this would be distressing for him.



**27.** As well as detailing the feedback which Ms. Leahy received from the multidisciplinary team, she avers that Mr. R., the social worker, confirms that he is seen by the respondent as somebody who delivers messages from the court. Again, whilst accepting that this was an affidavit sworn in the context of the s. 108 application, it is a matter of fact that, through her role in that context, a view expressed by the respondent has been passed on by his multidisciplinary team. That view is a wish to have access with his mother. She is someone who resides in the United Kingdom and would appear to have health difficulties. It is some years since there was a meeting, but the team have recommended that the respondent would look at photographs taken during their last meeting and a contact plan would begin, with phone calls and team meetings, progressing to an ‘in-person’ meeting.

### **No Participation by the Respondent**

**28.** In short, the averments by Ms. Leahy disclose that, whilst she was certainly in a position to meet with the respondent, the multidisciplinary team’s view was that it would not be in his interests for such a meeting to take place. The evidence discloses three reasons for that. First, the lack of ability to engage on the part of the respondent; second, that his ability to process information is very limited and very compromised; and, third, the predicted negative impact on his welfare of such a visit.

**29.** It is in the circumstances, that I am satisfied that no injustice could conceivably be done by the court proceeding to deal with today’s inherent jurisdiction application on the basis it has decided to, namely, on foot of the undertaking that Ms. Leahy will be swearing an affidavit on behalf of the committee reflecting the themes I have just discussed. Ms. McDonnell makes very clear the committee’s support for the current application.

### **Decision**

**30.** Drawing this ruling to a conclusion, having carefully considered the entirety of the evidence, I am very satisfied that to make the orders sought today represents a necessary and a proportionate response by the court so as to ensure that the fundamental rights of a vulnerable person who lacks capacity to make relevant decisions, including with regard to his place of residence and the care he needs, are vindicated, and protected.

**31.** Recalling Dr. M.’s averments, the making of orders today under the court’s inherent jurisdiction provides a legal framework to ensure the continuation of the respondent’s care in his current placement. The evidence also allows for a finding that it is a placement which the respondent himself views positively. It is also entirely uncontroversial to say that the continuation of that placement is made possible by his detention and the range of orders which the court is making today and which, in substance, ‘mirror’ those which, until today, had been made under the court’s wardships jurisdiction.

**32.** In making these orders, this Court will, of course, ensure that, given their nature and impact on the respondent’s liberty and autonomy, they will be the subject of regular reviews going forward under the court’s inherent jurisdiction, recalling that, because the 2015 Act

focuses on the s. 3 definition, no continuation of detention under Part 10 and no reviews of detention going forward under s. 108 would have been possible.

**33.** I am satisfied that a further review should take place in approximately three months, with liberty to apply, should it be necessary, at any point prior to that.

**34.** As Mr. Leahy very appropriately submits, any application by the respondent's father in respect of access would effectively be transferred from the wardship side to the inherent jurisdiction side. I am grateful to Mr. Leahy whose instructing solicitors will notify the respondent's father of developments.

**35.** In relation to the review in June, it strikes me that two things are worth mentioning. The evidence overwhelmingly speaks to the risks to the respondent and from his presentation were he, for example, to exit the placement and be at large in the community without the support and supervision he needs. That evidence today provides a very solid basis for the detention and restriction aspects. On the next occasion, it would be helpful if the rationale for detention could be examined in the reporting specifically, including, for example, through the 'lens' of attempts to abscond, if they are so, and, if not, obviously from a different perspective.

**36.** Mindful of Ms Justice Hyland's decisions in *K.K.*, I think it is obvious from my ruling that I am satisfied that there is, today, sufficient evidence by way of independent reporting. Going forward and on the next occasion, insofar as it is intended to proffer independent evidence, I think that would be appropriate for Dr. H. to fulfil that role, given her familiarity with the respondent.

