[2020] IEHC 487

THE HIGH COURT
WARDS OF COURT

[WOC 9911]

IN THE MATTER OF TH

RESPONDENT / A WARD OF COURT

JUDGMENT of Ms. Justice Niamh Hyland delivered on 1 October 2020

Summary of Decision

1. This is an application by Michael Ward Solicitors for the costs of representing Mr H, ward of court, in the wardship proceedings that ultimately resulted in Mr H being made a ward of court by Order of the President on 2 July 2019. Mr H's solicitors seek costs against the HSE even though Mr H ultimately did not oppose the petition to take him into wardship after his solicitors obtained two medical reports on his behalf, both of which stated that he lacked the necessary capacity.

2. The application for costs was advanced by counsel for Mr H on the basis that the Constitution and the ECHR require that the intended ward's voice be heard and that therefore the HSE ought to pay the costs of his legal representation. The question of the entitlement to be represented and the question as to who pays for that representation are two quite different issues. I fully agree that it was appropriate in this case that Mr H be represented and that his solicitors be entitled to an order for costs when measured. However, simply because the HSE presented the petition under s. 12 of the Lunacy Regulation (Ireland) Act 1871 (the "1871 Act") (i.e. at the direction of the President), that does not mean it should inevitably pay Mr H's legal costs.

3. In the circumstances of this case, I have decided that the costs should be borne by the estate of the ward i.e. out of Mr H's own resources, and in so doing I place particular emphasis on the following factors:

   (a) the court has explicit jurisdiction to make orders directing that costs be paid out of the estate of a ward of court;

   (b) the costs in question were incurred representing Mr H's interests and on his instruction;

   (c) the HSE cannot be viewed as an "unsuccessful" party within the meaning of s. 169 of the Legal Services Regulation Act 2015 (the "LSRA 2015") for the purposes of costs;

   (d) the solicitors for Mr H did not seek to agree with the HSE in advance that the costs of his representation would be borne by the HSE;

   (e) the estate of Mr H in this case has sufficient means to discharge the legal costs when measured;

(f) the right of a ward to have his or her voice heard can be vindicated just as effectively by an intended ward bearing the costs of legal representation from their own funds, where appropriate, as by a third party bearing those costs.

4. Accordingly, I am ordering that the measured costs of the legal representation provided by solicitors and counsel for Mr H in respect of the petition for an inquiry be borne out of the estate of the ward.

Background

5. Mr H was born on 4 July 1937. He is now 83 years of age. He owns a property close to Athy, Co. Kildare which has a value of approximately €220,000. He currently resides at Ashley Lodge Nursing Home, Co. Kildare.

6. Mr H was admitted to Naas General Hospital on the 6 October 218. At that time, he had a diagnosis of dementia. By the 19 December 2018 Mr H was medically fit for discharge. The staff at Naas General Hospital were concerned that Mr H could not look after himself because of his dementia and that the system of support in his local community was no longer sufficient to manage his care needs.

7. The HSE's solicitors wrote to the Office of the Wards of Court on 19 December 2018 outlining its concerns in respect of Mr H and asking the President of the High Court to consider requesting a Medical Visitor to attend on Mr H to commence 12th section proceedings on foot of the information furnished. The President directed Dr Justin Brophy to act as 'Medical Visitor' pursuant to s.11 of the 1871 Act and Dr Brophy conducted a capacity assessment on Mr H, concluding that Mr H was of unsound mind and incapable of managing his affairs.

8. By Order dated 20 February 2019 the President of the High Court directed that the matter proceed by way of Petition for an inquiry as to the soundness or unsoundness of mind of Mr H and that the HSE serve the petition and have carriage of the report and proceedings. Ms Dillon, solicitor for the HSE served an Originating Notice document on Mr H on 6 March 2019. She indicates in her affidavit of service that she attempted to explain the procedure to Mr H. This notice notified Mr H the process involved in objecting to an inquiry being held or in demanding that such inquiry take place before a Jury.

9. By notice of objection dated 13 March 2019 Mr H signed the objection in the presence of Ms Mary Ward, solicitor. It appears that Ward Solicitors were contacted by SAGE, a patient advocacy group. No application was made to the HSE in advance of legal services being provided to Mr H seeking support in respect of the legal costs.

10. Ms Ward requested Dr David Robinson, Consultant Physician to examine Mr H on 9 April 2019 for the purposes of assessing his capacity. Dr Robinson concluded he did not have the capacity to make decisions and lacked insight into his care needs. Dr Michael O'Cuill, on the request of Ms Ward, examined Mr H on 11 June 2019. Dr O'Cuill agreed that Mr H was a person of unsound mind and was unable to manage his person or affairs due to

vascular dementia. In both reports, the very strong desire of Mr H to leave the nursing home and to go home were identified, as well as his belief that he could manage at home.

11. On 2 July 2019 the matter was listed before the President of the High Court for 12th Section Declaration. The reports of Dr Robinson and Dr O'Cuill were filed in Court on the 25 June 2019. It was confirmed at the hearing that there was no evidence to contest the proceedings and the President admitted Mr H to Wardship. The General Solicitor was appointed Committee of the Person and of the Estate of the Ward.

12. An application for costs was made on behalf of Ms Ward, solicitor and Senior and Junior Counsel. The President directed that this issue be 'stood over' and that a statement of the ward's assets be obtained. The application for costs has now been re-entered and Ms Ward and Senior and Junior counsel seek their costs as against the HSE.

Submissions of counsel for Mr H

13. Extensive submissions were made in respect of the right of a person the subject of a wardship petition to be heard and legally represented, arising, *inter alia*, from the decision in *AC v. Hickey & Cork University Hospital & Ors* [2019] IESC 73 and from the case law of the ECtHR. There was little disagreement with those principles and I summarise the core aspects of same below.

14. It was further submitted that the party responsible for bearing the legal costs of the ward was necessarily the HSE. Counsel for Mr H pointed to the fact that in practice the HSE provides a guardian *ad litem*, and if necessary, legal assistance, where it seeks a detention order against persons and seeks to argue that this must of necessity oblige the HSE to provide similar assistance in cases not involving detention.

15. Counsel for Mr H opposed the submission of the HSE that the legal costs should come out of Mr H's estate. She argued that, if respondents to wardship inquiries were required to fund their own legal costs, it would have a chilling effect on the provision of legal representation. I discuss this argument further below.

Submissions of the HSE

16. The HSE resists an order of costs, relying on the following factors:

- no request was made of it in advance of any legal services being provided to Mr H for the HSE to discharge those legal costs;
- it was not the petitioner in the application;
- it acted in strict compliance with its statutory obligations in relation to the promotion of Mr H's health and welfare in notifying the Wards of Court office of his situation in December 2018;
- no application was made for a detention Order in respect of Mr H;
- the fact that the HSE have a practice of paying for a guardian *ad litem* or legal representation in cases where they are the petitioner and are seeking to detain

respondents or provide compulsory medical treatment cannot be the basis for an obligation to discharge costs in this case;

- the opposition to the wardship inquiry was not pursued.

Submissions of the General Solicitor

17. The General Solicitor for Minors and Wards of Court (the "General Solicitor") made submissions on the law and practice relating to costs applications pursuant to s. 12 and s.15 of the 1871 Act in circumstances where she and her office have experience in the law and practice of the jurisdiction in wardship. In so doing the General Solicitor did not seek to directly address the question of what orders should be made in this case, if any.

18. The General Solicitor observes that the issues before the Court are arguably less related to the right of the respondent to the benefit of legal advice/representation and more related to how this is to be funded i.e. by the petitioner/ solicitor with carriage (who in the majority of cases will not be a state body but a private individual in the form of a family member or friend of the respondent, or indeed the General Solicitor herself in the event that she is assigned carriage of the proceedings by the President of the High Court), out of the estate of the respondent whose estate the application is designed to protect, or by some other mechanism. It is accepted that the issue of the right to legal assistance and/or representation and how it is funded may be related.

Right of an intended ward to be heard

19. The entitlement of a respondent to a wardship petition to be heard and, if necessary, legally represented, has been firmly established in Irish law by the recent Supreme Court decisions in *AC* and, to a lesser extent, in *AM v. Health Service Executive [2019] 2 I.R. 115*. All the participants noted the seminal importance of the decision in AC although the HSE was keen to stress the very different factual circumstances in the instant case and the corresponding limitations on the applicability of *AC*.

20. In that case, in concluding that Mrs C's rights of fair procedures were not vindicated in the making of the Order taking her into wardship in August 2016, one of the factors of concern identified by O'Malley J. was that Mrs C had requested legal representation but that there was no provision for legal aid in the area of wardship. Having extensively reviewed the jurisprudence of the ECtHR relating to the rights of persons lacking capacity, she observed:

> *"367. While it is true that there is no general constitutional right to legal aid in civil matters, it is clear that it has been accepted by the State, in some circumstances, that certain types of decision warrant the provision of at least the opportunity for legal representation. Furthermore, the HSE has in practice funded legal representation in wardship applications where it was seeking a detention order. In my view the decision of a court to deprive an adult of all legal capacity is of such significance that the absence of legal assistance may, in some circumstances, render the process unfair.*

368. However that is not to say (since the issue has not been argued to the extent that would be desirable for a decision of this nature) that there is necessarily a constitutional right to legal aid in wardship. The more basic point is that there must, in my view, be at least a mechanism by which the views of the proposed ward can be ascertained and her interests protected. In particular it must be open to the proposed ward to contest the evidence being put before the court and to make the case that the medical criteria have not been met or that, in any event, wardship is not necessary or appropriate".

21. At the conclusion section of the judgment, O'Malley J. noted as follows:

"396. Moving on to Mr. C's appeal, I have found that the procedures applied to the making of the wardship order in August 2016 were flawed in that Mrs. C's fair procedure rights were not vindicated. The notice given of the hearing date was, I believe, too short. She should have been furnished with the evidence that was to form the basis for the Court's decision, and should have had an adequate opportunity to challenge it. The absence of legal aid for such cases is a matter of real concern, given the consequences of a wardship order, and it seems to me that if a person is not in a position to get legal representation it may be necessary to appoint a guardian ad litem to protect her interests".

22. Two aspects of that ruling bear emphasis. First, the necessity for legal aid in certain circumstances is not confined to cases involving a detention order, although in the *AC* case, Mrs C was physically prevented from leaving and thus deprivation of liberty issues arose. But the ruling goes beyond cases involving detention orders.

23. Second, O'Malley J. noted that a guardian *ad litem* may need to be appointed if a person "*is not in a position to get legal representation".* Thus, the ability of a person to obtain their own legal representation is clearly a factor to be considered when identifying the obligations of others involved in the wardship application.

24. At my request, the parties delivered very helpful supplemental submissions on the jurisprudence of the ECtHR in respect of representation of persons lacking capacity. However, because that case law does not, in essence, go beyond the requirements already identified by the Supreme Court (which itself was informed by the ECtHR jurisprudence), I do not propose to consider same in any detail. Suffice to say that in *Winterwerp v. The Netherlands* 6301/73 (1979) 2 EHRR 387 the court made it quite clear that, where a person is deprived of their liberty, Article 5 requires that they have the right to be heard and, if necessary, to be represented. The Court observed:

"60. Nonetheless, it is essential that the person concerned should have access to a court and the opportunity to be heard either in person, or where necessary, through some form of representation, failing which he will not have been afforded "the fundamental guarantees of procedure applied in matters of deprivation of liberty" … Mental illness may entail restricting or modifying the manner of exercise of such a right … but it cannot justify impairing the very essence of the right. Indeed, special

procedural safeguards may prove called for in order to protect the interests of persons who, on account of their mental disabilities, are not fully capable of acting for themselves."

25. Nothing in either Irish case law nor that of the ECtHR suggests that for a person's rights to be adequately vindicated, legal representation (if required) must be paid for by the State, or by State bodies party to the wardship proceedings. In my view, where a respondent to a wardship petition can obtain his or her own legal representation, this adequately vindicates the right of the respondent to be heard. Of course, that may not always be possible; and in that case, the question of who should fund the legal costs necessary to permit a respondent to be heard (if legal representation is required, which will not always be the case) requires to be decided having regard to the facts of a given case.

Jurisdiction to order costs be paid out of estate of the ward

26. Having regard to the value of the property owned by Mr H, referred to above, his means are such that the costs incurred in representing his interests can be met out of his own estate. The court's jurisdiction to make such an order derives from both s.12 and s.94 of the 1871 Act (as well as its jurisdiction under s.168 and 169 of the LSRA 2015, and Order 99 of RSC, discussed below). The operative part of s.12, having referred to proceeding upon a medical visitor's report as a petition, provides:

> *… the costs and expenses to be incurred by any person in proceeding upon any such report and order in obedience to any such order as aforesaid shall be paid and provided for in such manner as the Lord Chancellor intrusted as aforesaid may by any general or special order at any time or from time to time direct.*

27. Section 94 provides as follows:

> *The Lord Chancellor intrusted as aforesaid may order the costs and expenses of and relating to the petitions, applications, orders, directions, conveyances, and transfers to be made in pursuance of this Act, or any of them to be paid and raised out of or from the land or stock, or the rents or dividends in respect of which the same respectively shall be made, in such manner as he may think proper.*

28. Where a respondent is taken into wardship, it is the almost invariable practice in the wardship list to grant "private" petitioners (i.e. petitioners who are not public bodies such as the HSE, the CFA or hospitals or nursing homes) the costs of the petition against the estate of the ward.

29. Indeed, even where the outcome of the inquiry is that the respondent is not taken into wardship, costs may be awarded against the respondent in favour of the petitioner. In *In the matter of MJ a person alleged to be of unsound mind* [1929] I.R. 509, the proceedings originated in a report of a medical visitor which Kennedy C.J. directed to be proceeded upon as a petition under s. 12 for an inquiry as to the state of mind of MJ. Following an inquiry before a jury (as requested by MJ), it was held that the respondent

did not lack capacity (the respondent having objected). The solicitors who petitioned for an inquiry sought their costs, but this was strongly resisted by MJ. In considering whether he had the power to give the solicitors their costs, Kennedy C.J. observed:

> *"Now when I turn to the less specific but much wider terms of the clause at the end of s. 12 of the Lunacy Regulation (Ireland) Act 1871, which authorised the Lord Chancellor (now the Chief Justice) to provide for costs generally in cases under that section, I think I must have regard to the fact that the Parliament which enacted the Act of 1871 had in mind the English Act of 1882 and the decision in the case of In Re F which confirms the view that it was within the contemplation of the Irish Act that the Lord Chancellor should have the most ample power and jurisdiction to deal with the costs in these cases. I am of the opinion that I have jurisdiction and authority in a proper case under s.12 of the Irish Act of 1871 to order that the costs of the party having carriage be paid out of the estate of the person supposed to be of unsound mind, notwithstanding that such person is successful in establishing his soundness of mind to the satisfaction of a jury".*

30. A not dissimilar situation arose some 73 years later in the case of *In re Catherine Keogh* (Unreported, High Court, Finnegan P., 2 October 2002). There, the respondent was involved in a road traffic accident and sustained very serious brain injuries. Proceedings were brought and the matter was settled for a substantial sum. The next friend, being a psychiatrist in the Royal Hospital Donnybrook, presented a petition under s.15 of the 1871 Act to have the respondent made a ward of court. The respondent objected to the application and a jury trial took place, which concluded that the respondent was not of unsound mind. The petitioner sought his costs against the respondent, and this was opposed by the respondent, who in turn sought her costs against the petitioner. Finnegan J. referred to s. 94, and observed as follows:

> *"The practice of the court since 1871 has been that if a petition has been properly presented and for the lunatic's benefit exclusively by a person entitled to present it the costs will be made payable out of the ward's estate even though the petition should be unsuccessful or the proceedings upon the inquiry granted result in the alleged lunatic being found sane or the finding of lunacy quashed on a traverse. Where the petition is presented bona fide the costs of opposing the inquiry will not be fixed on the Petitioner even though the opposition succeeds"* (page 5).

31. Ultimately, he found the bringing of the petition was reasonable and as such the petitioner was awarded his costs as against the respondent. The respondent in that case had argued that the precedent of *In re MJ* had the effect of treating her differently to other litigants where the general principle is that costs follow the event, and that even where an unsuccessful plaintiff had good grounds for bringing a claim and acted bona fide, it will not recover costs against a successful opponent. It was alleged that the approach in the *MJ* case was in breach of Article 40.1 and 40.3.2 of the Constitution. Finnegan J. rejected this argument, noting that Article 40.1 requires differences of capacity to be taken into account and that insofar as Article 40.3.2 is concerned, justice

required a balancing of hardship between the petitioner and respondent and because the petition was reasonable and *bona fide* there was no injustice to the respondent. Interestingly, an application was made that the petitioner's costs should be borne by the State (who had not been a party to the proceedings). Finnegan J. refused, holding that there was no statutory basis upon which costs incurred by a petitioner for an inquiry or costs incurred by the respondent in opposing same could be imposed upon the State.

32. These cases show that irrespective of whether s.12 (in an appropriate case) or s.94 is relied upon, there is a statutory basis for an order for costs to be made against the estate of the ward (or indeed a person where no order for wardship has been made following an inquiry). The discretion has been widely exercised, such that orders have been made even where a respondent was successful in her opposition to the inquiry.

33. If there is jurisdiction to direct the estate of the ward to cover the costs of the petitioner, there must certainly be a jurisdiction to direct the estate of the ward to cover what are essentially its own costs i.e. the costs incurred in ensuring that the ward's voice was heard in the inquiry. It follows that there is jurisdiction to make an order, either pursuant to s.12 or s.94 or both, directing that the costs of Mr H be paid out of the estate of the ward.

Sections 168 and 169 of LSRA/Order 99

34. I turn now to the legal framework applicable to a decision on costs in the context of wardship. Costs are normally exclusively governed by the rules in s. 168 and 169 of the Legal Services Regulation Act 2015 (the LSRA 2015) and Order 99 of the Rules of the Superior Courts (as amended by S.I. 584 of 2019).

35. All the parties have expressed reservations about the application of s. 168/169 and O. 99 in this case. The solicitors for the ward, Mr H, assert that the normal costs rules must be viewed in the context of the overriding context of wardship proceedings and in particular the right of the intended ward to have his or her voice heard.

36. The HSE says there was no event in respect of which costs should follow, since, although a notice of opposition was filed by Ward Solicitors, following the obtaining of medical evidence by them, it was withdrawn. Without prejudice to that, it asserts that if the notice of opposition was to be considered an event, it was not an event in respect of which Mr H was successful.

37. The General Solicitor observes that it may not be helpful to construe the event which costs follow in terms of winners and losers in petitions for wardship and that the exercise of the Order 99 discretion should be informed by the statutory framework in wardship and its treatment of costs.

38. I fully accept that given the special and unusual jurisdiction of the President of the High Court in respect of wardship, sections 168 and 169 and Order 99 should be read having regard to the nature of that jurisdiction. That presents no difficulty since the costs rules themselves provide for a wide discretion in relation to costs and for the context of any

particular case to be taken into account. Section 168 gives the court power to order that one party pay the costs of another party without limitation as to the position of either party. Section 169(1) explicitly provides that a court may depart from the presumption that the unsuccessful party pay the costs of the entirely successful party:

> *"(1) A party who is entirely successful in civil proceedings is entitled to an award of costs against a party who is not successful in those proceedings, unless the court orders otherwise, having regard to the particular nature and circumstances of the case, and the conduct of the proceedings by the parties …"*

O. 99(3)(1) requires the High Court, in considering the awarding of the costs of any action or step in any proceedings, to have regard to the matters set out in s.169(1) of the 2015 Act, where applicable (see *Chubb v. HIA* [2020] IECA 183 for a detailed consideration of these costs rules).

39. Costs in wardship are undoubtedly subject to additional considerations that may be superimposed on the court's normal costs jurisdiction. First, an order admitting a person to wardship has enormous implications on every aspect of that person's life. As such, as noted above, in certain circumstances it may be necessary to ensure that legal representation is available to the respondent to a wardship petition. As noted above, this obligation derives from the right to fair procedures, from the constitutional rights of a respondent, and from the ECHR. This may have implications for the way in which sections 168 and 169, and Order 99 are to be applied.

40. Second, the 1871 Act gives specific powers to the President to award costs in wardship cases, notably under s.12 and s.94. These powers must be considered alongside sections 168 and 169, and Order. In my view, nothing in s.169 displaces those powers, despite being enacted later in time and no argument to that effect has been made.

41. Nonetheless, sections 168 and 169, as well as Order 99 remain potentially relevant in a wardship inquiry. In *In The Matter Of The Appropriate Care Of A Ward Of Court* [2020] IEHC 20 McDonald J. applied the normal principles of Order 99 where, in the context of a dispute over the care of a ward between the Committee of the ward and the HSE, he granted the Committee a certain percentage of its costs against the HSE in circumstances where it had been partially successful in its application to the court (sections 168 and 169 not having been brought into force at the relevant time). It should be noted that McDonald J. was not dealing with an inquiry but rather with care orders once a person had been taken into wardship.

42. An argument has been made by the General Solicitor that, because what is being directed is an inquiry, rather than traditional adversarial litigation, that the notion of success or an event is inappropriate. Whether or not this is the case will depend on the circumstances. The breadth of the wording of sections 168 and 169 and the discretion given to a court under Order 99 mean that a court can always make costs orders on a basis other than the success of a given party. But in my view, in some petitions for an inquiry, the concept of

an entirely or partially successful party may still be helpful as part of the overall analysis of where the costs burden should lie.

43. In this case, the HSE had carriage of the proceedings seeking an inquiry. They were "successful" in that an inquiry was held and Mr H was found to be of unsound mind and incapable of managing his affairs, was held not to have capacity and was admitted to wardship. At the hearing there was no objection by Mr H's representatives to the issue of capacity in the light of the two medical reports they had commissioned, both of which concluded that Mr H lacked capacity and/or was a person of unsound mind. Because Mr H did not "succeed" in objecting to the order admitting him into wardship, in my view his legal team cannot justify obtaining their costs from the HSE on the basis that they were the successful party or that HSE were unsuccessful. Rather their approach appears to be that because the ward has a right to have his voice heard, the HSE should pay the costs, irrespective of the outcome of the case or any other factors. I explain why I do not agree with this approach below.

Application of principles

44. Bearing those principles in mind, I turn to the facts of this case and the submissions of the parties. Much of the submissions of counsel for Mr H were directed towards the entitlement of a respondent to a wardship petition to be heard, even where a detention order is not at issue, having regard to the decisions in *AC* and *C*, and the case law of the ECtHR. As identified above, I fully agree with those submissions. In this case, Mr H voiced his objections at an early stage, indicating that he strongly wished to go home. In the circumstances, it was appropriate that Mr H be heard and represented by his legal representatives, and their representation allowed him to participate in the process leading to him being taken into wardship, even where he did not ultimately object to the admission to wardship. Accordingly, I am satisfied that the solicitor and counsel who acted for him are entitled to their measured costs.

45. However, as pointed out by the General Solicitor, the question as to who should pay for representation is a different one to the question of whether a person is entitled to be represented. Counsel for the ward submitted that the party responsible for bearing the legal costs of the ward was necessarily the HSE. She pointed to the fact that in practice the HSE provides a guardian *ad litem*, and if necessary, legal assistance, where it seeks a detention order against persons and seeks to argue that this must of necessity oblige the HSE to provide similar assistance in cases not involving detention.

46. Counsel for the ward objected to the submission of the HSE that the legal costs should come out of the ward's estate in this case on the basis that, if respondents were required to fund their own legal costs, it would have a chilling effect on the provision of legal representation to respondents to wardship inquiries since solicitors would not be able to ascertain in advance of representation whether a respondent had sufficient means to fund the representation. However, no principled objection was identified arising from the Constitution and/or the ECHR case law requiring that the costs of a respondent seeking to object to a wardship petition be paid by a State body where one is involved rather than by the respondent himself or herself.

47. In respect of the "chilling" argument, in fact it is often possible to identify the respondent's assets readily from the Petition which is required to be served upon a respondent as those assets are often listed in the Petition. Moreover, it could not be the case that even if the HSE were, in a given case, the appropriate party against whom a costs order would be made, that a solicitor could assume that a costs order for all and any legal advice provided would inevitably be borne by the HSE, irrespective of the circumstances in which that advice was provided. Here, despite the HSE presumably being identified as the body from whom costs would be sought, no effort was made by Ward Solicitors to inform the HSE that a notice of objection was being submitted or to identify the steps it was intended to take on the ward's behalf and seek any form of agreement from the HSE in respect of costs being incurred. Had the HSE been deemed to be the appropriate party in principle to pay Mr H's costs, that lack of consultation might have mitigated against some or all of the costs being recovered from the HSE.

48. In any case, the argument that the HSE should bear the costs rather than the ward because of the chilling effect on representation is a hypothetical one since, in this particular case, legal advice was provided by Ward Solicitors in circumstances where they do not seem to have been aware, prior to becoming involved, either of Mr H's means or whether the HSE would fund the provision of advice.

49. For all those reasons, the mere fact that Ward Solicitors might prefer to recover their costs against a statutory body rather than the ward himself or herself is not a sufficient reason to require the HSE to pay the costs in this case, given that Mr H is in a position to discharge (measured) costs from his estate.

50. In conclusion, it seems to me that the below factors lean in favour of an order for costs being made from Mr H's own estate rather than by the HSE.

51. First, as identified above, the court has explicit jurisdiction to make orders directing that costs be paid out of the estate of a ward of court.

52. Second, the costs in question in this case were incurred representing Mr H's interests and on his instructions.

53. Third, the HSE cannot be considered liable for the costs of Mr H on the basis that it was unsuccessful in the proceedings or that there was any event that was determined against it and in favour of Mr H. The concept of "success" or the "event", while far from being determinative in the context of a petition for wardship, is not irrelevant.

54. Fourth, the solicitors for Mr H did not agree with the HSE in advance that the costs of his representation would be borne by the HSE.

55. Fifth, the estate of the ward in this case has sufficient means to discharge the legal costs when measured.

56. Finally, the right of a ward to have his or her voice heard can be vindicated just as effectively by an intended ward bearing the costs of legal representation from their own funds, where appropriate, as by a third party bearing those costs.

57. In all the circumstances, it appears an appropriate case in which to exercise the discretion of the court to make an order directing the costs be borne out of the estate of Mr H.

Conclusion

58. For the reasons identified above, I direct that the costs of the legal representation of Mr H (when measured) in respect of the petition for an inquiry into wardship be paid out of the estate of the ward.

Costs of this application

59. Finally, in relation to the costs of this costs hearing, subject to any submissions the parties may wish to make, I would propose that the solicitors for Mr H and the General Solicitor obtain their measured costs from the estate of the ward and that no order for costs is made in respect of the HSE.