

THE HIGH COURT

WARDS OF COURT

[2024] IEHC 242

WOC 11842

**IN THE MATTER OF THE MINOR WARDSHIP JURISDICTION AND
IN THE MATTER OF AN APPLICATION TO TRANSFER A MINOR TO SECURE
ACCOMMODATION IN THE UNITED KINGDOM AND
IN RE A MINOR RESPONDENT (BD)**

Ex-tempore ruling by Mr. Justice Mark Heslin delivered on 9th April, 2024

1. I want to express my thanks to Ms. McKechnie for the Child and Family Agency, which I will refer to as "the Agency", who moves the application today and who outlined very appropriately and comprehensively the evidence on foot of which it is based. I am also very grateful to Mr. Leahy who represents the Respondent's Guardian ad Litem.

2. It is appropriate to say at the outset that the Respondent minor did not participate in today's hearing and has made clear that she does not wish to have separate legal representation, and it is clear that she is content for the Guardian ad Litem to represent her views.

Background

3. As all of us are aware, this is an application which concerns a minor born in 2006 and, therefore, aged just 17. It is clear from the extensive evidence before the Court that she has already experienced in her young life harms of a most serious kind and unfortunately remains at risk of the gravest of harms.

4. By way of the immediate background, on the 3rd April this Court ordered that Ms. G be appointed as the Respondent's Guardian ad Litem and joined into the proceedings. A motion on notice was made returnable for today.

5. It is, however, appropriate before looking in some detail at the affidavit grounding today's motion to recall that Mr. Brian Horkan, solicitor for the Agency, swore an affidavit on 3rd April in which he averred to a number of relevant facts, and these can be summarised as follows:

- The Respondent's current presentation is chaotic.
- She is missing from her current placement in [redacted] more often than she is present.

- She is at risk of serious physical injury to herself or to others.
- She is at risk of sexual exploitation.
- She is at risk of becoming an active drug user or an addict.
- She has no insight into the high level of risks which are posed to her.

6. She is extremely vulnerable, and I will presently refer to certain reporting by Dr. Adrian Gavin, Senior Consult Educational Psychologist, which details the respondent's challenges and vulnerabilities.

7. Other relevant facts averred to by Mr. Horkan include that the Respondent's father is deceased, and the respondent has had no contact with her mother since she was 2 years-of-age.

8. A Full Care Order was granted in November 2009 and a Special Care Order was made concerning the respondent by Jordan J. on 22nd February 2024. However, due to the very unfortunate lack of capacity in special care, the Agency has been unable to comply with that Order.

Application before the Court

9. The affidavit grounding today's application was sworn by Ms.F, who is a Child and Care Social Worker with the Agency, and hers is an affidavit of 8th April 2024. As we are aware from the reliefs sought, that affidavit is sworn in support of an application to secure the wellbeing and safety of the Respondent by means of a suite of orders which would provide for her transfer to a secure therapeutic placement which has been identified for her in the United Kingdom, a placement called "[Redacted]"["the UK Placement"]. This placement is a secure children's home which provides intensive care, welfare, and therapeutic services.

10. While I have touched on certain of the facts, it is appropriate to note that the very comprehensive affidavit and exhibits, all of which I have considered as provided by Ms. F, demonstrates that the following is a fair summary of the facts which emerge from the evidence:

- The Respondent was born in Ireland to Irish parents.
- She has spent her entire life living in Ireland.
- She is habitually and ordinarily resident in this jurisdiction
- That will continue to be the case for the duration of any placement in the United Kingdom.
- In a manner averred earlier by Mr. Horkan, the Respondent's current placement remains chaotic.
- She continues to be missing from her placement more often than present.
- She is described as not presenting as aggressive or abusive towards staff or others involved in her care, rather, she has not been using the supports in place for her and, instead, is placing herself at significant risk when missing in the community.

Current Status of Special Care Regime

11. We are all aware that there is a statutory 'special care' regime in this jurisdiction. It is provided for in Part IV of the 1991 Childcare Act, as amended. Special care provides for short-term stabilising intervention which prioritises safe care in a secure and therapeutic environment for children and young people at risk. Special care is unfortunately operating at full capacity. Whilst there are physical beds available in purpose-built special care units in Ireland, the Agency does not have sufficient personnel to open the additional beds, despite the Agency having devoted monetary resources to the development of the special care system.

The Respondent's Ongoing Special Care Proceedings

12. Due to the level of risk posed to the Respondent, she was deemed to meet the criteria for special care. Special care proceedings were initiated in February of this year and, as I have said, Jordan J. made a Special Care Order on 22nd February 2024. In net terms, that Order remains in being and has *legal* effect but, to put it crudely, it has been of no *practical* assistance to the respondent, due to the absence of a special care bed for her.

13. In the manner averred by Ms. F, the statutory regime for special care is currently unable to be relied upon for the purposes of safeguarding the Respondent's health and welfare needs, due to the lack of placements. In this context, the Agency is seeking to rely on the parallel jurisdiction of wardship to achieve the fundamentally important, vital aim of securing the safety of this vulnerable minor.

Reporting Before the Court Concerning the Respondent

14. Turning to the respondent's vulnerabilities and challenges, she attended a psychology appointment on 16th November 2023 and completed an initial assessment. She attended a speech and language assessment on 16th October 2023. The results indicate that the Respondent has very low verbal comprehension, perceptual reasoning, working memory, and her processing speed was low-average.

15. The reporting also details her poor adaptive skills, meaning her ability to navigate her day-to-day environment is low and it is reported that her current literacy ability is that of an eight to nine year-old. The assessments further indicate that the Respondent rates high on indicators of attention deficits and hyperactivity disorders and this will need further assessment. The Respondent is also reported to have low full scale intelligence quotient.

16. The conclusions of the assessment include, *inter alia*, that the Respondent has a number of significant needs. She experiences difficulties with general understanding and information retention. Her overall adaptive functioning ability, or her ability to effectively navigate daily life tasks and meet the demands on her environment, is extremely low. Her behaviour in the past indicates a level of vulnerability and a continued need for supported living. She is experiences attentional difficulties and significant difficulties with working memory, and in her ability to plan

and organise activities which require attention.

17. She is functioning within the borderline range of ability falling just outside the range for a mild intellectual disability. Elements of her cognitive profile point to a learning disability and significant vulnerability. Based on discussions had with a Regional Disability Service, she would be accepted for a disability service and such a referral is recommended.

18. She requires further assessment and supports, including a referral for confirmation of ADHD, investigation of sleep difficulties, and access to counselling and adult speech and language therapy, and a referral to local adult disability services is recommended.

Details of the Proposed UK Placement

19. In light of the fact that there is no availability in special care in Ireland, a referral was made to secure care in England. In this context, [the UK Placement] has been identified as a suitable placement to meet the Respondent's needs and the evidence before the Court puts beyond doubt that such a placement is capable of meeting the needs identified. It is a placement operated by the Peterborough City Council, approved by the Secretary of State to restrict children's liberty. The commissioning of health services at [the UK Placement] is the statutory responsibility of NHS England under the Health and Social Care Act 2012.

20. [The UK Placement] provides care for up to 18 children aged between 10 and 17, who are placed there by local authorities. The accommodation comprises of five living or bedroom areas known as "lounges", each providing facilities for 4 young people. The most recent Ofsted inspection report into [the UK Placement] was positive.

21. In terms of what [the UK Placement] can provide, this includes a care team, health team, education team, and includes case managers, team managers (being qualified social workers), child and adult psychiatry, psychologists, occupational therapists, speech and language therapists, physical health nurses, a mental health nurse, teachers, and teaching assistants.

22. The therapeutic care needs and assessments, which have been identified for the Respondent and included in her Care Plan, include further assessment for ADHD, speech and language intervention and general therapeutic support. Restrictive practices to ensure the Respondent's safety in the placement are detailed in policy documents which are exhibited, namely with regard to 'observational guidelines', a 'performance monitoring of physical interventions policy', the 'use of single separation policy' and a 'policy for the management of time away'.

23. Ms. F goes on to aver that special care in this jurisdiction involves detaining a child in a secure unit for the purposes of providing care which addresses their behaviour and the risk of harm it poses to them and their care requirements. She also avers that special care includes medical and psychiatric assessment, examination and treatment, and educational supervision.

24. Having regard to the evidence I have touched on in relation to what [the UK Placement] has to offer, it is positively averred that the Agency is satisfied that the therapeutic care regime offered at [the UK Placement] mirrors to a large extent the regime of care provided in special care units in jurisdiction. The Agency is also satisfied that [the UK Placement] is appropriately regulated by the UK equivalent of our 'Health Information and Quality Authority', or HIQA. The Agency is satisfied that [the UK Placement] is an appropriate placement to provide the specialist therapeutic care that the Respondent urgently needs in an appropriate secure setting.

Need for Transfer to the Secure Placement

25. The fact is, and it is very amply covered in the evidence before the Court, that during the last number of months and right up to now, the Respondent has engaged in a number of high risks, as well as antisocial behaviours. These are averred to. It is not necessary to go into them in 'granular' detail, but they are risks of the most serious kind, including risks of physical injury to self, risks indeed to life, risks of sexual abuse, risks of sexual exploitation, including being trafficked, as well as risks of drug use and addiction, with the Respondent lacking insight into these high levels of risk.

26. It is also a matter of fact that all types of care alternatives have been tried, including foster care and residential care. However, no open unit is capable of keeping the Respondent safe at this time, given her level of 'missing from care' incidents.

27. It is also averred that there is no evidence to suggest that the Respondent would meet the criteria for treatment under the Mental Health Acts at this time, so that is not a care alternative suitable or available. It is averred and established as a fact that the need for therapeutic security arises out of the Respondent's high-risk behaviours rather than any mental impairment. It is also averred that the Respondent is currently struggling to engage appropriately due to the negative influences of others on her vulnerabilities and isolation.

28. The Social Work Team were, and continue to be, of the view that she cannot be safely cared for in the community and the following facts are also established in the evidence, and these facts mirror the analysis which would be necessary in light of section 23(h)(i) of the 1991 Child Care Act in this jurisdiction. In summary, the Respondent has attained the age of 17. Her behaviour poses a real and substantial risk of harm to her life, health, safety, development, or welfare. Having regard to that behaviour and risk of harm and her care requirements, the provision or continuation of the provision by the Applicant to that child of care, other than care in a secure setting and treatment and mental services under and within the meaning of the 2001 Mental Health Act, will not adequately address that behaviour and risk of harm and those care requirements.

29. The Respondent requires a placement in a secure setting to adequately address the behaviour and risk of harm and those are care requirements which the Applicant, i.e. the Agency, cannot provide to the child unless the Order sought is made in respect of her. The Respondent requires a

placement in a secure setting for the purposes of protecting her life, health, safety, development, or welfare.

30. In the context of today's application, which is for a care regime in England 'mirroring' special care were it available for her here, the Agency has determined that the Respondent requires special care and has carried out appropriate consultations including with An Garda Síochána, the Irish police force, as well as the Respondent's mother, albeit that the latter's involvement in her life has been minimal, as well as further consultation including with the Respondent herself and her Guardian ad Litem.

31. It is also a matter of fact that a family conference was deemed not to be in the Respondent's best interests and one can well understand why, in circumstances where as a matter of fact, there is no appropriate, safe, family or support network available, including in previous long-term foster care, to attend a meeting or to participate in creating a safe robust and alternative plan for the Respondent that would eradicate the need for a secure placement for her. In short, the evidence speaks loudly to the urgent need for a secure placement of the type which is proposed in [the UK Placement].

Proposed Role of The Agency and this Court Going Forward

32. As Ms. F explains, for the placement to proceed, consent of the competent authority in the neighbouring jurisdiction is required under Article 33 of the 1996 Hague Convention. That was sought and has been provided and a letter of 20th March 2024 is exhibited. The consent was sought from the central authority of England and Wales and granted on specific terms, namely:

- The Agency will remain at all times financially responsible for what is an interim placement.
- The Agency will arrange and indemnify the costs of access for members of the Respondent's family.
- The Agency will make arrangements for the Respondent to return to Ireland if at some point she no longer meets the criteria for detention.
- As she approaches her 18th birthday, the Agency will make arrangements including any necessary funding for assessment and transition to appropriate adult services.
- The Agency will fund and make arrangements for aftercare that the Respondent may need after treatment at [the UK Placement].
- In the event that the responsible clinicians consider that the Respondent should be transferred to another facility in England, the Agency will make a new request to the Secretary of State for Health or the body that the Department of Health advises to be the relevant competent authority at the time.
- This Court will conduct highly intensive welfare reviews on a four-week basis if the Respondent is placed in [the UK Placement].

- The orders made by this Court after each intensive welfare review will be furnished to the central authority for England and Wales.

33. It is also averred that an urgent application for recognition and enforcement of such order as this Court makes today will be made to the relevant courts in the United Kingdom.

Proposed Plan for the Initial Transfer

34. Averments are made in relation to the transfer plan. It is envisaged that transfer will be facilitated by private air transfer and a suitable team will accompany the Respondent minor comprising of a care worker, members of An Garda Síochána, the Respondent's Guardian and others yet to be definitively identified. The necessity for the involvement of police, An Garda Síochána, stems from the extremely high level of absconding which the Respondent engages in daily. Permissive orders regarding restraint and possible sedation are sought, and the evidence speaks to them being justified, to ensure the safe transfer of the Respondent and with a view to minimising trauma to her. Ms. F also avers to steps taken with a view to trying to keep the Respondent safe, pending transfer. I will presently come to a very helpful submission made by Mr. Leahy which speaks to that issue also.

35. Concluding the Grounding Affidavit, averments are made to the following effect:

- The Respondent requires a period of stability to break the spiralling cycle of substance misuse, coercion, and suspected sexual exploitation.
- A secure care setting would provide this break, as the Respondent's immediate safety and risk is currently severely compromised.
- A period of time in a secure care setting would also give the Respondent the opportunity to focus on her own needs and understand the risks to her health and safety of her behaviour through therapeutic intervention.
- The Respondent requires education and therapy to enable her to identify healthy and unhealthy relationships.
- Her history of neglect and alleged abuse from former foster carers has not equipped her with the knowledge of positive, loving and supportive relationships which she so desperately requires.

36. It is in this context that it is averred that it is in the Respondent's best interests that she be detained in a secure facility as a matter of urgency. The evidence undoubtedly supports that averment.

Evidence of Guardian ad Litem

37. I have also had the benefit of an affidavit sworn on 8th April 2024 by Ms. G, the Respondent's Guardian ad Litem who avers, among other things, that the Respondent did not wish to have independent legal representation. Ms. G exhibits a detailed report, prepared by her on 4th April of this year, as well as her earlier 17th March 2024 report, which was prepared for the purposes of a

Review Hearing in relation to the special care proceedings. The starkness of the situation can be illustrated by the following brief extract from Ms. G's more recent report which relates to her discussion with the respondent, which took place on 4th April:

"[The Respondent] *said she believed something bad was going to happen to her and I indicated my **concern that she would not make it to 18**, such was her risk-taking behaviour. She again said 'I don't know how to act because I have been treated so badly'*" [emphasis added].

She continued in that vein.

The Respondent's Views

38. As regards the Respondent's own views, she is unequivocal in her opposition to the proposal that she be placed in a secure setting in England. The Respondent neither wants to go to England, nor to be detained in a secure unit.

39. I pause to say that, were a special care bed available at present within this State, not only would this application not be made today under the Court's minor wardship jurisdiction but, speaking directly to the views reported by the Respondent, she would be *detained* in a secure care environment pursuant to Jordan J.'s Special Care Order as made on 22nd February.

40. In the manner averred on behalf of the Agency, it is satisfied that the therapeutic care regime available at [the UK Placement] largely mirrors the special care in special care units within this jurisdiction. In circumstances where special care, were it available here, and care in [the UK Placement] *both* involve environments of therapeutic security, the material difference is *location*, not detention.

41. It seems to me that the expressed wishes of the Respondent need to be seen in this light as well as in the light of overwhelming evidence that care in a secure setting is required in order to address the range of profoundly serious risks to the Respondent, and to ensure that she receives necessary support and care which she requires in her best interest.

42. The Respondent's expressed wishes plainly need to be seen in the context of the fact that there is no place capable of keeping her safe in this State. Her wishes also need to be seen in light of the evidence found in the Guardian ad Litem's report that the Respondent is "*functionally*" at a "*much younger age than 17*", as well as seen in the context of her assessed challenges, vulnerabilities and lack of insight which I have touched on earlier and which emerges from the reporting.

43. I can well understand why a citizen of this State would not wish to leave this State to receive care. However, the unfortunate reality disclosed in the evidence is that there is, as a matter of fact, no special care bed available at this point in time in Ireland, notwithstanding the 22nd February Special Care Order.

44. Ms. G has certainly discharged very appropriately and dutifully the role of Guardian ad Litem in the context of communicating the Respondent's views to the Court and I have commented on those.

Independent View of the Guardian ad Litem

45. It is appropriate to turn to her own independent view, reflective of that second crucial role a Guardian ad Litem performs. It is sufficient to say that, albeit because it is a recognition that there is no alternative, the Guardian ad Litem supports today's application. As she avers at paragraph 22 of her 8th April affidavit:

"With reluctance, because there is no special care placement available to [the Respondent] in this jurisdiction, because there is, as I understand it, little prospect of such a placement becoming available to [the Respondent] at any time soon, and because of the very severe risk which is posed to her life, safety, and welfare, by her present care circumstances, I consider that notwithstanding [the Respondent's] strongly expressed opposition to the proposal that it is nonetheless in her best interests and necessary to protect her welfare that the Orders sought by the Child and Family Agency be made by the Court."

46. As I say, I have nothing but sympathy for this vulnerable young person who sincerely wishes not to transfer, albeit temporarily, to England to receive care, and I have taken very full account of her expressed wishes, but I am satisfied that they are outweighed by the evidence that she needs, and urgently needs, the type of care which [the UK Placement] can provide and which is, very unfortunately, simply not available at present in this jurisdiction.

47. If this Court were to make a decision today in accordance with Respondent's expressed wishes, it would be to allow a situation to continue where her fundamental and constitutionally protected rights, including her right to life, to health, to bodily integrity, and to equal access to necessary care, were *not* vindicated or protected. Such a decision would be for the Court to ignore the Respondent's best interests in flagrant disregard for the provisions of the Constitution, in particular, Article 42A.4.1, which makes clear that the best interests of the child shall be the paramount consideration. A consideration of the evidence before the Court very safely allows me to say that it is in the Respondent's best interests to accede to today's application.

The Ongoing Crisis within the Special Care Regime

48. By way of comment, and it is comment only, but it does seem to me appropriate to make, it is most regrettable that an application of this type has had to be brought. I say this because, as all of us are aware, the will of the Irish People as expressed through legislation enacted by the Oireachtas, i.e. the Child Care Act 1991, as amended, is that the Agency provide special care beds for children who need them; and it was not the will of the Irish People that children in need of special care would have to leave this State to receive the equivalent of such special care, unavailable to them here.

49. The failure to provide a special care bed, whether due to staff retention, or recruitment issues, or otherwise, is plainly not the failure of this Respondent, or any other child's failure, but it is a failure nonetheless and it provides the context for today's application. In saying this, I want to make 'crystal clear' that I have nothing but gratitude for all of those who have been involved in trying to provide support and care to keep this vulnerable Respondent safe. I also want to express my sincere thanks to all of those involved in moving today's application.

Profoundly unsatisfactory

50. The point that I wish to stress is that, whilst it is very clear that the best interests of this particular child are served by the Court granting the reliefs sought today and doing so under its minor wardship jurisdiction, the context in which the application is brought is a failure to provide a special care bed, notwithstanding a statutory regime which obliges the Agency to provide one. That is very obviously a profoundly unsatisfactory situation, and what emerges from it, again speaking to the context and background, is the urgent need for the problem to be *solved*, irrespective of whether that solution to the problem of the lack of availability of special care beds is exclusively within the 'gift' of the Agency or requires input from the Executive, or otherwise.

51. I have no qualification to speak to the method by which the solution is arrived at, but I do feel it important to emphasise that a solution must be delivered. Why? Because, for so long as the special care regime is on the Statute Books in this jurisdiction, it is a problem which must be solved and the Court cannot ignore the fact that the special care regime is not functioning properly, as today's application illustrates. And why is that so? Very obviously, it is because special care is the means by which the People of this State have chosen to ensure that the constitutional rights of the most vulnerable, or some of the most vulnerable, in our society, such as this Respondent, are to be vindicated and protected, consistent with the injunction in Article 42A of the Constitution.

Crisis

52. Returning to the specific application, the fact that an existing Special Care Order could not be given effect to, meant that it was appropriate for the Applicant to bring today's application. In light of the evidence, it is appropriate for this Court to grant the reliefs sought. It is fair to say that granting the orders in the terms I will presently come to, represents a necessary, a proportionate, and a 'bespoke' response to secure the best interests of this vulnerable minor in a situation of acute need. However, it is also not unfair to characterise it as, and I mean no disrespect in using the term, something of a 'sticking plaster' approach. By that, I mean, it is an ad-hoc solution against the backdrop of an ongoing, wider, and unaddressed problem, indeed crisis, regarding insufficient numbers of adequately-staffed special care beds in this State for those who need them.

53. That compels me to say that the last thing this Court would wish to see, going forward, is a systematic invocation of the Court's wardship jurisdiction as opposed to a redoubling of efforts leading to a successful resolution of the underlying crisis in terms of the availability of special care beds. In other words, today's application was appropriate, but it is also exceptional, the 'rule' or

the 'norm' being, and it must remain, that when special care orders are made, they must not only have a *legal* validity, but must, in fact, be capable of being given *effect* in practice. Why is this so? Very obviously, it speaks again to the will of the Irish People as expressed in legislation.

54. To conclude the Ruling today and returning to the facts, there is simply no alternative care arrangement currently available which will keep this vulnerable minor safe and on the evidence before the Court today, [the UK Placement] is the only place she can be kept safe.

Regret

55. I want to acknowledge not only the skill with which Ms. McKechnie made today's application, but also acknowledge that she put on the record that it is a matter of great regret to the Agency that it finds itself in a position where there is no special care bed available. In light of that, I do not want anything I have said today to be intended as undermining heroic efforts by individuals in what must be very difficult circumstances to do the very best for each child with whom they are engaged, and I do not direct criticism at any individual. Far from it.

56. The jurisdiction available to the Court is not in doubt. The decision in *In the matter of JJ* [2021] IESC 1 makes clear that this Court has a wide jurisdiction to make protective orders in the context of wardship proceedings which are ongoing. This Court's minor wardship jurisdiction is also, as Ms. McKechnie very correctly submits, a flexible one. No legislation dilutes this Court's duties or powers to respond in a necessary and proportionate way to ensure the safety of a vulnerable person, such as this Respondent, by making orders of that type and in her best interests.

Constitutional rights

57. It is fair to say that the Court's response today is essentially to vindicate constitutional rights and secure the best interest of this vulnerable child, in circumstances where the legislative regime designed to do so cannot, as matter of fact, fulfil that function. It is also fair to say that even if this Court's wardships jurisdiction was not available to it, the Court could invoke its undoubted inherent jurisdiction given the constitutional rights at play and the evidence which makes clear that the Respondent's very life is at risk.

58. I am also very grateful to Mr. Leahy who put the Guardian ad Litem's position very clearly to the Court. As he rightly submits, she is someone very familiar with the Respondent, given the various roles which Ms. G has performed. Through Mr. Leahy, the Guardian supports today's application, albeit in circumstances where she has very appropriately been agitating for special care for the Respondent but, given the facts, the Guardian ad Litem acknowledges that the only means to secure the safety of the Respondent is via today's application, and it is in that context it is supported.

59. The reporting, as summarised so professionally by Mr. Leahy, also makes clear that the Guardian is very happy with the quality of care which will be available to the Respondent in [the UK Placement] and happy also with the unit itself.

60. I am very grateful, as I touched on earlier, to Mr. Leahy for alerting the Court to the fact that he understands an ad-hoc team of Irish police, An Garda Síochána, will be effectively intercepting men who have, it appears, been exploiting the Respondent in the most appalling manner. That is an additional step, as well as those averred to, which is being put in place pending a transfer with a view to trying to secure the safety of the Respondent. Needless to say, that step alone, while welcome, is no substitute for the application and the care which she requires in the therapeutically secure context which [the UK Placement] can provide.

Orders Granted

61. In terms of the reliefs sought, I have carefully considered the draft very helpfully furnished by Ms. McKechnie on behalf of the Agency. The evidence before the Court which I have attempted to summarise, certainly in my view, provides a basis for each and every one of the matters which in the draft the Court “notes” and is “satisfied of”, and the evidence, certainly in my view, supports the making of each and every one of the orders identified at paragraphs 1 to 13 inclusive, of the draft. They are in the best interests of the Respondent, they are necessary and proportionate interventions without which there is simply no means of keeping the Respondent safe, in circumstances where there is simply no alternative or less restrictive care regime available to her and none in this jurisdiction.